

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 11th DAY OF JUNE, 2009

PRESENT

THE HON'BLE MR. P.D. DINAKARAN, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE V.G. SABHAHIT

WRIT PETITION No.5022/2009 (GM-MM,S-PIL)

BETWEEN:

SRI SATHYAMOORTHY
S/O. PERUMAL
AGED ABOUT 49 YEARS,
R/AT No.4, NEAR VINAYAKA TEMPLE
KSRTC LAYOUT, SUBRAMANYAPURA POST
UTTRAHALLI MAIN ROAD
BANGALORE-61

... PETITIONER

(By Sri Rakesh Khanna, Senior Advocate
for Sri S.J. Chouta)

AND :

- 1 THE SECRETARY TO THE
GOVERNMENT OF INDIA
MINISTRY OF MINES
DEPARTMENT OF MINES
C WING, SHASTRI BHAVAN
CONNAUGHT PLACE
NEW DELHI 110 001
- 2 THE SECRETARY TO THE
GOVERNMENT OF INDIA
MINISTRY OF STEELS
DEPARTMENT OF STEELS
SHASTRI BHAVAN
CONNAUGHT PLACE
NEW DELHI 110 001

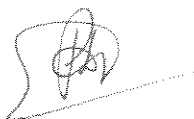


- 3 THE SECRETARY TO
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT
AND FOREST
SHASTRI BHAVAN, CONNAUGHT PLACE
NEW DELHI 110001
- 4 THE PRINCIPAL SECRETARY TO
GOVERNMENT OF KARNATAKA
COMMERCE AND INDUSTRIES DEPARTMENT,
M.S. BUILDING, Dr. AMBEDKAR VEEDHI,
BANGALORE-560 001.
- 5 THE SECRETARY TO
GOVERNMENT OF KARNATAKA
FOREST AND ENVIRONMENT DEPARTMENT
M S BUILDING, DR AMBEDKAR VEEDHI
BANGALORE-560 001
- 6 THE SECRETARY TO
GOVERNMENT OF KARNATAKA
DEPARTMENT OF MINES AND GEOLOGY
M S BUILDING, Dr. AMBEDKAR VEEDHI
BANGALORE-560 001
- 7 THE SECRETARY TO
GOVERNMENT OF KARNATAKA
REVENUE DEPARTMENT
M S BUILDING, Dr. AMBEDKAR VEEDHI
BANGALORE-01
- 8 THE DIRECTOR OF MINES AND GEOLOGY
GOVERNMENT OF KARNATAKA
M S BUILDING
Dr. AMBEDKAR VEEDHI
BANGALORE-560 001

... RESPONDENTS

(By Sri Aravind Kumar, Assistant Solicitor General For R1-3,
Sri Udaya Holla, Advocate General along with Sri Basavaraj Kareddy,
Government Advocate for R4-R8)

This W.P. is filed praying to direct the respondents not to issue
any mining leases in respect of iron ore within the state of Karnataka,
until all existing steel industries are issued captive mining leases.



This writ petition having been heard and reserved for judgment, coming on for pronouncement of judgment this day, Hon'ble the Chief Justice pronounced the following:

J U D G M E N T

This Public Interest Litigation is filed by Sri Sathyamoorthy, claiming to be a public spirited citizen, interested in safeguarding the public at large, against the exploitation of iron ore minerals in Karnataka.

2. The petitioner has sought for the following reliefs in the writ petition:

- i. to direct the respondents not to issue any mining leases in respect of iron ore within the State of Karnataka, until all existing steel industries are issued captive mining leases;
- ii. to reserve certain areas exclusively for existing steel industries;
- iii. to grant Captive Mining Leases to Steel Manufacturing industries in the State of Karnataka in proportion to their respective licensed capacity on preferential basis;
- iv. not to renew any existing mining lease unless necessary investment is made by the lease towards value addition;



- v. to increase the royalty and licence fee to a minimum of 10% of value of iron ore extracted; and
- vi. direct the respondents to frame appropriate rules to curb illegal mining of iron ore.

3. The case of the petitioner is that he has undergone severe anguish upon reading various news paper reports regarding illegal mining operations in Bellary District and the reports of the wealth amassed and flaunted by the mining cartel. The petitioner has conducted a detailed study of the mining of iron ore in India while concentrating in particular on the industry in Karnataka State.

4.1. It is brought to our notice that the Government of India formulated a National Mineral Policy based on the report of the High Level Committee, 2006. The said Committee referred to the menace of illegal mining and undesirable consequences thereon as follows:

- i. Unscientific mining;
- ii. Environmental and ecological degradation;
- iii. Illegal felling of trees and destruction of the forest cover;
- iv. Exploitation of workers without proper safety, health and welfare measure;



- v. Increased role of anti-social elements and criminals;
- vi. Profiteering by miners without any obligations to the Society;

4.2. Chapter 7 of the National Mineral Policy, 2008 makes special note of the need for the allocation of captive mines to Steel makers. The report acknowledges that iron ore is a limited resource and the indigenous Steel industry should have the benefit of iron ore at extraction cost rather than at market prices. The reason being that the proven reserves of hematite iron ore being limited, would not last beyond next 40-50 years. Hence, there is necessity to conserve iron ore and allot the available mineral resource to local steel mills to ensure long term supplies. This would also lead to reduction in freight besides reduction in cost of the two essential raw materials used in Steel making, namely Coking Coal and energy. The report also takes cognizance of the fact that in other countries, steel producers have captive mines.

4.3. It is also brought to our notice that though the recommendation had been made by the High Level Committee, no step has been taken for implementing the said recommendation and the recommendation made in the report still remains largely on paper.



4.4. National Mineral Policy, 2008 has also been promulgated and India ranks as the fifth major Steel producing nation with the total production of 55 million tonnes during the year 2008. On the other hand, China, which ranks as No.1 among the Steel producing countries, produced 502 million tonnes of steel during 2008. China emerged as a largest steel producing country since 1996 and its steel production and consumption of Steel amounts to 35% of the Global Steel share. China is also the largest importer and consumer of iron ore. It is estimated that 1.70 tonnes of iron ore is required to produce one tonne of crude Steel. As per the data, India ranks fifth in terms of iron ore resources, which are estimated as 23.10 billion tonnes of iron ore deposits. During the year 2008, as much as 207 million tonnes of iron ore had been produced. **Unfortunately, this national treasure is largely concentrated in the hands of few mining cartels, who exploit this natural reserve for their own private gains. Out of 207 million tonnes of iron ore produced, only 87 million tonnes were consumed domestically, while 120 million tonnes were exported mostly to South Asian Countries.** The locally consumed iron ore resulted in production of about 50 tonnes of Steel in the ratio of 1.7 tonnes of ore for



production of one tonne of Steel. **This wide disparity between domestic consumption of iron ore and the actual production of iron ore is mainly due to the lack of proper planning and policy making on behalf of the Government of India as well as various State Governments.**

4.5.1. What is more relevant, as brought to our notice, is, **Karnataka State has a possible 1150 million tonnes of iron ore reserves. Out of this huge reserves, nearly 400 million tonnes of crude iron ore has been identified and is presently being exploited.** The international rate of iron ore is \$ 150 currently, which has propelled the producers of iron ore to market their products internationally at the cost of the security of our future generations, because mineral resources are finite and non-renewable, besides depriving the domestic steel industry of much required iron ore.

4.5.2. Even though Karnataka has nearly 40% of the total Indian iron ore reserves, its production of Steel is only around 6 million tonnes, which amounts to 11% of India's Steel production capacity. According to the petitioner, this dismal state of affairs is due to the failure on the part of the successive Governments of Karnataka and Union Government to grant a preferential



treatment to steel producers in the State, thereby ensuring uninterrupted iron ore to feed their needs. Other States that have large deposits of iron ore have entered into M.O.U.s with steel manufacturers and granted mining lease on preferential basis.

4.6. It is further brought to our notice that the cost of mining ore in India, which is available on the surface, is around Rs.200 per tonne. The State Government receives between Rs.15 to 27 per tonne towards royalty depending on the quality of the ore. **The total cost of one tonne of iron ore works up to around Rs.300 per tonne ex-mine. As against this meager cost, the mining cartel has been selling the iron ore at \$ 150 per tonne and thus earning a profit in excess of Rs.5000/- per tonne.** The total profit earned by the iron ore mining industry on the 120 million tonnes of iron ore exported in the year 2007-2008 assumes mind boggling proportion of around Rs.60,000 Crore in one year alone over and above Rs.15,000 Crore profit on domestic sale.

4.7. It is also brought to our notice that siphoning of national wealth by few individuals would be put to an end by



evolving a policy of granting mining leases to steel producing industry in relation to their respective production capacity.

4.8. The petitioner complains that huge profits earned by the Mining Industry has led to rampant mining mainly by the existing licensees. Various reports substantiate the claims that the illegal mining is as huge and as extensive as the legal mining. One shudders to think of the quantum of money generated through illegally operated iron ore mines. The Government of Karnataka had directed the Hon'ble Lokayukta to enquire into the illegal mining and submit its report. Even though the report of the Lokayukta had been submitted to the State Government in December 2008 itself, it is brought to our notice that **the Government has slept over the report and no action has been taken till the date of filing of the writ petition.** It is therefore complained that, the respondents are not safeguarding the State's iron ore reserves from illegal exploitation despite huge loss of revenue.

4.9. The petitioner, therefore, had submitted a representation on **18.02.2009 to the respondents requesting them to grant Captive Mining leases to the domestic steel industries on preferential basis so as to**



ensure uninterrupted supply of iron ore at extract rates.

However, respondents have not heeded to the petitioner's request.

4.10. Being aggrieved by the utter inaction on the part of the respondents in implementing the various reports and policy decisions, the petitioner is seeking appropriate directions to **implement the policy by granting preferential mining lease to domestic steel industries so as to enable them to have uninterrupted supply of iron ore at reasonable rates and wherefore the writ petition for the above said reliefs.**

5.1. Mr. Rakesh Khanna, learned senior counsel appearing for the petitioner submits that though the National Mineral Policy, 2006 and 2008 provide for captive mining and the Mineral Policy, 2008 promulgated by the Government of Karnataka contemplates grant of captive mining licenses in favour of the Steel manufacturers, the said policies are not implemented in true letter and spirit.

5.2. The learned senior counsel has taken us through the **provisions of the MMDR Act and the Rules framed thereunder, viz. the Mineral Concession Rules, 1960 (hereinafter referred to as 'the MC Rules' for short) as**



also the contents of the National Mineral Policy, 2006, National Mineral Policy, 2008 and the Karnataka Mineral Policy, 2008.

5.3. Mr. Rakesh Khanna, learned senior counsel appearing for the petitioner has taken us through the provisions of Chapters 5 and 7 of the report of the High Level Committee under the Chairmanship of Sri Anwarul Hoda and invited our attention to the observations made in the report of the High Level Committee **regarding importance of captive mining and the encouragement to be given to the Steel manufacturers.**

5.4. Mr. Rakesh Khanna, learned senior counsel also submits that the **applications submitted by the Steel Manufacturers for grant of captive mining licenses have not been considered within reasonable time either by the State Government or by the Central Government despite the time limit prescribed under Rule 63-A of the Rules for the State Government to make recommendation to the Central Government and no time limit has been prescribed for grant of permission by the Central Government in**



respect of the approval of mining lease pertaining to minerals mentioned in Schedule I of the Act.

5.5. Bringing to our notice Rule 63-A of the Rules, it is submitted that the applications are not processed within reasonable time and while considering the applications for grant of mining lease, National Mineral policy and Mineral Policy of the State Government for encouraging captive mining are not taken into account.

6. Mr. Aravind Kumar, the learned Assistant Solicitor General appearing for respondents 1 to 3 submits that **National Mineral Policy encourages captive mining as also the value additions.** He further submits that no time limit is prescribed for the Central Government to grant prior approval. Steps are being taken for amending the Rules for prescribing reasonable time limit for taking action by the Central Government and also to enhance the royalty payable to the Government. He also submits that apart from encouraging captive mining, it is also necessary to encourage iron ore mining as a stand-alone industry and **also to give encouragement for value addition as the same would generate employment avenue and brings revenue to the Government;** necessary



steps have been taken by the Central Government by issuing directions to the State Government; complaints received in the matter are taken up continuously and are tracked till the final report in the matter is received and action on the complaints is completed.

7.1. Mr. Udaya Holla, learned Advocate General appearing for respondents 4 to 8 contends that:

- (i) the petitioner has no locus standi to file the present public interest petition, in respect of which, admittedly, the petitioner has no interest;
- (ii) The State Government, as well as Central Government, have not violated the policy framed by them and therefore, the petitioner is not entitled to the relief as prayed for on the basis of the mineral policy adopted by the State Government as well as the Central Government;
- (iii) it is for the Government to have its own policy and this Court cannot interfere with the policy decisions taken by the Government;
- (iv) the relief sought for by the petitioner to direct the respondents not to issue mining leases for iron ore



till all existing steel industries are issued captive mining leases, cannot be granted;

- (v) The Central Government has come up with a national policy, wherein, it is observed that:

"Mining contributes to the generation of wealth and creation of employment independently and therefore, be treated as an economic activity in its own right and not merely as an ancillary activity of manufacturing industry."

- (vi) the Central Government is also of the **opinion that mining has a backward linkage and value addition within the same State should be encouraged and therefore, priority should be given for captive mining viz., grant of mining leases to industries, which consume minerals/ore;**

- (vii) Even though the State Government Policy that mining is a stand-alone industry has to be acknowledged, **the State Government Policy also provides that there shall be a priority for the captive mining;**

- (viii) that the exports are essential for the economy of the country;



- (ix) that there should not be a total ban on export of iron ore as the same is a matter of policy for the Government and the same is not justiceable; and
- (x) The State Government has made recommendation for grant of mining lease to Steel Industry.

7.2. Learned Advocate General also submits that the State of Karnataka has declared its Mineral Policy in 2008 based on the National Mineral Policy, 2008. The main objects of the State Mineral Policy, as enumerated in clause 5.2, are:

- (i) **to promote transparency in granting concessions;**
- (ii) **to maximize value addition to the minerals extracted within the State by encouraging maximum investments in downstream industries; and**
- (iii) **to give priority to the applicants who propose establishment of industries for value addition within the vicinity of the mineral bearing areas.**

7.3. Mr. Udaya Holla, learned Advocate General further submits that Clause 6 of the State Mineral Policy provides for Mineral based Industries, which reads as hereunder:



6.1. Mining as a stand-alone industry needs to be encouraged as it provides large scale employment. It creates value by converting a resource into a product;

6.2. New mineral based industries should be set up to match the available raw material resources;

6.3. Existing and new industries should set up facilities to bring the available raw materials up to the required specifications by processes like beneficiation, pelletisation and sintering; and

6.4. These industries will generate more employment and spawn auxiliary industries.

7.4. Learned Advocate General thus submits that though captive mining has to be encouraged, mining as a stand-alone industry cannot be ignored, as the raw material for manufacture of Steel has to be imported and that would be possible only if foreign exchange is earned by export of iron ore, so that, the steel industries would not suffer for want of raw material.

7.5. Learned Advocate General, therefore, submits that the importance of captive mining would not be ignored and the State Mineral Policy would be enforced in true letter and spirit. **He further submitted that the applications for grant of mining**



lease would be processed within time limit prescribed under Rule 63-A of the Rules.

8. We have given our careful consideration to the submissions made on behalf of the petitioner as well as the respondents.

9.1. It is relevant to keep in mind that entry 54 of the Seventh Schedule of the Constitution in Union List, empowers the Parliament **to enact legislation for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.** Accordingly the Parliament enacted a separate legislation viz. the MMDR Act, in order to provide for regulation of mines and development of minerals, even though the mines and minerals vests with the State Government and the forest belong to the State Government; and the Central Government, either under the MMDR Act or under the Forest (Conservation) Act, 1980 (for short 'the FC Act') do not have any hold, any right or ownership over the minerals or forest. By operation of the MMDR and FC Acts there is a need to get prior approval of the Central Government.



9.2. The mining operation and grant of leases are governed by the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the MMDR Act').

9.3. Section 2 of the MMDR Act provides for declaration as to expediency of Union Control. Section 4(1) provides that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence, or as the case may be, of a mining lease, granted under the MMDR Act and Rules framed thereunder. Section 4(2) provides that no reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of the MMDR Act and the Rules framed thereunder. Section 4(3) provides that any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease. Section 5(1) provides for restrictions on the grant of

prospecting licences or mining leases. As per proviso to Section 5(1), no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government; Section 5(2) thereof provides that no mining lease shall be granted by the State Government unless it is satisfied that-

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

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

Section 10 of the MMDR Act provides for the grant of three types of licenses, viz.

- (i) Reconnaissance permits;
- (ii) Prospecting license; and
- (iii) Mining lease.

9.4. An application for grant of any of the aforesaid licenses should be made to the concerned State Government along with the necessary fee. Section 11 of the Act empowers



the State Government to grant preferential right to certain persons. Section 13 of the Act empowers the Central Government to frame rules regulating the grant of permits, licenses and leases in respect of certain minerals incorporated in Schedule - I of the Act. The Central Government under Section 17 of the Act is empowered to reserve to itself certain areas not already covered under any lease for exploitation by it. Section 17A of the Act provides for reservation of certain areas for the purpose of conservation. Section 18 of the Act imposes a duty on the Central Government to take all steps that may be necessary for the conservation, systematic development of minerals and for the protection of the environment by preventing or controlling any pollution which may be caused. Section 23 C of the Act imposes a duty on the State Government to make rules for preventing illegal mining, transportation and storage of minerals. The present petition is confined to iron ore which is listed in Schedule I part C serial No.6.

9.4.1. In this regard, it is apt to extract some of the relevant provisions of the MMDR Act, referred to above.

9.4.2. Section 2 of the MMDR Act is a declaration as to the expediency of Union control. The same reads as hereunder:



"Section 2: Declaration as to the expediency of Union control.- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

9.4.3. That apart, as per Section 4 of the MMDR Act, no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of permit/licence or as the case may be, of mining lease, granted under this Act and the rules made thereunder, and also provides that no permit, licence or lease shall be granted otherwise than in accordance with the MMDR Act and the Rules framed thereunder, which reads as under:

Section 4: Prospecting or mining operations to be under licence or lease.- (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the



commencement of this Act which is in force at such commencement.

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) no reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules framed thereunder.

(3) any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not



already held under any reconnaissance permit, prospecting licence or mining lease.

9.4.4. However, the State Government shall not grant reconnaissance permit, prospecting licence or mining lease to any person, **except with the prior approval of the Central Government** and no mining lease shall be granted by the State Government **unless it is satisfied that there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned,** as per Section 5 of the MMDR Act. The same read as hereunder:

Section 5: Restrictions on the grant of prospecting licences or mining leases.- (1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person-

- (a) is an Indian national, or company as defined in sub-section (1) of section 3 of the Companies Act, 1956 (1 of 1956); and
- (b) satisfies such conditions as may be prescribed:

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



Explanation.- For the purposes of this sub-section, a person shall be deemed to be an Indian national,-

- (a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and*
- (b) in the case of an individual, only if he is a citizen of India.*

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

- (a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and*
- (b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.***

9.4.5. Section 6 of the MMDR Act deals with maximum area for which a prospecting licence of mining lease may be granted. The same reads thus:

Section 6:- Maximum area for which a prospecting licence or mining lease may be granted.- (1) No person shall acquire in respect of any mineral or prescribed group of associated minerals in a State-

- (a) one or more prospecting licences covering a total area of more than twenty-five square kilometres; or*
- (aa) one or more reconnaissance permit covering a total area of ten thousand square kilometres;*

Provided that the area granted under a single reconnaissance permit shall not exceed five thousand square kilometres; or

- (b) *one or more mining leases covering a total area of more than ten square kilometres:*

Provided that if the Central Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded by it, in writing, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the aforesaid total area;

- (c) *any reconnaissance permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous:*

Provided that if the State Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire a reconnaissance permit, prospecting licence or mining lease in relation to any area which is not compact or contiguous.

(2) *For the purposes of this section, a person acquiring by, or in the name of, another person a reconnaissance permit, prospecting licence or mining lease which is intended for himself shall be deemed to be acquiring it himself.*

(3) *For the purposes of determining the total area referred to in sub-section (1), the area held under a reconnaissance permit, prospecting licence or mining lease by a person as a member of a co-operative society, company or other corporation or a Hindu undivided family or a partner of a firm, shall be deducted from the area referred to in sub-section (1) so that the sum total of the area held by such person, under a reconnaissance permit, prospecting licence or mining lease, whether as such member or partner, or individually, may not, in any case, exceed the total area specified in sub-section (1).*



xxx xxx xxx

xxx xxx xxx

xxx xxx xxx

9.4.6. As per Section 10 of the MMDR Act, application for the reconnaissance permit, prospecting licence or mining lease shall be made to the State Government in the prescribed Form. On receipt of such application, the State Government can grant or refuse to grant the permit, licence or lease as per the provisions of the Act and any Rules made thereunder, which reads as follows:

Section 10: Application for prospecting licences or mining leases.-

- (1) An application for a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.*
- (2) Where an application is received under sub-section(1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.*
- (3) On receipt of an application under this section, the State Government may, **having regard to the provisions of this Act and any rules made thereunder**, grant or refuse to grant the permit, licence or lease.*

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9.4.7. Section 11 of the MMDR Act deals with preferential right of certain persons, which reads thus:

Section 11: Preferential right of certain persons.-

(1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee **shall have a preferential right for obtaining** a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government **is satisfied that** the permit holder or the licensee, as the case may be, -

- (a) has undertaken **reconnaissance operations or prospecting operations**, as the case may be, to establish mineral resources in such land;
- (b) **has not committed any breach** of the terms and conditions of the reconnaissance permit or the prospecting licence;
- (c) **has not become ineligible** under the provisions of this Act; and
- (d) **has not failed to apply** for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

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



shall have 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 or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section(2) are the following:-

- (a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;**
- (b) the financial resources of the applicant;**



- (c) the **nature and quality of the technical staff employed** or to be employed by the applicant;
- (d) the investment which the applicant proposes to make in the mines and **in the industry based on the minerals**; and
- (e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section(1), where the **State Government** notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, **all the applications received during the period as specified in such notification**, which shall not be **less than thirty days**, shall be considered simultaneously as if all such applications have been received **on the same day** and the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, **to such one of the applicants as it may deem fit.**

(5) **Notwithstanding anything** contained in sub-section (2), but subject to the provisions of sub-section (1), the **State Government may, for any special reasons to be recorded**, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, **to an applicant whose application was received later in preference to an applicant whose application was received earlier:**

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section.

9.4.8. Section 11(1) of the MMDR Act prescribes the following qualifications for claiming their preferential right for obtaining the prospecting licence or mining lease, viz.

- (i) the permit holder or the licensee has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;
- (ii) has not committed any breach of terms and conditions of the reconnaissance permit or the prospective licence;
- (iii) has not become ineligible under the provisions of the Act; and
- (iv) has not failed to apply for prospecting licence or mining lease within three months after the expiry of reconnaissance permit.

9.4.9. Section 11(2) provides that where the State Government has not notified the area for the grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and two or more persons have applied for reconnaissance permit, prospecting licence or mining lease, the applications received earlier shall have preferential right over the applications received later, i.e. preference should be given based on the date of application.



9.4.10. But, the first proviso to Section 11(2) of the MMDR Act states that, where an area is available for reconnaissance permit, prospecting licence or mining lease and the State Government has invited applications by notification 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 and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority.**

9.4.11 The second proviso to Section 11(2) of the MMDR Act provides that where any ***such applications are received on the same day,*** the State Government may grant reconnaissance permit, prospecting licence or mining lease to such one of the applicants as they deem fit after taking into consideration the matters under Section 11(3)(a) to (e) of the MMDR Act.

9.4.12. As per Section 11(4) of the MMDR Act, all the applications received during the period as specified in the notification, which shall not be less than thirty days, ***shall be considered simultaneously as if all such applications were***



received on the same day after taking into consideration the matters referred to under Section 11(3) of the MMDR Act.

9.4.13. Section 11(5) of the MMDR Act empowers the State Government for any special reasons to be recorded, to grant reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later, in preference to an applicant whose application was received earlier, of course, with the prior approval of the Central Government in respect of minerals specified in the First Schedule.

9.4.14. A comparative analysis of Sections 11(2) and 11(4) of the MMDR Act would make it clear that Section 11(2) is applicable when the State Government has not notified the area available for the grant and in such case, applications received earlier would be preferred as against the applications received later.

9.4.15. As per the first proviso to Section 11(2) of the MMDR Act, the applications made prior to the notification, shall also be deemed to be received on the same day pursuant to the notification notifying the area available for grant and inviting application for the same.



9.4.16. The second proviso to the said Section provides that, where any such applications are received on the same day, the State Government may grant reconnaissance permit/prospecting licence/mining lease, as the case may be, to such one of the applicants, taking into consideration the matters specified under Section 11(3) of the MMDR Act.

9.4.17. As per Section 11(4) of the MMDR Act all the applications received during the period specified in the notification shall be considered simultaneously as if they were received on the same day, after taking into consideration the matters specified under Section 11(3) of the MMDR Act.

9.4.18. A harmonious reading of these provisions would make it clear that all the applications, whether made prior to the notification or after the notification, or whether they are received during the period specified in the notification which shall not be less than thirty days, shall be deemed to have been received on the same day pursuant to the notification and all such applications shall be considered simultaneously, after taking into consideration the matters specified in Section 11(3). In other words, only if no notification is made as to the availability of area for grant, and when two or more persons have applied, the



applications received earlier shall have preference over the later ones.

9.4.19. Section 18 of the MMDR Act emphasizes the necessity for conservation and systematic development of minerals in India and for protection of environment for preventing and controlling any pollution, which may be caused by prospecting or mining operations. The same reads thus:

Section 18: Mineral Development. - (1) *It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and **for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations** and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.*

(2) *In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:-*

- (a) *the opening of new mines and the regulation of mining operations in any area;*
- (b) *the regulation of the excavation or collection of minerals from any mine;*
- (c) *the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of sustainable contrivances for such purpose;*
- (d) *the development of mineral resources in any area;*



- (e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bore-holes;
- (f) the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person;
- (g) the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf;
- (h) the submission by the owners of mines of such special or periodical returns and reports as may be specified, and the form in which and the authority to which such returns and reports shall be submitted;
- (i) the regulation of prospecting operations;
- (j) the employment of qualified geologists or mining engineers to supervise prospecting or mining operations;
- (k) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine;
- (l) the manner in which and the authority by which directions may be issued to the owners of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals or for the protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations;
- (m) the maintenance and submission of such plans, registers or records as may be specified by the Government;
- (n) the submission of records or reports by persons carrying on prospecting or mining operations regarding any research in mining or geology carried out by them;

- (o) *the facilities to be afforded by person carrying out prospecting or mining operations to persons authorised by the Central Government for the purpose of undertaking research or training in matters relating to mining or geology.*
- (p) *the procedure for and the manner of imposition of fines for the contravention of any of the rules framed under this section and the authority who may impose such fines; and*
- (q) *the authority to which, the period within which, the form and the manner in which applications for revision of any order passed by any authority under this Act and the rules made thereunder may be made, the fee to be paid and the documents which should accompany such applications.*

(3) *All rules made under this section shall be binding on the Government.*

9.4.20. Sections 2 and 18 of the MMDR Act referred to above also emphasise the authority of the Central Government in the matter of regulation of mines and development of minerals-

- (i) in public interest;
- (ii) for conservation and systematic development of minerals in India; and
- (iii) for protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations.

10.1. The Central Government, by exercise of the power conferred under Section 13 of the MMDR Act, framed the Mineral Concession Rules, 1960.

10.2. Rule 26 of the MC Rules provides the procedure to be followed for the refusal of the application for grant or renewal of the mining lease and the same reads as hereunder:

"26. Refusal of application for grant and renewal of mining lease.-

- (1) *The State Government may, **after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant,** refuse to grant or renew a mining lease over the whole or part of the area applied for.*
- (2) ***An application for the** grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, **shall not be refused** by the State Government **only on the ground that Form I or Form J,** as the case may be, **is not complete in all material particulars, or is not accompanied by the documents** referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-rule 22.*
- (3) ***Where it appears that the application is not complete** in all material particulars or **is not accompanied by the required documents,** the State Government shall, by notice, **require the applicant to supply the omission or,** as the case may be, **furnish the documents,** without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.*

{emphasis supplied}



10.3. Rule 35 of the MC Rules provides for preferential right of certain persons and the same reads as hereunder:

"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."

{emphasis supplied}

10.4. Rule 59 of the MC Rules deals with the availability of the area for re-grant to be notified and the same reads as hereunder:

"Rule. 59. Availability of area for re-grant to be notified.- (1) No area-

- (a) **which was previously held or which is being held** under a reconnaissance permit or a prospecting licence or a mining lease; or
- (b) **which has been reserved by the government or any local authority for any purpose other than mining; or**
- (c) **in respect of which the order granting a permit or licence or lease has been revoked under sub-rule(1) of rule 7A or sub-rule(1)**

of rule 15 or sub-rule(1) or rule 31, as the case may be; or

(d) **in respect of which a notification has been issued under** sub-section (2) or sub-section (4) of section 17; or

(e) **which has been reserved by the State Government or under section 17A of the Act,**

shall be available for grant unless -

(i) **an entry to the effect that the area is available** for grant is made in the register referred to in sub-rule (2) of rule 7D or sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be; and

(ii) **the availability of the area for grant is notified** in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that **where an area reserved under rule 58 or under section 17A of the Act is proposed to be granted to a Government Company, no notification under clause(ii)** shall be required to be issued:

Provided also that **where an area held** under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of **sub-section (1) of**

section 11, no notification under clause (ii) shall be required to be issued.

(2) The **Central Government** may, for reasons to be recorded in writing, **relax the provisions of sub-rule (1) in any special case.**"

{emphasis supplied}

10.5. Rule 63A of the Rules, which prescribes the time limit for the disposal of the applications by the State Government for grant of reconnaissance permit, prospecting licence and mining lease, reads as hereunder:

Rule 63-A. *The State Government shall dispose of the application for grant of reconnaissance permit, prospecting licence or mining lease in the following period:-*

(a) Reconnaissance Permit – *within six months from the date of receipt of the application for reconnaissance permit under Rule 4A.*

(b) Prospecting licence – *within nine months from the date of receipt of the application for prospecting licence under Rule 10.*

(c) Mining lease – *within 12 months from the date of receipt of the application for mining lease under rule 22:*

Provided that the aforesaid periods shall be applicable only if the application for reconnaissance permit, prospecting licence or mining lease, as the case may be, is complete in all respects:



Provided further that the disposal by the state Government in the case of minerals listed in the First Schedule to the Act shall mean either recommendation to the Central Government for grant of the mineral concession or refusal to grant the mineral concession by the State Government under rule 5 for reconnaissance permit, rule 12 for prospecting licence and rule 26 for mining lease, and in all other cases, disposal shall mean either intimation regarding grant of precise area, or refusal to grant the mineral concession under rule 5 for reconnaissance permit, rule 12 for prospecting licence and rule 26 for mining lease:

Provided also that in case the State Government is not able to dispose of the application for grant of reconnaissance permit, prospecting licence or mining lease within the period as specified above, the reasons for the delay shall be given in writing."

11.1. It is clear from the report of the High Level Committee of the Government of India that **it is necessary to distinguish between the concepts of value addition and captive mining in the context of issues raised before the Committee.** Value Addition requirement is imposed by the State Governments when they want the concession holder to ensure that the industrial unit that uses the mineral from the allocated mine is set up within the boundaries of the state in which the mine is located; there is no such location specificity in captive mining and only a supply linkage between the mine and

the unit is required and this has implications for mining concessions claimed by value adders from adjoining states.

11.2. The Committee has observed that : a thriving Steel industry does not need to rely on captive mining; however, captive mines are a reality in India and many of them are run efficiently; at the same time, there are benefits that large-scale stand-alone mining can bring huge foreign exchange, which the country cannot afford to ignore, such as, induction of advanced technology in exploration as well as optimum mining operations; and it would be in the country's interest to have a mining regime in which space exists for both captive and stand alone mines.

11.3. The said High Level Committee, after considering the arguments in favour of and against captive mining, has made the following recommendations:

- "1. Stand alone mining and captive mining should continue to co-exist in the country. The position should be reviewed in 2016-17 in light of the emerging situation of establishment of steel capacity in the country, on the one hand, and accretions to the level of iron ore resources in the country, on the other. A view can be taken at that time on whether the balance of advantage in the grant of

LAPL/PL/M1, should be changed in favour of Steel mines.

2. Through appropriate changes in Section 11(3)(d) it should be clarified that in a situation of multiple applications for grant of iron ore LAPL/PL/ML, the existing investment in Steel plants that have exhausted their current captive mines should also be a consideration. However, the applicant must independently qualify under other criteria, including Section 11(3)(a) relating to prior experience. This is necessary to ensure efficient mining.
3. Existing Captive mines should be renewed if they have complied with the conditions of the lease and the life of the steel plant so warrants taking into account existing and planned capacities. In the case of new capacities, the recommendations of Chapter 5 will apply.
4. **Steel making capacities already in existence on 1st July 2006 that do not have captive mines may also be given preferential allocation of adequate iron ore reserves within the State without the need to go through the process of tender/auction, as a one-time measure to provide a level playing field. These existing steel companies would have to enter into tie-ups with experienced**



mining companies so that they become eligible in terms of Section 11(3)(a) of the MMDR Act. Due regard should be given to the size of the steel making capacity when considering allocation of a specific ore body.

5. Scientific and vigorous prospecting in the country should be encouraged. LAPLs and PLs for magnetite may be freely given to both stand alone and captive miners, whether Indian or foreign. LAPLs for haematite may be given only after strictly ensuring that GSI or another state agency has not already done the requisite exploration.
6. **Captive Iron ore mines allotted to Steel makers should use the ore from these mines for their own steel and should not sell the same either in India or abroad. "**

12. In view of the National Mineral Policy, 2008 as also the Karnataka Mineral Policy, 2008, it is clear that captive mining is sought to be encouraged in the said policies and recommendations are being made for grant of mining lease in favour of Steel Industries. Priority is also given for value addition. **It is clear from the provisions of Section 11(3)(d) of the Act that the investment which the applicant proposes to make in the mines and in the**



industry based on the minerals is also one of the factors to be considered for granting mining lease. Similarly, Rule 35 of the Rules provides that 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. Further, the development of mining as a stand alone industry has also not been ignored.

13.1. Both the learned Advocate General appearing for respondents 4 to 8 as also the Assistant Solicitor General appearing for respondents 1 to 3 fairly concede that in view of the National Mineral Policy, 2008 and Karnataka Mineral Policy, 2008, **captive mining by giving preference to the applications filed by Steel manufacturers is recognized for encouragement and in view of the time limit fixed for processing the applications by the State Government under Rule 63-A of the Rules, it is clear that the Government of Karnataka is interested in implementing the State Mineral Policy by giving priority to captive**



mining and to dispose of the applications for grant of mining lease by the Steel manufacturers within time prescribed under Rule 63-A of the Rules.

13.2. The learned Assistant Solicitor General fairly agrees **that the National Mineral Policy also contemplates encouragement to be given to Captive Mining by considering the applications filed by Steel manufacturers for grant of mining lease for captive mining and for value additions.** Though no time limit is prescribed by the Central Government to dispose of the applications for grant of prior approval, as recommended by the State Government, the same should be done within reasonable time. Steps are also being taken for fixing time limit under the Rules, by amending the Rules.

14.1. Interpreting the above provisions of the MMDR Act and MC Rules, particularly Section 18 and Rule 26, which speak about the systematic development of minerals and procedure to be followed in the matter while refusing to grant or renew the lease, this Court, in the case of **M/S. JINDAL VIJAYANAGAR STEELS LTD. V. M/S. MSPL LIMITED** [Writ Appeal No.5026 of



2009 and connected matters disposed of on 5th June, 2009] observed that:

"17.27.5 In view of the crystal clear declaration under Section 2 of the MMDR Act and the intention for the development of minerals as provided under Section 18 of the MMDR Act, an obligation is cast on the Central Government to **take steps for the systematic development of minerals in India** and, for such purpose, to make rules. There is no obligation cast upon the Central Government to exploit minerals but the obligation is to ensure that such exploitation takes place in a systematic manner (**vide KARTAR SINGH BHADANA v. HARI SINGH NATWA- AIR 2001 SC 1556**). It is to achieve this obligation, MMDR Act and the MC Rules provide wide opportunity to the applicants, so that, no application for grant or renewal of mining lease shall be refused on the ground of incomplete details or want of material particulars and such applicant should be required to comply with such omissions and material particulars and the State Government has to give an opportunity of being heard and record the reasons in writing and communicate the same to the applicant, if it proposes to refuse to grant or renew the mining lease as per Rule 26 of the MC Rules. Accordingly, a systematic method is provided for considering, evaluating and dealing with the applications for grant or renewal of mining lease for mineral development.

14.2. While interpreting Section 11(3) of the MMDR Act and Rule 35 of the MC Rules, this Court in M/s. Jindal Vijayanagar Steels Ltd. v. M/s. MSPL Limited [Writ Appeal

No.5026 of 2009 and connected matters disposed of on 5th June, 2009], held that:

"28.4. The words employed by the Parliament under Section 11(3)(e) viz., 'such other matters as may be prescribed' include the matters prescribed under Rule 35 of MC Rules also specifically refers to Section 11(3) of the MMDR Act. It is, therefore, mandatory for the State Government to consider the end-use of minerals by the applicants while evaluating their relative merits. In the instant case, the appellants herein (respondents 4 and 5 in the writ petition) who have already established Iron-ore based industry viz., iron and steel plant, weighed the State Government to prefer the appellants herein (respondents 4 and 5 in the writ petition) as against the first respondent herein (writ petitioner). When the appellants herein (respondents 4 and 5 in the writ petition) proposed to use the iron-ore mined as captive consumption for the existing industry which in turn generate more employment and span ancillary industries, the consideration and evaluation of relative merits of the appellants herein (respondents 4 and 5 in the writ petition) and the first respondent herein (writ petitioner) in terms of Rule 35 of MC Rules, would certainly fall within the matters specified under Section 11(3) of MMDR Act."

14.3. Thus Section 11(3)(d) of the MMDR Act specifically contemplates to take into consideration the investment which the applicants propose to make in the mines and the industries based on minerals; and Rule 35 of the MC Rules provides for

preferential rights of certain persons, considering the end use of the mineral by them.

15.1. Industrialization, which is intended for mass production of goods, changes the way of business and the very lifestyle. While globalization takes over, the local and traditional economy slowly disappears.

15.2. Iron ore comprises naturally occurring iron bearing minerals which can be economically extracted for production of iron and steel. Almost all the iron and steel in this planet have been derived initially from iron ore excepting a few small occurrences of meteorites containing iron coming from Space. Iron ore is a major raw material for steel industry. In 21st century, around 85% of iron and steel came from iron ore directly, the rest from recycled steel scrap, which in turn came from iron ores over the last four centuries.

15.3. Iron and steel is the backbone of modern societies and economies. Per capita consumption of steel is a direct index of degree of development of a nation. As per the available statistics, the present per capita steel consumption is 50 kg per annum in India. Time has come to



compare India's per capita steel consumption with that of 400 kg in developed countries, a world average of 180 kg and Chinese current consumption of 340 kgs. Our country, from a mere domestic per capita steel consumption of 35 kg in 2000, is projected to grow to 150 kg by 2020. This corresponds to the production targeted steel consumption of 200 million tons per annum, after factoring in imports/exports. 60% of the production is expected to come through blast furnace route, 33% through sponge iron – electric arc furnaces and 7% through other routes. This would require an availability of 290 million tones per annum of medium/high grade iron ore, after discounting scrap and recycling. Blast furnaces have the flexibility to use medium grades (62-64% Fe) and fines (through sinter and pellets) without loss of productivity and efficiency.

15.4. Iron constitutes 4-5% of earth's crust, but is not evenly distributed. Iron ore reserves are largely distributed in Australia, Brazil, India, Russia and Ukraine. Indian Iron ore is rich in Fe and has moderate silica, alumina and phosphorus. India ranks fifth in terms of iron ore reserves and is a leading producer and exporter of iron ore in the world after Australia, Brazil and CIS Countries and contributes to around 7.6% of world iron ore production. Some iron ores in India are the best



naturally occurring grades in the world. With 207 million tones of iron ore production in 2008, iron ore tops the metallic mineral production in the country.

15.5. In the meantime, countries like Japan and China have been importing iron ore from India and value adding/converting it to high end-high priced steel products and also exporting to all other countries, to the benefit of their society. Generally, countries have adopted to the idea of conserving raw materials and other inputs for the purpose of domestic industry and only value added item have been exported, ensuring economic growth right from grassroot level. All the economically developed countries have become developed by pursuing this route, excepting Australia who have very large mineral resources and retain very small population. China has adopted a different strategy now, of importing iron (+60% Fe) contributed to 60 MT per year of additional steel inventory there, which is more than India's annual production. This, in turn correspondingly improves the competitiveness of Chinese steel industry for eventual export possibly back to India and this will work against the overall interest of Indian economic growth in the long term.



15.6. The Steel industry is the engine that drives manufacturers in industries such as automobile, machinery, white goods, appliances and constructions. Steel Industry is the back bone of "Economic Development of the Nation" and wherefore, it is imperative that special concern should be taken to develop the indigenous Steel industry by making special concessions and placing the industry in a preferential position vis-à-vis procurement of iron ore.

15.7. Undoubtedly, the Steel industry generates more income to the State exchequer besides generating far more employment than the mining industry. As rightly pointed out, the Steel industry contributes around Rupees 200 Crore annually to the State and Central exchequer for every million tonne of iron ore converted into Steel, as compared to Rs.1.5 Crore in the case of iron ore exported, besides providing permanent employment and livelihood to millions of citizens. Even though the Government of India has formulated a national mineral policy with the objective of granting preferential mining leases to steel industries, no concrete steps have been taken in that regard. Nothing concrete has been done by the State of



Karnataka to control the growing money power of the mining industry and Steel industries have not been granted any iron ore mining lease in the State.

15.8.1. Karnataka has total iron ore resources of 9.03 billion tons out of total 23.59 billion tons, which is 38.28% of total Indian iron ore resources. In spite of higher resources in the State, the total iron and steel making capacity in the State is only a dismal 6.5 million tons, which is only 11.8% of the total Indian iron and steel production capacity of India.

15.8.2. **The biggest fail back of very low steel production is that all these producers who have set up industry in the state do not have any iron ore mines, in spite of the assurance by the State Government and provisions of MMDR Act and National Mineral Policy and the Karnataka State Mineral Policy. These companies have already made an investment of over Rs.25,000/- crore in the state and have generated direct and indirect employment to atleast 25000 people.**

15.8.3. All other mineral-rich states viz., Orissa, Jharkhand and Chattisgarh which signed maximum number of MOUs, have clear policy to give iron ore mining lease only to the existing iron



and steel producers or the proposed steel plants, who make substantial investment in the state in iron and steel plant before the recommendation.

15.8.4. Although mineral wealth vests with State Governments, yet the subject of regulation of mines and mineral development is covered by entry 54 of the Union List under Seventh Schedule of the Constitution of India. By virtue of this, the Parliament has exclusive power to make laws with respect to regulation of mines and mineral development. But still greater role by State Governments is the need of the hour.

15.9. While ratifying the value addition criteria adopted by certain mineral-rich Indian States, utmost priority for granting of mining lease shall be given to those companies who have set up steel plants to the benefit of the society at large.

15.10. **Prudent pre-qualifications followed by allocation of mining leases, within a reasonable time, to those steel companies who have invested and operating, could be the appropriate route to trigger higher growth rate in steel sector, thereby ensuring value addition, employment generation, infrastructure development – a**



pre-requisite to become a developed and balanced society.

16. The main object of economic development is to improve the level of living. The living standards are measured by the availability of food, shelter, education, health, sanitation and social services, etc.

17. Approving the decision of the State Government and Central Government giving preference to captive consumption of iron ore for the existing industry and captive consumption for the proposed industry or mining as a stand-alone industry, this Court by order dated 5th June, 2009 in WA No. 5026 of 2009 and connected matters held as hereunder:

30.4. ... the first respondent herein (writ petitioner) in its representations dated 16th August, 2003, 31st May 2004 and 12th October 2004 has specifically claimed that it intends to use the impugned iron ore as captive consumption for the proposed steel industry. On the other hand, the appellants herein (respondents 4 and 5 in the writ petition) require the impugned iron ore as captive consumption for their existing industry. It is, under such circumstances, the Government rightly, taking into consideration all the relative merits of the respective parties, preferred the appellants herein (respondents 4 and 5 in the writ petition) and recommended them to the Central Government for the grant of mining lease."



18. While mining as a stand-alone industry cannot be ignored, the contention of the petitioner based on the policy decision of the Central and State Government that preference should be given to captive mining while granting mining lease, also deserves due consideration. The schedule of time prescribed under Rule 63A of the MC Rules is also required to be strictly adhered to, as the State is bound by such time schedule in deciding the applications for grant of mining lease. It is true that no specific time limitation is given for granting approval by the Central Government, but that does not mean that the Central Government could take its own sweet time, which in our considered opinion would be unreasonable and arbitrary, because any such delay would affect the economic growth of the State.

19.1 Even though it is not proper for this Court to prescribe any time schedule, which is not provided under the statute, we are of the considered opinion that the Central Government should themselves come forward to exercise their power for clearing the applications for the approval contemplated under Section 5 of the MMDR Act and Section 2 of the FC Act within a reasonable time limit, which should not, in our



considered opinion, be more than six months from the date of receipt of the application for such approval.

19.2. Mere want of provision as on date for passing orders in respect of the approval of the Central Government contemplated under Section 5 of the MMDR Act and Section 2 of the FC Act, would not be an excuse for the Central Government to take indefinite time for passing orders on the application for such approval and to cause undue delay in the matter, as it would defeat the very policy of the Central Government and the State Government in the matter of industrialization and economic development. Of course, it was contended on behalf of the respondents that it may not be proper for this Court to interfere with the policy decision of the Government. But we are unable to appreciate the said contention, because in the instant public interest litigation, the petitioner is neither making any allegation against the policy decision nor challenging the same, but all that the petitioner seeks is, only to give effect to the policy decision of the State which is admittedly implemented by the State.



19.3. The Apex Court, in **SHRILEKHA VIDYARTHI (KUMARI) v. STATE OF UTTAR PRADESH [(1991)1 SCC 212]** held that:

*"27. Unlike a private party whose acts uninformed by reason and influenced by personal predilections in contractual matters may result in adverse consequences to it alone without affecting the public interest, any such act of the State or a public body even in this field would adversely affect the public interest. **Every holder of a public office by virtue of which he acts on behalf of the State or public body is ultimately accountable to the people in whom the sovereignty vests.** As such, all powers so vested in him are meant to be exercised for public good and promoting the public interest. This is equally true of all actions even in the field of contract. Thus, **every holder of a public office is a trustee whose highest duty is to the people of the country and, therefore, every act of the holder of a public office, irrespective of the label classifying that act, is in discharge of public duty meant ultimately for public good.** With the diversification of State activity in a Welfare State requiring the State to discharge its wide ranging functions even through its several instrumentalities, which requires entering into contracts also, it would be unreal and not pragmatic, apart from being unjustified to exclude contractual matters from the sphere of State actions required to be non-arbitrary and justified on the touchstone of Article 14."*



19.4. Again, the Apex Court, in **FOOD CORPORATION OF INDIA v. KAMADHENU CATTLE FEED INDUSTRIES** reported in [(1993)1 SCC 71] has observed as hereunder:

"7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law: **A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is 'fairplay in action'. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.**



8. *The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. **The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent.***

{emphasis supplied}

19.5. In the case of **OFFICIAL LIQUIDATOR v. DAYANAND** reported in **(2008)10 SCC 1**, the Apex Court while dealing with the doctrine of legitimate expectation observed that:



"102. The concept of "due process of law" has played a major role in the development of administrative law. It ensures fairness in public administration. The administrative authorities who are entrusted with the task of deciding between the parties or adjudicating upon the rights of the individuals are duty-bound to comply with the rules of natural justice, which are multifaceted. The absence of bias in the decision-making process and compliance with audi alteram partem are two of these facets. The doctrine of legitimate expectation is a nascent addition to the rules of natural justice. It goes beyond statutory rights by serving as another device for rendering justice. At the root of the principle of legitimate expectation is the constitutional principle of rule of law, which requires regularity, predictability and certainty in Government's dealings with the public—J. Raz, The Authority of Law [(1979) Chapter 11]. The "legal certainty" is also a basic principle of European community. European law is based upon the concept of vertrauensschutz (the honouring of a trust or confidence). It is for these reasons that the existence of a legitimate expectation may even in the absence of a right of private law, justify its recognition in public law.

103. In Halsbury's Laws of England (4th Edn.), the doctrine of legitimate expectation has been described in the following words:

"A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The



expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice."

104. A formal statement on the doctrine of legitimate expectation can be found in the judgment of the House of Lords in *Council of Civil Service Unions v. Minister for Civil Service*. In that case the Government tried to forbid trade unionism among civil service. For this, the Civil Service Order in the 1982 Council was issued. The Court of Appeal declared that the Minister had acted unlawfully in abridging the fundamental right of a citizen to become a member of the trade union. The House of Lords approved the judgment of the Court of Appeal and held that such a right could not be taken away without consulting the civil servant concerned.

105. In India, the courts have gradually recognised that while administering the affairs of the State, **the Government and its departments are expected to honour the policy statements and treat the citizens without any discrimination**. The theory of legitimate expectation first found its mention in *Navjyoti Coop. Group Housing Society v. Union of India*. In that case the right of a housing society for right to priority in the matter of registration was recognised in the following words: (SCC pp. 494-95, paras 15-16)

"15. ... In the aforesaid facts, the Group Housing Societies were entitled to 'legitimate expectation' of following consistent past practice in the matter of allotment, even though they may not have any legal right in private law to receive such treatment. The existence of 'legitimate expectation' may have a number of different

consequences and one of such consequences is that the authority ought not to act to defeat the 'legitimate expectation' without some overriding reason of public policy to justify its doing so. In a case of 'legitimate expectation' if the authority proposes to defeat a person's 'legitimate expectation' it should afford him an opportunity to make representations in the matter. In this connection reference may be made to the discussions on 'legitimate expectation' at p.151 of Vol. 1(1) of Halsbury's Laws of England, 4th Edn. (re-issue). We may also refer to a decision of the House of Lords in *Council of Civil Service Unions v. Minister for Civil Service*. It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a decision of the public authority affected him of some benefit or advantage which in the past he had been permitted to enjoy and which he legitimately expected to be permitted to continue to enjoy either until he was given reasons for withdrawal and the opportunity to comment on such reasons.

16. It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in. We have not been shown any compelling reasons taken into consideration by the Central Government to make a departure from the existing policy of allotment with reference to seniority in registration by introducing a new guideline."

{emphasis supplied}

19.6. The Apex Court in **TATA IRON AND STEEL CO. LTD. v. UNION OF INDIA** reported in (1996)9 SCC 709,



approving the view of the Committee appointed by the Central Government pursuant to the directions to the High Court of Orissa, consisting of senior officers from the Ministry of Mines, the Indian Bureau of Mines and the Geological Survey of India, that the National Mineral Policy having been tabled before both the Houses of Parliament, is a guiding factor in the decision-making process of the Government and, both in the National Mineral Policy as well as the Industrial Policy of the State of Orissa, captive mining has been recognized as a fundamental guideline in determining the criteria for granting mining lease, held that the Committee made an estimate of the **captive mining requirement of each of the parties appearing before it, after coming to the conclusion that captive mining is a fundamental guideline to be kept in mind while renewing the lease.**

20. In that view of the matter, we do not see any error or illegality on the part of the petitioner in approaching this court for seeking appropriate direction to both Central and State Government to process the applications in accordance with the policy decision taken by them, as the petitioner is entitled to seek such relief based on legitimate expectation.



21. Therefore, we are convinced that the petitioner is bonafide in approaching this Court with the above public interest litigation laying his hands on the very National Mineral Policy, 2006 and 2008 as well as the Karnataka Mineral Policy, 2008, which itself provide for promoting and encouraging scientific mining methods by employing advanced mining equipment and machineries with skilled and non-skilled manpower and actively encouraging value addition which should go hand-in-hand with the growth of the mineral sector as a stand-alone industrial activity and to give priority to the applicants, who propose to establish industries based on value addition making it clear that mining as a stand-alone industry needs to be encouraged as it provides large scale employment; new mineral based industries should be set up to match the available raw material resources; existing and new industries should set up facilities to bring the available raw materials up to the required specifications by processes like beneficiation, pelletisation and sintering; and these industries will generate more employment and spawn auxiliary industries.

22.1. We are, therefore, satisfied that (i) the proposed end use of the minerals by the applicant; and (ii) the captive consumption and value addition of minerals, should be the prime



criteria for granting mining lease, because the steel plants coming up in a relatively under-developed areas, will ensure further employment generation in establishment of roads, ports, transportation, water resources, railway infrastructure, supply chain business domain and allied industries such as power plants, slag cement plants, ancillary units, etc., leading to improved infrastructure and overall development of the lifestyle of the public at large of the locality and region.

22.2. The major concern in mining sector is the undue and protracted delay in clearing approval from various Ministries and departments, viz. Mines and Geology, Pollution Control Board, Environment and Forest, Revenue and Survey, Indian Bureau of Mines, etc. and in processing and granting mining lease. Such delay, not only causes hardship to the applicants who invest huge amount, but affects economic growth of the nation. Therefore, it is appropriate for the State Government and the Central Government to evolve a single-window system within their respective jurisdiction to notify, receive, scrutinize, process, approve and to take appropriate decision in granting mining lease without undue and protracted delay.



23. In the circumstances, we direct:

- (i) the State Government and Central Government to evolve a **single-window system** within their respective jurisdiction to notify, receive, scrutinize, process, approve and to take appropriate decision in granting mining lease without undue and protracted delay;
- (ii) the State Government to strictly adhere to the time schedule prescribed under Rule 63A of the MC Rules in disposing the applications for grant of mining iron ore within the State of Karnataka;
- (iii) the State Government to consider the matters specified under Section 11(3) of the MMDR Act read with Rule 35 of the MC Rules strictly in the matter of grant of mining lease of iron ore in the State of Karnataka;
- (iv) the State Government to give preference for the captive consumption of iron ore for their existing iron and steel industries, of course, without causing any harm to the existing mining as a stand-alone industry as it would go in line with the National Mineral Policy, 2008 and the Karnataka Mineral Policy, 2008 to generate more employment in the State and also provide for value addition and satisfy the end-use of minerals by such applicants; and



- (v) the Central Government to dispose of the applications for the approval of mining lease as contemplated under Section 5 of the MMDR Act and/or Section 2 of the FC Act, as the case may be, within the reasonable time, not exceeding six months from the date of receipt of applications for such approval, so that, there would not be any financial strain on the investments that may be made by the industrialists as well as financial aid that may be extended by the State or state-owned Corporation or the Nationalised Banks in this regard.

24. The Writ Petition is disposed of with the above said observations.

Sd/-
Chief Justice

Sd/-
Judge

Index: Yes/No ✓

Web host : Yes/No ✓