A SANDUR MANGANESE & IRON ORES LTD.

v.

STATE OF KARNATAKA & ORS.

(Civil Appeal No. 7944 of 2010)

B SEPTEMBER 13, 2010

[P. SATHASIVAM AND H.L. DATTU, JJ.]

Mines and Minerals (Development and Regulation) Act, 1957 – s. 11(1), (2), (3), (4), (5) – Mineral Concession Rules, C *1960 – rr. 59, 60 and 35 – Mining lease – Grant of – Renewal of mining lease in favour of 'S' Company but not for the entire area– Applications by 'S' for lease over certain area within the deleted area – Rejected by State Government – Notification u/r.59(1) by State Government notifying large area for re-grant* D *of mining lease including area applied by 'S' – Invitation of applications from public – Fresh application by 'S', 'MSPL' and 'K' pursuant to the Notification – However, application by 'J' made only prior to the Notification – Recommendation by State Government to Central Government for approval of* E *proposed grant in favour of 'J' and 'K' which was subsequently approved by Central Government – Writ petition challenging the recommendation – Single Judge of High Court quashing the grant in favour of 'J' and 'K' – Division Bench setting aside the order – On appeal, held: State Government cannot justify* F *grant based on criteria that are de hors the MMDR Act and MC Rules – State Government's recommendation and the proceedings of Chief Minister was contrary to the provisions of s. 11 and rr. 59 and 60 and not valid in law – J's application made prior to the Notification could not be entertained along with the applications made pursuant to the Notification –* G *Proposed investment in mines and in the industry based on the minerals is a relevant factor – Criteria of captive consumption not a controlling factor to grant fresh lease – State Government has no authority under the Act to make*

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commitments to any person that it will, in future, grant a mining lease in the event that person makes investment in any project – Recommendation in favour of 'J' and 'K' cannot be saved by law of equity – Flaw in the recommendation of State Government requires re-consideration, thus, matter cannot be remitted to the Central Government – Order of Division Bench as well as the decision of State Government and the Central Government quashed – State Government directed to consider all applications afresh – Mines and minerals.

Power of State Government under the Act and the Rules – Extent of – Held: State Government is denuded of all legislative and executive power under Entry 23 of List-II read with Article 162 after passing of the MMDR Act – State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of s. 11(3), hence it cannot act in a manner that is inconsistent with the provisions of s. 11(1) in the grant of mining leases – Constitution of India, 1950 – Article 162, List II Entry 23.

Interpretation of statutes – Rule of construction – When statute vests certain power in an Authority to be exercised in a particular manner – Held: Authority has to exercise the power in the manner provided in the statute itself – Any deviation therein, cannot be sustained.

Ex-Ruler of Sandur State (now appellant Company) was granted lease for 20 years for mining of Iron and Manganese Ores in respect of 29 sq. miles falling within the boundaries of the Sandur State. The appellant Company invested in mining of Ores. After the expiry of 20 years, the lease was not renewed for the entire area as given in the original lease. In 1992, 'HG' was granted 60 hectares out of the same applied area. The appellant Company again applied for grant of lease within the area deleted from its original lease but the same was rejected. The appellant Company filed a revision petition before the

A Government of India and the matter was remanded to the State Government. Thereafter, 'MSPL' made an application to the State Government for grant of mining lease over an area which was previously held by Sandur and also sought relaxation of the conditions specified in
B Rule 59(1) of the Mineral Concession Rules, 1960. Subsequently, 'J' Company also made an application for grant over the same area. The State Government made a recommendation to the Central Government for grant of lease to the 'MSPL'. While the matter was under
C consideration, one 'ZS' filed a writ petition seeking declaration that he was entitled for grant of a mining lease in his favour. However, the Central Government returned the proposal of the State Government directing it to await an environmental study.

D On 26/27.02.2002, the State Government by a letter conveyed to the appellant Company that out of the area of 513.16 hectares applied for by the appellant Company, only an extent of 256 hectares (640 acres) was available to it. The appellant Company again filed a revision
E petition. On 15.03.2003, the State Government issued a Notification under Rule 59(1) of the Rules, notifying the availability of a large area for re-grant of mining lease which was referred to as 'Held Area Notification' including the area applied by the appellant Company. The appellant
F Company applied for the grant of mining lease over an area of 200 hectares in the notified area afresh. On 29.07.2003, the Government of India directed the State Government to consider the appellant's application. However, the State Government did not pass any order.
G Pursuant to the Notification, 'MSPL' made a fresh application for grant of mining lease over the notified area. 'K' and 88 other applicants also applied. However, 'J' did not apply. On 06.12.2004, the State Government made a recommendation to the Central Government

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under Section 5 of the Mines and Minerals (Development and Regulation) Act, 1957 for approval of the proposed grant of mining lease to 'J' and 'K'. 'MSPL' and some of the applicants made representations to the Central Government against the said recommendation made by the State Government. The appellant Company as also 'MSPL' filed separate writ petitions challenging the recommendation dated 06.12.2004 of the State Government. During pendency, the Central Government gave its approval for grant of mining lease in favour of 'J' and 'K'. The Single Judge of the High Court by order dated 07.08.2008 quashed the Notification dated 15.03.2003 and the mining licences granted in favour of 'J' and 'K'. The Division Bench of the High Court by order dated 05.06.2009 upheld the validity of Notification of the State Government dated 15.03.2003 and the proceedings dated 06.12.2004 and consequently approval of the Central Government were held valid. Therefore, the instant Special Leave Petitions were filed.

The questions which arose for consideration in these appeals were as follows:

(i) Whether the State Government's recommendation dated 06.12.2004 and the proceedings of the Chief Minister are contrary to the provisions of Section 11 of the Act and Rules 59 and 60 of MC Rules and not valid in law.

(ii) Whether the application made by respondent-'J' prior to the Notification dated 15.03.2003 is capable of being entertained along with the applications made pursuant to the said notification.

(iii) Whether the order of the High Court of Karnataka in the case of 'ZS' permit the consideration of the application made by the respondent-'J' prior to the Notification dated 15.03.2003.

A (iv) Whether Rule 35 of the MC Rules justify the recommendation of the State Government in favour of 'J' and 'K'.

(v) Whether the criterion of 'captive consumption' referred to in *Tata Iron and Steel Co. Ltd.* vs. *Union of India* (1996) 9 SCC 709 was applicable to the instant case despite not being one of the factors referred to in Section 11 (3) of the MMDR Act or Rule 35 of the MC Rules.

C (vi) Whether factors such as the past commitments by the State Government to applicants who have already set up steel plants, are relevant for grant of lease despite the MMDR Act and the MC Rules constituting a complete Code.

D (vii) Whether the recommendation in favour of 'J' and 'K' is saved by the operation of the Law of Equity.

(viii) Whether the Single Judge as well as the Division Bench of the High Court are justified in arriving at the E said conclusion.

(ix) Whether it is advisable to remit the matter to the Central Government.

F Partly allowing the appeals, the Court

HELD: 1.1. A perusal of the proceedings of the Chief Minister shows that no clear reasons were given to show as to why 'J' and 'K' were preferred over other applicants. There was no plausible reason why the applications of G the appellants were not considered favourably. A summary of the applications was prepared and at the end certain columns were left blank which the Chief Minister filled by hand and then signed the proceedings. [Para 18] [281-B-C]

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1.2. The evaluation of all 111 applications was done in three successive stages in a manner not envisaged by Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957. No such procedure of three stage consideration or differentiation between individuals and Companies and those Companies with existing investments and those without existing investment is envisaged in Section 11. The proceedings of the Chief Minister, at no level, considered the various guiding criteria mentioned in Section 11(3). Only one criteria, namely, 'proposed investment' was taken into account in evaluating some applications. However, two irrelevant points were taken into account, namely, (i) whether or not the applicant holds a mining lease in the State, and (ii) the amount of their past investment in steel plant. The proceedings recommended in favour of 'J' and 'K' was justified by the special reasons specifically stated at the very end in terms of Section 11(5). [Paras 19 and 20] [281-D-F; 282-B-D]

1.3. A plain reading of Section 11 (5) makes it amply clear that it would apply to favour a later applicant over an earlier applicant which is relevant only in the event that the main provision of Section 11(2) relating to preference of prior applicants applies and not in the case of Notification inviting applications, whether it is under the first proviso to Section 11(2) or 11(4) under the later proviso, upon Notification, by deeming fiction all applications are treated as having been received on the same date. [Para 20] [282-G-H; 283-A]

1.4. The proceedings of the Chief Minister also violate Section 11 (4). Sub-section (4) permits only the applications made pursuant to the Notification to be taken into account and not applications made prior to the Notification. The Notification referred to in the first proviso to Section 11(2) is intended only to invite applications in respect of 'virgin areas'. In the case of

A **previously held areas covered by Notification dated 15.03.2003, applications made prior to the Notification could not be entertained because they were pre-mature. [Para 21] [283-A-F]**

B **1.5. In view of the specific parliamentary declaration, there is no question of the State having any power to frame a policy *de hors* the MMDR Act and the Rules. [Paras 22, 24 and 25] [283-F-G; 287-B-D]**

State of Orissa vs. *M.A. Tulloch and Co.* **(1964) 4 SCR** C **461;** *Baijnath Kedio* vs. *State of Bihar and Ors.* **(1969) 3 SCC 838;** *Hingir Rampur Coal Co. Ltd.* vs. *State of Orissa* **1961 (2) SCR 537;** *State of West Bengal vs. Kesoram Industries Ltd. and Ors.* **(2004) 10 SCC 201;** *Bharat Coking Coal Ltd.* vs. *State of Bihar and Ors.* **(1990) 4 SCC 557;** *State of Assam* D *and Ors. vs. Om Prakash Mehta and Ors.* **(1973) 1 SCC 584;** *Quarry Owners' Association vs. State of Bihar and Ors.* **(2000) 8 SCC 655, relied on.**

1.6. It is not open to the State Government to justify E **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** F **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. [Para 28] [287-G-H]**

C.I.T. Mumbai vs. *Anjum M.H. Ghaswala and Ors.* **(2002)** G **1 SCC 633;** *Captain Sube Singh and Ors.* vs. *Lt. Governor of Delhi and Ors.* **(2004) 6 SCC 440;** *State of U.P.* vs. *Singhara Singh and Ors.* **(1964) 4 SCR 485, relied on.**

TISCO vs. U.O.I. and Anr. **(1996) 9 SCC 709,** H **distinguished.**

2.1. Section 11(1) provides preferential right to the holder of reconnaissance permits or a prospecting licencee who has identified mineral resources in the area allotted to him for grant of a mining lease, subject to certain conditions specified in the proviso appended thereto. The over-riding character of the priority given to the successful prospecting licencee or reconnaissance permit-holder is clear from the fact that each of the subsequent sub-sections in Section 11 is made subject to Section 11(1). Section 11(2) gives preference to a prior applicant for grant of reconnaissance permit, prospecting licence or mining lease over later applicants where the State Government has not issued any Notification. The analysis of the Report of the Committee to Review the Existing Laws and Procedure for Regulation and Development of Minerals makes it clear that the main provision in Section 11(2) applies to 'virgin areas'; and that an area that is previously held or reserved would require a Notification for it to become available. The first proviso to Section 11(2) carves out an exception to the preferential right based on priority of applications in point of time referred to in the main provision. It makes it clear that where the State Government subsequently issues a notification inviting applications for grant, the prior and subsequent applications to the Notification would be considered as if they were filed on the same day and no priority in order of time would be given. The second proviso requires the State Government to examine the matters set out in Section 11(3) while considering the applications for grant. Under the ordinary principles of statutory interpretation, the first proviso to Section 11(2) embraces the field that is covered by the main provision. Thus, the Notification calling for applications referred to in the first proviso to Section 11(2) applies only to virgin areas. [Paras 31, 32 and 33] [290-D-H; 291-A-D; 292-C-E]

Indian Metals and Ferro Alloys Ltd. vs. *Union of India and*

A *Ors.* **1992 Supp. 1 SCC 91;** *Abdul Jabar vs. State of J&K.* **AIR 1957 SC 281;** *Ram Narain Sons vs. Asst. CST* **1955 (2) SCR 483, relied on.**

2.2. Section 11(3) specifies the matter relevant for purposes of second proviso to Section 11(2). Section 11(3)(d) provides that "the investment which the applicant proposes to make in the mines and in the industry based on minerals" and it speaks about investment proposed to be made and not past investments. Thus, it confines the concept of "captive consumption of minerals to proposed investment and not past investments". Even the residuary clauses in Section 11(3)(e) are limited to 'matters as may be prescribed', which would necessarily mean matters prescribed by Rules. [Para 35] [293-C-F]

B C D *BSNL Ltd. and Anr.* vs. *BPL Mobile Cellular Ltd. and Ors.* **(2008) 13 SCC 597, referred to.**

2.3. Sub-section (4) of Section 11 contemplates a situation where a Notification is issued inviting applications for an area for grant. In contrast to the first proviso to Section 11(2), it provides that all applications received pursuant to a Notification shall be considered simultaneously without assigning any priority in point of time, and after taking into account the matters specified in Section 11(3). Section 11(4), in effect, covers exactly the same field as the first and second proviso to Section 11(2) read along with Section 11(3) with one difference, i.e., unlike the first proviso to Section 11(2), it provides for consideration of only those applications that are made pursuant to the Notification and not those made prior to the Notification. Notification under Section 11(4) is consistent with Rule 59(1) read with Rule 60 insofar as applications received prior to the notification would not be entertained. The first proviso to Section 11(2) was being added to cover virgin areas, then provided for the

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addition of Section 11(4), in order to ensure that the Notification referred to in Rule 59(1) together with Rule 60 would not render *ultra vires* the MMDR Act. It cannot be said that the first proviso of Section 11(2) would cover Notifications under Rule 59(1) because this would render Section 11(4) otiose and redundant. [Para 36] [293-F-H; 294-A-D] A B

J.K. Cotton Spinning & Weaving Mills Co. Ltd. vs. *State of U.P.* **AIR 1961 SC 1170;** *O.P. Singla and Anr. vs. Union of India and Ors.* **(1984) 4 SCC 450, referred to.** C

2.4. Section 11(5) carves out an exception to the preference in favour of prior applicants in the main provision of Section 11(2). It permits the State Government, with the prior approval of the Central Government, to disregard the priority in point of time in the main provision of Section 11(2) and to make a grant in favour of a latter applicant as compared to an earlier applicant for special reasons to be recorded in writing. It also gives an indication that it can have no application to cases in which a Notification is issued because, in such a case, both the first proviso to Section 11(2) and Section 11(4) make it clear that all applications will be considered together as having been received on the same date. Thus, the proceedings of the Chief Minister and the recommendation dated 06.12.2004 are contrary to the Scheme of the MMDR Act as they were based on Section 11(5) which had no application at all to applications made pursuant to the Notification dated 15.03.2003. [Para 37] [294-F-H; 295-A] D E F

2.5. Section 11(4) would apply to a Notification issued under Rule 59(1). Rule 59(1) provides that the categories of areas listed in it including, *inter alia*, areas that were previously held or being under a mining lease or which was reserved for exploitation by the State Government or under Section 17A of the Act, shall not be available for G H

A grant unless (i) an entry is made in the register and (ii) its availability for grant is notified in the Official Gazette specifying a date not earlier than 30 days from the date of Notification. Sub-rule (2) of Rule 59 empowers the Central Government to relax the conditions set out in B Rule 59(1). As per r. 60, an application for grant of connaissance permit, prospecting licence or mining lease in respect of an area whose availability is required to be notified under Rule 59 shall, if no notification is issued; or where Notification is issued, the 30-days C black-out period specified in the Notification pursuant to Rule 59(1)(i)(ii) has not expired, be deemed to be pre-mature and shall not be entertained. Section 11(4) is consistent with Rules 59 and 60 when it provides for consideration only of applications made pursuant to a D Notification. The consideration of applications made prior to the Notification, as required by the first proviso to Section 11(2), is clearly inconsistent with Rules 59 and 60. In such circumstances, a harmonious reading of Section 11 with Rules 59 and 60, therefore, mandates an E interpretation under which Notifications would be issued under Section 11(4) in the case of categories of areas covered by Rule 59(1) of the Rules. [Para 38] [295-B-G]

2.6. The Division Bench erred in concluding that applications made prior to the Notification under Rule F 59(1) which are pre-mature and cannot be entertained under Rule 60 would revive upon issuance of the Notification. The conclusion is against basic principles of statutory interpretation. The effect of Rule 60 is couched in negative language that is mandatory in nature. The G purpose of Rule 59(1), which is to ensure that mining lease areas are not given by State Governments to favour persons of their choice without notice to the general public would be defeated. The Single Judge correctly interpreted Section 11 read with Rules 59 and 60. [Paras H 39 and 41] [295-H; 296-A-B; 297-B-C]

Amritlal Nathubhai Shah and Ors. vs. Union Government of India and Anr. **(1976) 4 SCC 108;** *State of Tamil Nadu vs. M.S. Hindstone and Ors.* **(1981) 2 SCC 205;** *State of U.P. vs. Babu Ram Upadhya* **(1961) 2 SCR 679;** *Gujarat Pradesh Panchayat Parishad amd Ors. vs. State of Gujarat and Ors.* **(2007) 7 SCC 718, referred to.**

2.7. The Division Bench concluded that if Rule 60 is interpreted to render applications made prior to Rule 59(1) Notification *non est*, it would make Rule 59(2) unworkable because persons normally apply for mining lease areas along with an application for relaxation under Rule 59(2). The conclusion is clearly misplaced. It is only the request under Rule 59(2) of any person for relaxation in respect of an area that is considered and not the application for grant. Only after the relaxation under Rule 59(2) by the Central Government of the requirement of Notification under Rule 59(1) that applications could be considered for grant of mining lease. Section 11(2) alongwith Rules 59 and 60 should be interpreted that Section 11(2) is to cover virgin areas alone. Thus, the application made by 'J' prior to the Notification cannot be entertained along with the applications made pursuant to the Notification dated 15.03.2003 because it is Section 11(4) which covers the Notification along with Rule 59(1) and not the first proviso to Section 11(2) of the Act. [Para 41] [297-E-H; 298-A-C]

3. A perusal of the order of the High Court in the writ petition filed by 'ZS' shows that the State Government was directed to consider only the application of 'MSPL' and the applications filed by the impleading applicants and others pursuant to the Notification dated 15.03.2003 in accordance with law and in terms of the provisions of the MMDR Act and MC Rules. The High Court did not issue any direction to consider all applications made prior to the Notification. There was no *mandamus* from the

A High Court to consider prior applications. The word 'others' qualify the phrase 'pursuant to' and not the class of applicants who had applied even prior to the 'Held Area Notification' dated 15.03.2003. The High Court merely directed the State Government to consider the B applications in accordance with the provisions of the MMDR Act and MC Rules. The said order was passed without going into the specific provisions in the Act or Rules. The order does not deal with the interpretation of Section 11 or Rules 59 and 60. Hence, the orders of the C High Court in the case of 'ZS' do not permit the consideration of application by 'J' which was made prior to the Notification dated 15.03.2003. [Para 42] [298-E-H; 299-A-B]

4.1. Rule 35 permits the State Government to D differentiate between the 'end use' of the minerals for the purpose of sub-section (2) of Section 11 in addition to the matters in Section 11(3). Rule 35 does not differentiate between 'proposed' and 'existing' end use. In the instant case, all the parties, namely, 'MSPL', the appellant E Company, 'J' and 'K' expressed their intention to use iron ore from the mines for producing steel and, therefore, the same 'end use' requirement is satisfied. Therefore, it could have enabled the State Government to take into account the claim of 'J' and 'K', whose past investments F would not have qualified on the 'proposed' investment criterion under Section 11(3)(d), in addition to 'MSPL' and the appellant Company. This could have been a basis to exclude those with proposed investments in steel plants from consideration. [Para 43] [300-A-C]

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4.2. Rule 35 specifies one additional factor apart from the factors set out in Section 11(3). The plain language of Rule 35 requires its application only in cases covered by Section 11(2) and not by Section 11(4). Therefore, to the extent that it is Section 11(4) that covers Notification

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under Rule 59(1) and not Section 11(2). The State Government committed an error in relying on Rule 35 to exclude 'MSPL' and the appellant Company on the premise that it is intended to give preference to those who have made existing investments in industries based on iron ore and that the respondents-'J' and 'K', qualify on the said consideration. However, Rule 35 only permits the State Government to take additional factor of the 'end use' of the minerals and not the existing investments made by the applicants. The respondents also do not satisfy the requirements under Section 11(3)(d) which talks solely about proposed investments to be made and not the existing ones. [Para 44] [300-D-G]

5. Section 11(4) and second proviso to Section 11(2) provide that the State Government may grant, *inter alia*, a mining lease after taking into consideration the matters specified in Section 11(3). Section 11(3)(d) specifies "the investment which the applicant proposes to make in the mines and in the industry based on the minerals" as one of such matters and on a plain interpretation, it is clear that only the proposed investment is a relevant factor. If the Legislature had intended that it should include past investments also, the use of the word 'proposed' is superfluous, which could never be the case. The respondents did not point out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments or for captive purposes in existing industries. [Para 45] [301-B-D]

Tata Iron and Steel Co. Ltd. vs. *Union of India* **(1996) 9 SCC 709, distinguished.**

Indian Charge Chrome Ltd. and Anr. vs. Union of India and Ors. **(2006) 12 SCC 331, referred to.**

6.1. The State Government is denuded of all legislative and executive power under Entry 23 of List-II

A read with Article 162 after passing of the MMDR Act. The State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of Section 11(3) of the Act, hence, it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the B MMDR Act in the grant of mining leases. Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. The respondents have not been able to point out any other C provision in the MMDR Act or MC Rules permitting grant of mining lease based on past commitments. The State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event that the person makes D investment in any project. Assuming that the State Government had made any such commitment, it could not be possible for it to take an inconsistent position and proceed to notify a particular area. Further, having notified the area, the State Government certainly could not, thereafter, honour an alleged commitment by ousting E other applicants even if they are more deserving on the merit criteria as provided in Section 11(3). [Para 48] [302-D-H; 303-A-D]

6.2. The State Government cannot grant mining F leases keeping in mind any considerations apart from the ones mentioned in the MMDR Act and MC Rules. Thus, no extraneous considerations such as past commitments made by the State Government to 'J' and 'K' who have already set up steel plants can be entertained by the State G Government while granting mining leases and the State Government must abide by the Act and Rules. [Para 49]

State of Assam and Ors. vs. Om Prakash Mehta and Ors. AIR 1973 SC 678; *Quarry Owners' Association vs. State of Bihar and Ors.* (2000) 8 SCC 655; *State of Orissa* vs. *M.A.* H

Tulloch and Co. **(1964) 4 SCR 461**; *Baijnath Kedio* vs. *State of Bihar and Ors.* **(1969) 3 SCC 838**; *State of West Bengal vs. Kesoram Industries Ltd. and Ors.* **(2004) 10 SCC 201**; *Bharat Coking Coal Ltd.* vs. *State of Bihar and Ors.* **(1990) 4 SCC 557**; *C.I.T. Mumbai* vs. *Anjum M.H. Ghaswala and Ors.* **(2002) 1 SCC 633**; *Captain Sube Singh and Ors.* vs. *Lt. Governor of Delhi and Ors.* **(2004) 6 SCC 440**; *State of U.P.* vs. *Singhara Singh and Ors.* **(1964) 4 SCR 485, relied on.**

7. The Law of Equity cannot save the recommendation in favour of 'J' and 'K' because equity stands excluded when a matter is governed by statute. Where the field is covered expressly by Section 11 of the MMDR Act, equitable considerations cannot be taken into account to assess 'J' and 'K', when the recommendation in their favour is in violation of statute. 'K' did not have a commitment from the State Government regarding its iron ore needs. In the proceedings of the State Government, there is only a statement that it may apply for a lease. 'J' emphasized that it has already set up its steel plant based on the commitments made by the State Government to grant a mining lease and it is in need of iron ore for these steel plants. Commitments made by the State Government cannot be a relevant factor for grant of lease in the teeth of the consideration set out in Section 11(3). If that was to be the sole criterion, the State Government ought not to have notified the area as 'Held Area Notification' dated 15.03.2003. Since the entire field of granting mining lease is covered by MMDR Act and MC Rules, the State Government cannot use any consideration apart from the ones mentioned in the Act and Rules. [Paras 50 and 51] [304-D-H; 306-B]

Kedar Lal vs. Hari Lal Sea **(1952) SCR 179**; *Raja Ram vs. Aba MarutiMali* **(1962) Supp. 1 SCR 739, referred to.**

8.1. The Division Bench erred in concluding that the application made by 'J' prior to the Notification could be

A entertained along with the applications made pursuant to the Notification because it is not Section 11(4) which covers the said Notification under Rule 59(1) but the first proviso to Section 11(2). The Division Bench did not even mention Section 11(4) in its reasoning apart from stray B references even though the conclusion of the Single Judge hinged on how Section 11(4) would be rendered otiose and redundant if the first proviso to Section 11(2) was taken as governing the consideration of applications under a Notification pursuant to Rule 59(1). It also erred C in concluding that the applications made prior to Notification under Rule 59(1) which are pre-mature and cannot be entertained under Rule 60 would revive upon issuance of the Notification. Had that been the intention of the Legislature, there was no reason for the D Legislature to take pains under Rule 60(b) that an application made during the period of 30 days specified in the Notification also would be pre-mature and could not be entertained. If the decision of the Division Bench is taken to its logical conclusion, then it would result in reading a proviso at the end of Rule 60 to the effect that E once the 30 days' period specified in the Notification contemplated by Rule 59(1) sub-clause (ii) is over, pre-mature applications would revive. After taking such pains to make it clear that the application would not be entertained until the end of 30 days' period, surely the F Legislature itself would have inserted such proviso in Rule 60 if that were its intention. If such pre-mature applications are allowed to be entertained, it would result in the State Government giving out mining leases to favoured persons without notice to the general public. G [Paras 52 and 53] [306-D-H; 307-A-B]

8.2. The conclusion arrived at by the Division Bench that if Rule 60 is interpreted to render applications made prior to Rule 59(1) Notification *non est*, in that event, it H would make Rule 59(2) unworkable because persons will

normally apply mining lease areas along with an application for relaxation under Rule 59(2), is clearly misplaced. It is only the request under Rule 59(2) for relaxation in respect of an area that is considered and not the application for grant. It is only after the relaxation under Rule 59(2) by the Central Government of the requirement of the Notification under Rule 59(1) that the applications could be considered for grant of mining lease. Though the Single Judge in his order dated 07.08.2008 quashed the communication/recommendation of the State Government dated 06.12.2004 proposing to grant mining lease to 'J' and 'K', however, the Single Judge traveled much beyond the reliefs sought for in the writ petition and quashed the entire Notification No. CI.16:MMM.2003 dated 15.03.2003. While approving earlier part of the order and quashing the communication/ recommendation of the State Government dated 06.12.2004, the other observations/directions are not warranted in the light of the provisions of the Act and the Rules. The said observations/directions are deleted. [Paras 54 and 55] [307-C-H]

9.1. The Central Government considers only the materials forwarded by the State Government along with its recommendation. If the recommendation of the State Government cannot be upheld in law, all consequential orders including the subsequent approval by the Central Government are also liable to be quashed. If the very same recommendation of the State Government is sent back to the Central Government on the administrative side in its role as an approving authority under Section 5(1) without setting aside the impugned judgment, it is more likely that the Central Government would simply follow its previous order. In that event, the Central Government would be influenced by the judgment passed by the Division Bench upholding the grant made in favour of 'J' and 'K'. Such an exercise would be in the

A **nature of post-decisional hearing which would be impermissible. As on date the Central Government hears revision petitions through an Executive Officer and without participation of a Judicial Member. The exact procedure of the revisional tribunal has kept changing**
B **over the last few months. It would not be an independent and efficacious alternative forum. When there was no valid recommendation by the State Government for the grant of lease, there cannot be any valid approval of the Central Government relying on defective**
C **recommendation. [Para 56] [308-B-H; 309-A-C]**

H.L. Trehan and Ors. vs. *Union of India and Ors.* **(1989) 1 SCC 764**; *K.I. Shephard and Ors.* vs. *Union of India and Ors.* **(1987) 4 SCC 431**; *Shekhar Ghosh* vs. *Union of India and Anr.* **(2007) 1 SCC 331**; *Union of India vs. R. Gandhi,*
D *President, Madras Bar Association* **JT 2010 (5) SC 553, relied on.**

Pavani Sridhara Rao vs. *Govt. of A.P and Ors.* **(1996) 8 SCC 298**; *State of Kerala* vs. *Puthenkavu N.S.S. Karayogam*
E *and Anr.* **(2001) 10 SCC 191**; *Indian Charge Crome Ltd. and Anr. v. Union of India and Ors.* **(2006) 12 SCC 331, referred to.**

Barnard vs. *National Dock Labour Board* **(1953) 1 All E.R. 1113**; *McFoy* vs. *United Africa Co.* **(1961) All E.R. 1169,**
F **referred to.**

9.2. The recommendation of the State Government dated 06.12.2004 is not valid with reference to the provisions of MMDR Act and the Rules, hence the invalid
G **recommendation cannot be looked into by the Central Government. The proviso to Section 5(1) itself provides only for the Central Government either to grant or reject its approval to the State Government's recommendation in the case of mining lease for a mineral such as iron ore**

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in the First Schedule. Such consideration on the administrative side does not involve consideration of all the applicants based on their mining lease applications and after giving an opportunity of hearing. Inasmuch as the Central Government does not have all relevant materials before it, it may not be in a position to substitute itself for the State Government and it would not be proper, in fact, it would be inconsistent with the provisions of the MMDR Act and the Rules, to frame the issue on the administrative side of the Central Government. Even otherwise, inasmuch as there is a flaw in the recommendation of the State Government which requires re-consideration, the request for remitting the matter to the Central Government for its decision is rejected. [Para 56] [309-C-G]

10. The impugned order of the Division Bench of the High Court in Writ Appeal No. 5084 of 2008 and allied matters as well as the decision of the State Government dated 26/27.02.2002 and the subsequent decision of the Central Government dated 29.07.2003 are quashed. The State Government is directed to consider all applications afresh in light of the interpretation of Section 11 of the Act and Rules 35, 59 and 60 of MC Rules and make a recommendation to the Central Government within the stipulated period. [Para 57] [309-H; 310-A-C]

Case Law Reference:

(1964) 4 SCR 461	Relied on.	Para 22, 49
(1969) 3 SCC 838	Relied on.	Para 22, 49
1961 (2) SCR 537	Relied on.	Para 22
(2004) 10 SCC 201	Relied on.	Para 23, 49
(1990) 4 SCC 557	Relied on.	Para 24, 49
(1973) 1 SCC 584	Relied on.	Para 26

A	(2000) 8 SCC 655	Relied on.	Para 27, 49
	(2002) 1 SCC 633	Relied on.	Para 28, 49
	(2004) 6 SCC 440	Relied on.	Para 28, 49
B	(1964) 4 SCR 485	Relied on.	Para 28, 49
	(1996) 9 SCC 709	Distinguished.	Para 29, 46
	1992 Supp. 1 SCC 91	Relied on.	Para 33
	AIR 1957 SC 281	Relied on.	Para 33
C	1955 (2) SCR 483	Relied on.	Para 33
	(2008) 13 SCC 597	Referred to.	Para 35
	AIR 1961 SC 1170	Referred to.	Para 36
D	(1984) 4 SCC 450	Referred to.	Para 36
	(1976) 4 SCC 108	Referred to.	Para 40
	(1981) 2 SCC 205	Referred to.	Para 41
E	(1961) 2 SCR 679	Referred to.	Para 41
	(2007) 7 SCC 718	Referred to.	Para 41
	(2006) 12 SCC 331	Referred to.	Para 47
	AIR 1973 SC 678	Referred to.	Para 49
	(1952) SCR 179	Referred to.	Para 50
	(1962) Supp. 1 SCR 739	Referred to.	Para 50
	(1953) 1 All E.R. 1113	Referred to.	Para 56
	(1961) All E.R. 1169	Referred to.	Para 56
	(1996) 8 SCC 298	Referred to.	Para 56
	(2001) 10 SCC 191	Referred to.	Para 56
	(1989) 1 SCC 764	Relied on.	Para 56

(1987) 4 SCC 431	**Relied on.**	**Para 56**
(2007) 1 SCC 331	**Relied on.**	**Para 56**
JT 2010 (5) SC 553	**Relied on.**	**Para 56**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7944 of 2010.

From the Judgment & Order dated 05.06.2009 of the High Court of Karnataka at Bangalore in W.A. No. 5084 of 2008.

With

C.A.Nos. 7945-54, 7955-61 of 2010

K.K. Venugopal, Krishnan Venugopal, Uday Tiwary, Abir Phukan, Sidharth Singh, A. Raghunath, Shyam Mohan, Nishant, A. V., P.V. Dinesh, P. Rajesh, P.V. Vinod, T.P. Sindhu, Athouba K., Sunil Dogra, A. Venayagam Balan, Harshad V. Hameed, Kuriakose Varghese, K. Rajeev, B. Agrawal, Rajeev Mehta for the Appellant.

Dushant Dave, D.L.N. Rao, Bhardwaj S. Iyengar, Badri Vishal, Prashant Kumar, M. Gireesh Kumar, S.K. Kulkarni, A.S. Kulkarni, AP & J Chambers, Manu Nair, P.C. Sen, R. Sharma Mark Disouza, Suresh A. Shroff & Co., Anitha Shenoy, Rashmi Nand Kumar, S. Udaya Kumar Sagar, Bina Madhavan, Biswanath Agrawalla, Vivek Chib, Rajiv Mehta, K.N. Phanindra, Kiran Suri, Aparna Bhat Mattoo, S.J. Amith, Nazneen Ahmed, Ravindra Keshavrao Adsure for the Respondents.

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted in all the special leave petitions.

2. These appeals seek to challenge the common judgment and order of the Division Bench of the High Court of Karnataka dated 05.06.2009 arising out of Writ Appeal No. 5084 of 2008

A and allied matters and the decision of the State Government dated 26/27.02.2002 as well as the Central Government dated 29.07.2003.

3. The appellants in these appeals are Sandur Manganese & Iron Ores Ltd. (in short "Sandur") and M/s MSPL Ltd. The B principal respondents are M/s Kalyani Steels Ltd. (in short "Kalyani") and M/s Jindal Vijayanagar Steels Ltd. (in short "Jindal"). Apart from these, the State of Karnataka and the Union of India are also arrayed as respondents.

C **4. Factual matrix**:

(a) The case of **Sandur** (Petitioner in SLP (C) No. 22077 of 2009) is as follows:

D (i) Shri Y.R. Ghorpade, ex-Ruler of Sandur State, was granted lease for mining of Iron & Manganese Ores under Order No. GEO.Ms.068 dated 26.02.1953, for a period of 20 years commencing from 01.01.1954 to the extent of 29 sq. miles, falling within the boundaries of the Sandur State. On 18.01.1954, the appellant-Company was incorporated as a Private Limited E Company under the provisions of the Companies Act, 1956. On 21/23.06.1956, a lease was transferred in favour of the Company as per Government Order No. I.1432-38 GE43.55-22. On 28.11.1964, the Company was converted into a Public Limited Company. In 1965, the Company, with the aim of value addition F to Ores mined by the Company and also to industrial area, set up a 15 MVA Metal and Ferro Alloys Plant at Vyasankere near Hospet at a substantial capital cost. In 1980, Sandur also set up two more 20 MVA Furnaces in the Plant for manufacture of Ferro-Silicon by entering into an agreement with the State Government G and the Karnataka Electricity Board to receive power at a viable tariff. On 19.09.1973, upon applying for renewal of the abovesaid lease, the Company was allotted an area of 20 sq. miles only instead of 29 sq. miles which was leased earlier. However, the

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said area is reserved for exploitation by the National Mineral Development Corporation (in short "NMDC") – a Government of India Undertaking. When the company noticed that the NMDC did not initiate any Mining Lease Application on the said area, then on 29.09.1987, it applied for mining lease over an area of 2 sq. miles within the said deleted area. On 25.01.1989, the State Government rejected the application on the ground that the area applied for was already reserved by NMDC. However, NMDC was not granted lease and in 1992, one Sri H.G. Rangangoud was granted 60 Hectares out of the same applied area.

(ii) Again, on 24.06.1993, again the Company applied for grant of lease over an area of 513.16 Hectares within the area deleted from its original lease but it was rejected by the State Government on the ground that the area applied by them has overlapped with the area granted to one Sri Rangangoud and nine others. On 11.12.1993, the Company challenged the above decision of the State Government by filing a Revision Petition before the Government of India, Ministry of Coal and Mines, New Delhi. On 09.04.1999, the Government of India by holding that the order passed by the State Government was in violation of Rule 26 (1) of the Mineral Concession Rules, 1960 (hereinafter referred to as "MC Rules") and opposed to the principles of natural justice remanded the matter to the State Government for early disposal as per the provisions of Mines & Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "MMDR Act") and the Rules framed thereunder. On 26/27.02.2002, the Company got a letter from the State Government that out of the area of 513.16 Hectares applied for by it, only an extent of 256 Hectares (640 acres) was available and it could choose either Block A (168 Acres or 67 Hectares) or Block B (472 Acres or 189 Hectares).

(iii) On 13.05.2002, the Company filed a revision petition before the Government of India against the said decision of the State Government. On 15.03.2003, the State Government

A issued a Notification in exercise of its power under Rule 59 of the MC Rules reserving the entire area calling for applications from the general public for grant of mining leases and by notifying large extent of previously held areas as available for grant of mines including the area applied by the appellant-Company. On
B 16.04.2003, the appellant-Company, by way of abundant caution, applied afresh for grant of mining lease over an area of 200 Hectares in the notified area without prejudice to its rights for consideration of its earlier application dated 24.06.1993. On 29.07.2003, the Government of India allowed the revision petition
C filed by the appellant-Company and directed the State Government to consider the application dated 24.06.1993 filed by the appellant-Company on merits, in terms of order dated 09.04.1999 of the Revisional Authority and pass a final order in the case. In spite of this order, the State Government has not passed any order. On 06.12.2004, a letter was issued by the
D State Government seeking approval of the Central Government for grant of lease to other applicants i.e. Jindal & Kalyani. Being aggrieved by the said recommendation, on 11.06.2007, the appellant-Company filed Writ Petition No. 8971 of 2007 before the High Court. The learned single Judge clubbed this writ petition
E along with W.P. No. 21608 of 2005 filed by another applicant – MSPL Ltd. On 07.08.2008, the learned single Judge quashed the Notification dated 15.03.2003 and the Mining Licences granted in favour of Jindal and Kalyani with certain observations.

F (iv) On 22.08.2008, Jindal-Respondent No.5 herein filed W.A. No. 5026 of 2008 in the High Court. Being aggrieved by the order passed by the learned single Judge, Sandur preferred Writ Appeal No. 5084 of 2008 before the High Court. By the impugned common order dated 05.06.2009, the Division Bench
G of the High Court set aside the order of the learned single Judge dated 07.08.2008 and upheld the validity of Notification of the State Government dated 15.03.2003 and the proceedings dated 06.12.2004 and the consequential approval of the Central Government were held valid. Aggrieved by the said order, the

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appellant-Company has filed S.L.P.(C) No. 22077 of 2009 before this Court. A

(b) The case of **MSPL** (Petitioner in SLP (C) Nos. 22943-22952 of 2009) is as follows:

(i) MSPL Limited filed above SLPs against the common judgment and order dated 05.06.2009 passed by the High Court of Karnataka in W.A. Nos. 5024, 5026, 5032, 5052, 5053, 5064-5066, 5077 and 5145/2008 setting aside the judgment of the learned single Judge dated 07.08.2008 in the writ petitions. B C

(ii) On 24.05.2001, MSPL Ltd. made an application to the Director of Mines & Geology (hereinafter referred to as "the Mines Director") for grant of a mining lease over an extent of 298.5 Hectares in the area known as Eddinpada in Kumaraswamy Range of the State of Karnataka which was part of a mining lease previously held by the appellant-Company in S.L.P. (C) No. 22077 of 2009. On 30.08.2001, the State of Karnataka requested the Central Government to relax the conditions set out in Rule 59(1) in favour of MSPL Ltd. under Rule 59(2). While the matter was under consideration of the Central Government, one *Ziaullah Sharieff* (another applicant for a mining lease) filed Writ Petition No. 35915 of 2001 (GM-MMS) before the High Court seeking declaration that he is entitled for grant of a mining lease in his favour. On 21.12.2001, the Central Government returned all proposals for grant of mining lease pending before it to the State Government to await the report of the Regional Environmental Impact Assessment of the Bellary-Hospet Region by National Environmental Engineering Research Institute (NEERI). D E F

(iii) On 13.05.2002, Sandur filed a revision before the Central Government under Rule 54 of the MC Rules challenging the proposal of the State Government dated 30.08.2001, in favour of the MSPL. During pendency of the said revision, Sandur also filed W.P. No. 22767 of 2002 seeking a *mandamus* to the Central Government to consider its revision petition. On G H

A 24.10.2002, Jindal made an application for grant of mining lease over a part of the same area previously held and surrendered by Sandur. On 15.03.2003, the State Government issued Notification informing the general public that the areas mentioned in the annexure thereof were available for grant under B Rule 59 of the Rules and interested persons were requested to file applications for grant of mining leases. On 16.04.2003, pursuant to the said notification, MSPL made an application for the same area previously held by Sandur. On 29.07.2003, the Central Government rejected the revision petition of MSPL. On C 20.12.2003, MSPL made further submissions before the Mines Director. On 30.04.2004, the respondent-Mines Director sent a notice to the MSPL for making submissions. Again on 06.10.2004, the Under Secretary to the new State Government, Mines (C & I Department) issued another notice under Rule 26(1) D of the Rules requiring the MSPL to appear before the Hon'ble Chief Minister of Karnataka to make a presentation for sanction of lease. MSPL put-forth its claim and submitted a detailed presentation to the Principal Secretary to the Chief Minister. Vide letter dated 06.12.2004, the State Government sought the approval of the Central Government under Section 5(1) of the E MMDR Act to grant lease to Jindal over an area of 200.73 Hectares and Kalyani over an area of 179.70 Hectares in respect of a part of the land mentioned in S.No.1 to the Notification dated 15.3.2003. On 15.12.2004, MSPL made representations both to the Minister for Mines and to the Secretary, Department of F Mines in the Central Government against the said proposal. On 21.12.2004, a further representation was made to the Secretary, Department of Mines. Against the said approval, two others preferred writ petitions before the High Court for quashing of the said proposal. MSPL filed application for impleadment in the G said writ petitions and the same was rejected by the learned single Judge vide order dated 21.07.2005.

(iv) On 12.09.2005, MSPL preferred writ petition being W.P. No. 21608 of 2005 before the High Court challenging the H recommendation in favour of Jindal and Kalyani. On 05.06.2006/

27.06.2006, the Central Government granted approval to the recommendation dated 06.12.2004 of the State Government for grant of mining lease in favour of Jindal and Kalyani. Vide judgment dated 07.08.2008, learned single Judge of the High Court allowed W.P. No. 21608 of 2005 quashing the recommendation. Against the judgment of the learned single Judge, Jindal and Kalyani preferred W.A. Nos. 5026 & 5028 of 2008 respectively, before a Division Bench of the High Court. MSPL also filed W.A. No. 5057 of 2008 challenging the same judgment of the learned single Judge save and except to the extent that the recommendations of the State Government to the Central Government insofar as it recommended the grant of mining to Jindal and Kalyani was quashed. A large number of other writ appeals were also filed, heard together and disposed of by a common judgment and order dated 05.06.2009.

5. Heard Mr. Nariman, learned senior counsel for Sandur, Mr. K.K. Venugopal and Mr. Krishnan Venugopal, learned senior advocates for MSPL, Mr. Harish N. Salve, learned senior counsel for Jindal, Mr. Dushyant Dave, learned senior counsel for Kalyani and Mr. Ashok Haranahalli, learned Advocate General for the State of Karnataka.

6. **Main issues:-**

(a) Whether the State Government's recommendation dated 06.12.2004 and the proceedings of the Chief Minister are contrary to the provisions of Section 11 of the Act and Rules 59 and 60 of MC Rules and not valid in law.

(b) Whether the respondent-Jindal's application dated 24.10.2002 made prior to the Notification dated 15.03.2003 is capable of being entertained along with the applications made pursuant to the said notification.

(c) Whether the order of the High Court of Karnataka in

A *Ziaulla Sharieff's* case permit the consideration of the respondent-Jindal's application dated 24.10.2002 made prior to the notification dated 15.03.2003.

B (d) Whether Rule 35 of the MC Rules justify the recommendation of the State Government in favour of the Respondents-Jindal and Kalyani.

C (e) Whether the criterion of "captive consumption" referred to in *Tata Iron and Steel Co. Ltd. vs. Union of India,* (1996) 9 SCC 709, have any application in this case despite not being one of the factors referred to in Section 11 (3) of the MMDR Act or Rule 35 of the MC Rules.

D (f) Whether factors such as the past commitments by the State Government to applicants who have already set up steel plants, matter for consideration for grant of lease despite the MMDR Act and the MC Rules constituting a complete Code.

E (g) Whether the recommendation in favour of respondents-Jindal and Kalyani saved by the operation of the Law of Equity.

F (h) Whether the learned single Judge as well as the Division Bench are justified in arriving at such conclusion.

(i) Whether it is advisable to remit it to the Central Government.

G 7. Before considering various issues as mentioned above, let us refer relevant provisions of the Act and the Rules concerned to the issues in question. The Preamble of the MMDR Act, as amended by Act 38 of 1999, makes it clear that it is intended for the development and regulation of mines and H minerals under the control of Union. The relevant provisions from

the Act are:

"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 herein after provided.

3. *Definitions:*-In this Act, unless the context otherwise requires:—

a. "minerals" includes all minerals except mineral oils;

b. .....

c. "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

d. .....

e. .....

f. .....

g. "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;

h. "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;

(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;

A (hb) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations; and.

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 licencee 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: A

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 sepcified 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: B C

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 applications as it may deem fit. D

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

a. any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant; F

b. the financial resources of the applicant;

c. the nature and quality of the technical staff employed or to be employed by the applicant; G

d. the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

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A 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 B 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- C 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), D 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 E application 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."

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8. In exercise of the powers conferred by Section 13 of the Act, the Central Government framed rules called the Minerals Concession Rules, 1960. We are concerned only with the following Rules:-

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"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

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mentioned in clauses (a) to (d) of sub-section(3) of Section 11, the end use of the mineral by the applicant. A

59. *Availability of area for regrant 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

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or C

(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 rule15 or sub-rule(1) of rule 31, as the case may be; or D

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

(e) which has been reserved by the State Government under Section 17A of the Act E

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 F

(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: G

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs H

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.

60. **Premature applications.** – Application for the grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under rule 59 shall, if -

(a) no notification has been issued, under that rule ; or

(b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained.".

9. In the light of the above statutory provisions, let us consider the issues framed, one by one, and test the validity or otherwise of the decision of the State Government as well as the order passed by the learned single Judge and the Division Bench of the High Court.

10. As mentioned earlier, by the impugned common judgment dated 05.06.2009, the Division Bench reversed the judgment of the learned single Judge and held that the applications for grant of mining lease made prior to notification under Rule 59 of the MC Rules could be considered for grant

along with applications filed pursuant to the notification. In the case on hand, the application was made by Jindal prior to the notification. The Division Bench upheld the recommendations dated 06.12.2004 of the State Government together with the proceedings of the Chief Minister which were the basis for the recommendation under Section 5(1) of the MMDR Act to the Central Government for approval of grant of mining lease in favour of Jindal and Kalyani. It is seen from the records that on 24.05.2001, MSPL made an application to the State Government for grant of mining lease over an area of 298.5 hectares in Eddinpada area in Kumaraswamy range of the State of Karnataka and also sought relaxation of the conditions specified in Rule 59(1) of the MC Rules. This area was previously held under a mining lease by Sandur. Subsequently, on 24.10.2002, Jindal also made an application for grant over the same area. The State Government made a recommendation to the Central Government for grant of lease to the MSPL and sought relaxation of the conditions set out in Rule 59(1). However, it is not in dispute that the Central Government returned the proposal of the State Government directing it to await an environmental study being carried out by the NEERI.

11. The materials placed further show that on 15.03.2003, the State Government issued a Notification under Rule 59(1) of the MC Rules notifying the availability of a large area for re-grant of mining lease which was referred to as the "Held Area Notification". Pursuant to the same, MSPL made a fresh application on 16.04.2003 for grant of mining lease over the notified area. Kalyani and 88 other applicants also applied pursuant to the said Notification. Admittedly, Jindal did not apply pursuant to the "Held Area Notification", even though some of its sister concerns applied for the grant. On 06.12.2004, the State Government made a recommendation to the Central Government under Section 5 of the MMDR Act for approval of the proposed grant of mining lease to Jindal and Kalyani. MSPL and some of the applicants made representations to the Central Government against the said recommendation made by the

A State Government. Challenging the recommendation dated 06.12.2004 of the State Government, writ petitions were filed by the aggrieved companies before the High Court. During the pendency of the writ petitions, the Central Government gave its approval for grant of mining lease in favour of Jindal and Kalyani
B on 05.06.2006 and 27.06.2006 respectively. By judgment dated 07.08.2008, the learned single Judge allowed the writ petitions filed by MSPL and Sandur as well as others and quashed the grant on the ground among others, that Jindal's application prior to the "Held Area Notification" could not have been entertained
C in view of Section 11(4) of the MMDR Act and Rules 59 and 60 of the MC Rules. The Division Bench, by judgment and order dated 05.06.2009, reversed the judgment passed by the learned single Judge. With this background, let us discuss the issues formulated above.

D **Issue (a)**

"Whether the State Government's recommendation dated 06.12.2004 and the proceedings of the Chief Minister are contrary to the provisions of Section 11 of the Act and
E *Rules 59 and 60 of MC Rules and not valid in law."*

12. Mr. Nariman and Mr. K.K. Venugopal, learned senior counsel appearing for the Sandur and MSPL respectively, by taking us through the entire proceedings of the Chief Minister, vehemently contended that the State Government was pre-
F determined to grant the lease in favour of Jindal and Kalyani. They also contended that there is no clear reason as to why Jindal and Kalyani alone were given preference and the applications of MSPL, Sandur and others were not considered favourably. They also highlighted that all that is done is the
G reproduction of the details mentioned in their applications and at the end, certain columns were left blank in which the Chief Minister has filled in by hand, after which he has signed the proceedings. They also pointed out that though relevant criteria is provided under Section 11(3) of the Act, only one criteria,
H namely, the proposed investment, is taken into account while

evaluating the applicants. It is their grievance that the special reason mentioned in the recommendation is only to favour Jindal and Kalyani. Even if it is so, according to them, the decision of the State Government is violative of Section 11(4) of the Act which permits only applications made pursuant to the Notification to be taken into account and not applications made prior to the Notification. Both the learned senior counsel, relying on Rule 35, pointed out that the recommendations made to justify preference taking into account past investments by steel companies cannot be sustained. In any event, according to them, in view of Section 2 of the Act, State Legislature is denuded of its legislative power to make any law with respect to the regulation of mines and mineral development. Finally, it was pointed out that there is no question of framing policy such as the Karnataka Mineral Policy to give out mining leases independently of the MMDR Act and the Rules. On the other hand, Mr. Harish N. Salve and Mr. Dushyant Dave, learned senior counsel appearing for Jindal and Kalyani, by drawing our attention to the very same provisions and the orders of the courts, submitted that the recommendations made by the State Government is in terms of the provisions of the Act and Rules and the Division Bench was right in affirming the same.

13. It is useful to refer notification dated 15.03.2003 issued by the Government of Karnataka which reads thus:

"GOVERNMENT OF KARNATAKA

NO. CI/16/MMM/2003

Government of Karnataka Secretariat
Ms. Building
Bangalore, Dated 15.03.2003

NOTIFICATION

It is hereby informed for the mining public that the area noted in the annexure is available for regrant under rule 59 of Mineral Concession Rules, 1960.

A The application for grant of mining lease shall be received by the Director of Mines and Geology, No.49, "Khanij Bhavan", D.Devaraj Urs Road, Bangalore-01, after 30 days from the date of publication of the notification in the Official Gazette. If the day notified for receiving the B application happens to be a Public Holiday or General Holiday, applications will be received on the next working day under amended Rules. The sketch of the area is available for inspection at the office of the Director, Department of Mines and Geology, Khanija Bhavan, C D.Devaraj Urs Road, Bangalore-01 during working hours on all working days.

The mining public should note that the availability of the area published here in is subject to the clearance from the Revenue Department for mining activities and D compliance of the MM (D&R) Act, 1957 and the M.C.Rules and all other relevant Acts and Rules by the applicants. In case the area is found to consist of Forest Lands, the clearance from the Forest Department under Section (2) of the Forest (Conservation) Act, 1980 for utilizing the area for E non-forest activities should be obtained by the applicants.

Interested persons are advised to inspect the area and satisfy themselves about the availability of mineral deposits (as the area is previously under held. ML/PL block) F and the present status of the land there is before making application for mining lease.

BY ORDER AND IN THE NAME OF THE
GOVERNOR OF KARNATAKA
(A.B. SIDDHANTI)
G Under Secretary to Govt. (Mines),
Commerce and Industries Department."

14. After expiry of the cut-off date, as mentioned in the said notification, hearing was conducted by the Chief Minister under Rule 26A of the Rules. The order of the Chief Minister shows that H as per the direction of the High Court in a writ petition filed by

Ziaulla Sharieff, the State has to consider their applications in accordance with law along with other applications. It is the claim of the State that as per the said decision, it was necessary to consider the applications filed for grant of mining lease over the area in question before the issue of Notification on 15.03.2003 along with applications received in response to the said Notification. Para 3 of the order of the Chief Minister shows that 21 applications were filed for grant of mining lease over the area in question before the notification was issued and 90 applications were received in response to the notification. In all, the Chief Minister has considered 111 applications for grant of mining lease. The order further shows that notice under Rule 26(1) of the Rules was issued to all the applicants to appear for hearing on 12.10.2004 at 4.00 PM to make presentation for sanction of mining lease in their favour. On 12.10.2004, the hearing was adjourned. According to the State, applicants were heard on different dates. Out of 111 applicants, 85 applicants attended the hearing and 75 applicants gave their written representations. On 16.10.2004, the hearing was again adjourned, 72 applicants attended and 9 applicants submitted their written representations. Again, the hearing was held on 25.10.2004, 76 applicants attended and 27 applicants submitted their written submissions. On 04.11.2004, 16 applicants attended the hearing and 7 applicants submitted their written submissions.

15. The order of the Chief Minister further shows that out of 111 applications, 55 are companies/firms and 30 are individuals. Out of 111 applicants, 11 have given more than one application in the name of their sister companies/partnership firms etc. The proceeding further shows that all applications were examined under Section 11(5) of the Act with a view to provide an opportunity to all the applicants who have filed their applications on subsequent days i.e. after 16.04.2003. The order further shows that out of 30 individuals who have applied for mining lease, only 3 applicants hold mining lease in the State and the remaining 27 applicants do not hold any mining lease.

A Some of the individuals are local people and have some past experience in mining. Some of them are qualified engineers. Most of the applicants have indicated that they would be exporting ore or would be supplying it to the local market. The order proceeds that none of them have indicated any proposal
B for the value addition to the ore. The Chief Minister, after considering them, do not merit any consideration for grant of mining lease, rejected all those applications. It is brought to our notice that no one from that category challenged the same in the court of law.

C 16. After rejecting those applications, the impugned proceeding shows that a total number of 55 companies/firms have applied for mining lease and the details furnished by them have been incorporated in a tabular form in para 9. In para 10 of the order, it was stated that out of 55 companies/firms who have
D applied for mining lease, only 12 companies/firms were having mining lease in the State. Some of the companies have already established their units in the State and they have requested the sanction of mining lease for using the ore for captive consumption and for value addition to the ore. Some of the firms who are
E willing to invest huge amounts in mining industry have indicated that they require the mines for exporting ore and for supplying it to the local market. Some of the companies have already established their units in Karnataka by investing huge amounts and they are depending upon local market for their raw material,
F that is, iron ore. In para 11 of the order, it is stated that since the request of such of the companies is for 'captive consumption' and for 'value addition', they deserve consideration over others. In para 12, the order refers those who established steel plants in Karnataka. Finally, after quoting Rule 35 which provides for
G preferential rights for certain persons and by arriving at a conclusion that "it is desirable to allot the mining areas to applicants who have already established their plants in the State by investing huge amounts", and by invoking Rule 35 of the MC Rules, the Chief Minister recommended or in other words filled
H up dotted lines by mentioning Jindal and Kalyani.

17. It is the grievance of the appellants, namely, Sandur and MSPL that the proceedings of the Chief Minister shows that the State Government was pre-determined to grant the lease in favour of Jindal and Kalyani.

18. A perusal of the proceedings of the Chief Minister shows that no clear reasons were given to show as to why Jindal and Kalyani were preferred over other applicants. There is also no plausible reason why the applications of the appellants herein were not considered favourably. A summary of the applications was prepared and at the end certain columns were left blank which the Chief Minister filled by hand and then signed the proceedings.

19. The evaluation of all 111 applications has been done in three successive stages in a manner not envisaged by Section 11. In the first stage of the process, the applications by individuals were discarded. In the second stage, those by companies as a whole and in the third stage, only companies with existing investment in steel plants out of which Jindal and Kalyani were chosen without any special or adequate reason. In fact, no such procedure of three stage consideration or differentiation between individuals and companies and those companies with existing investments and those without existing investment is envisaged in Section 11. As rightly pointed out by learned senior counsel for the appellants, the proceedings of the Chief Minister, at no level, consider the various guiding criteria mentioned in Section 11(3) as mentioned below:

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;

A d. the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

e. such other matters as may be prescribed."

B 20. It is true that among the criteria mentioned, only one criteria, namely, "proposed investment" is taken into account in evaluating some applications. However, as mentioned above, in the said proceedings, two irrelevant points were taken into account, namely, (i) whether or not the applicant holds a mining C lease in the State and (ii) the amount of their past investment in steel plant. It is equally true that the proceedings recommended in favour of Jindal and Kalyani was justified by the special reasons specifically stated at the very end in terms of Section 11(5) which is reproduced below:-

D

"(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 E mining lease, as the case may be, to an applicant whose application was received later in preference to an application whose application was received earlier:

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

A plain reading of the above provision makes it amply clear that it would apply to favour a later applicant over an earlier G applicant which is relevant only in the event that the main provision of Section 11(2) relating to preference of prior applicants applies and not in the case of notification inviting applications, whether it is under the first proviso to Section 11(2) or 11(4) under the later proviso, upon notification, by deeming H fiction all applications are treated as having been received on

the same date. A

21. Apart from the above infirmity, the proceedings of the Chief Minister also violate Section 11(4) of the Act which reads thus:

> "(4) Subject to the provisions of sub-section (1), where the B
> 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, C
> 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, D
> to such one of the applicants as it may deem fit."

The above sub-section permits only the applications made pursuant to the notification to be taken into account and not applications made prior to the notification. The notification E
referred to in the first proviso to Section 11(2) is intended only to invite applications in respect of "virgin areas". In the case of previously held areas covered by present notification dated 15.03.2003, applications made prior to the notification cannot be entertained because they are premature.

F

22. We have already adverted to Section 2 of the MMDR Act, which is a parliamentary declaration, makes it clear that the State Legislature is denuded of its legislative power to make any law with respect to the regulation of mines and mineral development to the extent provided in the MMDR Act. (Vide G
State of Orissa vs. *M.A. Tulloch & Co.* (1964) 4 SCR 461). In *Baijnath Kedio* vs. *State of Bihar and Others*, (1969) 3 SCC 838, a Constitution Bench of this Court reiterated the above view. Argument of the appellant in that case was that, apart from the provisions of the 2nd proviso to Section 10 added to the Land H

A Reforms Act, 1950 in 1964, by Act IV of 1965 and second sub-rule added to Rule 20 of the Bihar Minor Mineral Concession Rules, 1964, there is no power to modify the terms. It was further contended that these provisions of law are said to be outside the competence of the State Legislature and the Bihar
B Government. With regard to the State Legislature, it was contended that the scheme of the relevant entries in the Union and the State List is that to the extent to which regulation of mines and mineral development is declared by Parliament by law to be expedient in the public interest, the subject of legislation is
C withdrawn from the jurisdiction of the State Legislature and, therefore, Act 67 of 1957 (MMDR Act) leaves no legislative field to the Bihar Legislature to enact Act 4 of 1955 amending the Land Reforms Act. Answering those questions, the Constitution bench has held thus:

D "13. .... Entry 54 of the Union List speaks both of Regulation of mines and minerals development and Entry 23 is subject to Entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a
E declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the
F State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly
G made to contradict it. There are also two decisions of this Court reported in the *Hingir Rampur Coal Co. Ltd.* v. *State of Orissa*, and *State of Orissa* v. *M.A. Tulloch and Co.* in which the matter is discussed. The only dispute, therefore, can be to what extent the declaration by Parliament leaves
H any scope for legislation by the State Legislature. If the

impugned legislation falls within the ambit of such scope it will be valid; if outside it, then it must be declared invalid. A

14. The declaration is contained in Section 2 of Act 67 of 1957 and speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act. In this connection we may notice what was decided in the two cases of this Court. In the *Hingir Rampur case* a question had arisen whether the Act of 1948 so completely covered the field of conservation and development of minerals as to leave no room for State legislation. It was held that the declaration was effective even if the rules contemplated under the Act of 1948 had not been made. However, considering further whether a declaration made by a Dominion Law could be regarded as a declaration made by Parliament for the purpose of Entry 54, it was held that it could not and there was thus a lacuna which the Adaptation of Laws Order, 1950 could not remove. Therefore, it was held that there was room for legislation by the State Legislature. B C D E

15. In the *M.A. Tulloch case* the firm was working a mining lease granted under the Act of 1948. The State Legislature of Orissa then passed the Orissa Mining Areas Development Fund Act, 1952 and levied a fee for the development of mining areas within the State. After the provisions came into force a demand was made for payment of fees due from July 1957 to March 1958 and the demand was challenged. The High Court held that after the coming into force of Act 67 of 1957 the Orissa Act must be held to be non existent. It was held on appeal that since Act 67 of 1957 contained the requisite declaration by Parliament under Entry 54 and that Act covered the same F G H

A field as the Act of 1948 in regard to mines and mineral development, the ruling in *Hingir Rampur's case* applied and as Sections 18(1) and (2) of the Act 67 of 1957 were very wide they ruled out legislation by the State Legislature. Where a superior legislature evinced an intention to cover
B the whole field, the enactments of the other legislature whether passed before or after must be held to be overborne. It was laid down that inconsistency could be proved not by a detailed comparison of the provisions of the conflicting Acts but by the mere existence of two pieces of
C legislation. As Section 18(1) covered the entire field, there was no scope for the argument that till rules were framed under that Section, room was available."

The Constitution Bench after considering *Hingir Rampur Coal Co. Ltd.* vs. *State of Orissa*, 1961 (2) SCR 537 and *M.A.*
D *Tulloch* (supra) held that in view of the two undermentioned rulings of this Court and by enacting Section 15 of Act 67 of 1957, the Union of India has taken all the power to itself and authorized the State Government to make rules for the regulation of leases. By the declaration and the enactment of Section 15, the whole
E of the field relating to minor minerals came within the jurisdiction of Parliament and no scope was left for the enactment of the second proviso to Section 10 in the Land Reforms Act. The enactment of the proviso was, therefore, without jurisdiction.

F 23. In *State of West Bengal vs. Kesoram Industries Ltd. and Others*, (2004) 10 SCC 201, after referring to earlier judgments including *M.A. Tulloch* (supra) and *Baijnath Kedio* (supra), the Constitution Bench held as under:

"95. .... All that the Court has said is that the 1957
G enactment covers the field of legislation as to the regulation of mines and the development of minerals. As Section 2 itself provides and indicates, the assumption of control in public interest by the Central Government is on: (*i*) the regulation of mines, (*ii*) the development of minerals, and
H (*iii*) to the extent hereinafter provided. The scope and extent

of declaration cannot and could not have been enlarged by the Court nor has it been done. The effect is that no State Legislature shall have power to enact any legislation touching: (*i*) the regulation of mines, (*ii*) the development of minerals, and (*iii*) to the extent provided by Act 67 of 1957.... ...." A B

24. In the same way, the State is also denuded of its executive power in regard to matters covered by the MMDR Act and the Rules. [vide *Bharat Coking Coal Ltd. vs. State of Bihar & Ors.*, (1990) 4 SCC 557]. C

25. In view of the specific parliamentary declaration as discussed and explained by this Court in various decisions, there is no question of the State having any power to frame a policy *de hors* the MMDR Act and the Rules. D

26. In *State of Assam & Ors. vs. Om Prakash Mehta & Ors.*, (1973) 1 SCC 584, this Court in paragraph 12 held that the MMDR Act, 1957 and the MC Rules, 1960 contain complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to Government as well as lands belonging to private persons. E

27. Again this Court in *Quarry Owners' Association vs. State of Bihar & Ors.*, (2000) 8 SCC 655, held that both the Central and the State Government act as mere delegates of Parliament while exercising powers under the MMDR Act and the MC Rules. F

28. 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 vs. Anjum M.H. Ghaswala &* G H

A *Ors.*, (2002) 1 SCC 633 at 644, *Captain Sube Singh & Ors. vs. Lt. Governor of Delhi & Ors.*, (2004) 6 SCC 440 and *State of U.P. vs. Singhara Singh & Ors.*, (1964) 4 SCR 485.

29. Mr. Harish N. Salve and Mr. Dushyant Dave, by drawing our attention to the decision of this Court in *TISCO vs. U.O.I. & Anr.*, (1996) 9 SCC 709, submitted that inasmuch as this Court had upheld the grants based on "captive consumption", there is no flaw or error in the recommendation of the State Government dated 06.12.2004. A perusal of the above decision clearly shows that it concerned with Section 8(3) of the MMDR Act which requires consideration of the extremely general criterion of the interests of mineral development before granting second renewal of a mining lease. Unlike in Section 11(3), no further criteria was specified and it was in this background, this Court upheld on the facts of that case that relevant material taken into account by the Committee set up by the Central Government rightly included "captive consumption". In view of the factual situation, the said decision can have no bearing on initial grants of mining lease where the only permissible criteria are the matters set out in Section 11(3) of the MMDR Act.

Issue (b)

"Whether the respondent-Jindal's application dated 24.10.2002 made prior to the Notification dated 15.03.2003 is capable of being entertained along with the applications made pursuant to the said notification."

30. The next vital issue that arises in this case is whether Jindal's application dated 24.10.2002 made prior to the Notification dated 15.03.2003 inviting applications for previously held area could be considered in view of Section 11(4) of the MMDR Act read with Rules 59 and 60 of the MC Rules. Before considering the above aspect, it is relevant to note the stand taken by Jindal that in 2001, one *Ziaulla Sharieff* filed a writ petition being Writ Petition No 35915 of 2001 seeking a declaration that he was entitled to a mining lease in respect of

388 acres of land in Sandur Taluk, Bellary District. It was pointed out that in the said writ petition, MSPL was arrayed as respondent No.3 and Sandur was arrayed as Respondent No.7. Three sister concerns of Jindal were also arrayed as respondents. During the pendency of the said writ petition, the State Government issued a notification dated 15.03.2003 inviting applications from the general public for mineral concessions over large areas of the State of Karnataka. It was further pointed out that the area concerned in the said writ petition as also the area concerned in the present appeals were included in the said notification. By judgment and order dated 29.03.2004, the High Court disposed of Writ Petition No. 35915 of 2001 with the following direction "in view of the subsequent notification issued by the State Government dated 15.03.2003, inviting that the area is available for grant, the State Government is now expected not only to consider the applications pending before it but also the applications that may be filed pursuant to the above said notification notwithstanding the earlier recommendation made by the second respondent." Learned senior counsel appearing for Jindal submitted that the State Government had acted on the basis of the *Ziaulla Sharieff's* case and empowered the Director of Mines and Geology to hear applications that were filed prior to the issuance of the notification dated 15.03.2003 and were pending on the date of the said notification. Whether such direction saves the State Government's decision in considering the Jindal's application which was made well prior to the notification dated 15.03.2003.

31. In order to determine whether it is Section 11(4) or the first proviso to Section 11(2), it is relevant to understand the intention of the legislature in enacting Section 11 of the MMDR Act and Rules 59 and 60 of MC Rules as being part of single statutory scheme governing the grant of reconnaissance permits, prospecting licences and mining leases. The amendments to MMDR Act in 1999 which inserted and re-drafted Section 11 had their origin in the Report of the Committee to Review the Existing Laws and Procedure for Regulation and Development of

A Minerals set up by the Ministry of Mines, Government of India, submitted in January, 1998. We are concerned about para 2.1.21 of the Report which reads as under:

> "... The concept of first-come, first-serve has become
> B necessary in view of the fact that the Act does not provide for inviting applications through advertisement for grant of PL/ML in respect of virgin areas. No doubt, there is provision in Rule 59 of MCR for advertisement of an area earlier held under PL/ML with provision for relaxation." In this
> C background, the Committee recommended the introduction of the proviso to Section 11(2) permitting calling for applications by way of a notification. There is a distinction between virgin areas and areas covered under Rule 59 and Section 11(2) ought to be interpreted to cover virgin areas alone."

D

If we consider Section 11 with the aid of the said Report, it makes it clear that Section 11(1) provides preferential right to the holder of reconnaissance permits or a prospecting licencee who has identified mineral resources in the area allotted to him for grant
E of a mining lease, subject to certain conditions specified in the proviso appended thereto. The over-riding character of the priority given to the successful prospecting licencee or reconnaissance permit-holder is clear from the fact that each of the subsequent sub-sections in Section 11 is made subject to
F Section 11(1).

32. It is also clear that the main provision in Section 11(2) gives preference to a prior applicant for grant of reconnaissance permit, prospecting licence or mining lease over later applicants where the State Government has not issued any notification. The
G analysis of the Report makes it clear that the main provision in Section 11(2) applies to "virgin areas". It further makes it clear that to the extent that an area that is previously held or reserved would require a notification for it to become available. The first proviso to Section 11(2) carves out an exception to the
H preferential right based on priority of applications in point of time

referred to in the main provision. It makes it clear that where the State Government subsequently issues a notification inviting applications for grant, the prior and subsequent applications to the notification would be considered as if they were filed on the same day and no priority in order of time would be given. The second proviso requires the State Government to examine the matters set out in Section 11(3) while considering the applications for grant.

33. The Committee's Report, particularly, para 2.1.2,1 which we extracted in the earlier paras, makes it clear that this provision was inserted because the Act does not provide for advertisement of virgin areas and the State Government was perfectly within the rights to issue an advertisement inviting applications even for virgin areas. In this regard, it is useful to mention that this Court had suggested an almost identical change in the un-amended Section 11 in *Indian Metals and Ferro Alloys Ltd.* vs. *Union of India & Ors.*, 1992 Supp. 1 SCC 91 at page 127 para 35.

> **"35.** Now, to turn to the contentions urged before us: Dr Singhvi, who appeared for ORIND, vehemently contended that the rejection of the application of ORIND for a mining lease was contrary to the statutory mandate in Section 11(2); that, subject only to the provision contained in Section 11(1) which had no application here, the earliest applicant was entitled to have a preferential right for the grant of a lease; and that a consideration of the comparative merits of other applicants can arise only in a case where applications have been received on the same day. It is no doubt true that Section 11(2) of the Act read in isolation gives such an impression which, in reality, is a misleading one. We think that the sooner such an impression is corrected by a statutory amendment the better it would be for all concerned. On a reading of Section 11 as a whole, one will realise that the provisions of sub-section (4) completely override those of sub-section (2). This sub-section preserves to the S.G.

A a right to grant a lease to an applicant out of turn subject to two conditions: (*a*) recording of special reasons and (*b*) previous approval of the C.G. It is manifest, therefore, that the S.G. is not bound to dispose of applications only on a "first come, first served" basis. It will be easily appreciated
B that this should indeed be so for the interests of national mineral development clearly require in the case of major minerals, that the mining lease should be given to that applicant who can exploit it most efficiently. A grant of ML, in order of time, will not achieve this result."

C Even under ordinary principles of statutory interpretation, the first proviso to Section 11(2) embraces the field that is covered by the main provision. [Vide *Abdul Jabar* vs. *State of J&K.*, AIR 1957 SC 281 (para 8) and *Ram Narain Sons* vs. *Asst. CST*, 1955 (2) SCR 483 at 493].
D

Accordingly, we are of the view that the notification calling for applications referred to in the first proviso to Section 11(2) applies only to virgin areas.

E 34. It is the claim of Jindal and Kalyani that the proviso to Section 11(2) of the Act sets out a plenary rule for consideration of applications for mining leases where the State Government has invited applications for mineral concessions by notification in the official gazette and the applications pending on the date of notification must be considered simultaneously with
F applications filed in response to the notification and within the notification period. It is also their claim that since there is no provision in the rules empowering the State Government to issue notification inviting applications for mineral concessions apart from Rule 59(1), it is asserted by Jindal and Kalyani that a
G notification inviting applications for mineral concessions in the proviso to Section 11(2) must necessarily relate only to a notification under Rule 59(1) inviting applications for mineral concessions in previously held or reserved lands. Therefore, according to them, the proviso's stipulation that applications for
H mineral concessions pending on the date of the said notification

inviting applications must be considered, must necessarily apply to applications pending in receipt of previously held lands. It is also contended that the proviso to Section 11(2) and Rule 59(1) use identical phraseology when referring to areas (available for grant). It was pointed out that since this language is not present in Section 11(4), this suggests strongly that Rule 59(1), the proviso to Section 11(2), Section 11(3) and Rule 35 form a composite code dealing with the consideration of applications for mineral concessions over lands thrown open for grant by way of notification under Rule 59(1) and that Section 11(4) does not apply to such applications.

35. We have already held that Section 11(3) specifies the matter relevant for purposes of second proviso to Section 11(2). We also referred to the Committee's Report. In accordance with the recommendation in the said Report, Section 11(3)(d) was added as part of the substitution of Section 11 in the year 1999. Sub-section (d) provides that "the investment which the applicant proposes to make in the mines and in the industry based on minerals" and it speaks about investment proposed to be made and not past investments. Thus it confines the concept of "captive consumption of minerals to proposed investment and not past investments". Even the residuary clauses in Section 11(3)(e) are limited to "matters as may be prescribed", which would necessarily mean matters prescribed by rules. This is fortified by decision of this Court in *BSNL Ltd. & Anr. vs. BPL Mobile Cellular Ltd. & Ors.*, (2008) 13 SCC 597, para 45.

36. We have already quoted sub-section (4) of Section 11 which contemplates a situation where a notification is issued inviting applications for an area for grant. In contrast to the first proviso to Section 11(2), it provides that all applications received pursuant to a notification shall be considered simultaneously without assigning any priority in point of time, and after taking into account the matters specified in Section 11(3). Section 11(4), in effect, covers exactly the same field as the first and second proviso to Section 11(2) read along with Section 11(3)

A with one difference, i.e., unlike the first proviso to Section 11(2), it provides for consideration of only those applications that are made pursuant to the notification and not those made prior to the notification. Notification under Section 11(4) is consistent with Rule 59(1) read with Rule 60 insofar as applications received
B prior to the notification would not be entertained. The first proviso to Section 11(2) was being added to cover virgin areas, then provided for the addition of Section 11(4), in order to ensure that the notification referred to in Rule 59(1) together with Rule 60 would not render *ultra vires* the MMDR Act. In view of the same,
C the contention on behalf of Jindal and Kalyani that the first proviso of Section 11(2) would cover notifications under Rule 59(1) is unacceptable because this would render Section 11(4) otiose and redundant. In *J.K. Cotton Spinning & Weaving Mills co. Ltd.* vs. *State of U.P.*, AIR 1961 SC 1170 and *O.P. Singla & Anr.* vs.
D *Union of India & Ors.* (1984) 4 SCC 450, this Court held that a provision in a statute must not be so interpreted as to reduce another provision to a "useless lumber" or a "dead letter". If we accept the said position, it would result in anomalous consequences of rendering Rule 60 *ultra vires* the first proviso
E to Section 11(2). In fact, this has been highlighted by the Central Government in their affidavit filed before the High Court.

37. In addition to what we have stated, it is relevant to note that Section 11(5) again carves out an exception to the preference in favour of prior applicants in the main provision of
F Section 11(2). It permits the State Government, with the prior approval of the Central Government, to disregard the priority in point of time in the main provision of Section 11(2) and to make a grant in favour of a latter applicant as compared to an earlier applicant for special reasons to be recorded in writing. It also
G gives an indication that it can have no application to cases in which a notification is issued because, in such a case, both the first proviso to Section 11(2) and Section 11(4) make it clear that all applications will be considered together as having been received on the same date. In view of our interpretation, the
H proceedings of the Chief Minister and the recommendation

dated 06.12.2004 are contrary to the Scheme of the MMDR Act as they were based on Section 11(5) which had no application at all to applications made pursuant to the notification dated 15.03.2003.

38. We have already extracted Rules 59 and 60 and analysis of those rules confirms the interpretation of Section 11 above and the conclusion that it is Section 11(4) which would apply to a Notification issued under Rule 59(1). Rule 59(1) provides that the categories of areas listed in it including, *inter alia*, areas that were previously held or being under a mining lease or which has been reserved for exploitation by the State Government or under Section 17A of the Act, shall not be available for grant unless (i) an entry is made in the register and (ii) its availability for grant is notified in the Official Gazette specifying a date not earlier than 30 days from the date of notification. Sub-rule (2) of Rule 59 empowers the Central Government to relax the conditions set out in Rule 59(1) in respect of an area whose availability is required to be notified under Rule 59 if no application is issued or where notification is issued, the 30-days black-out period specified in the notification pursuant to Rule 59(1)(i)(ii) has not expired, shall be deemed to be premature and shall not be entertained. As discussed earlier, Section 11(4) is consistent with Rules 59 and 60 when it provides for consideration only of applications made pursuant to a Notification. On the other hand, the consideration of applications made prior to the Notification, as required by the first proviso to Section 11(2), is clearly inconsistent with Rules 59 & 60. In such circumstances, a harmonious reading of Section 11 with Rules 59 and 60, therefore, mandates an interpretation under which Notifications would be issued under Section 11(4) in the case of categories of areas covered by Rule 59(1). In those circumstances, we are unable to accept the argument of learned senior counsel for Jindal and Kalyani with reference to those provisions.

39. The Division Bench has clearly erred in concluding that applications made prior to the notification under Rule 59(1) which

A are premature and cannot be entertained under Rule 60 would revive upon issuance of the Notification. This conclusion goes against basic principles of statutory interpretation. We have already pointed out the effect of Rule 60 which is couched in negative language that is mandatory in nature. Further, if that was B the intention of the Legislature, there was no reason for the Legislature to take pains to state in Rule 60(b) that an application made during the black-out period of 30 days specified in the Notification also would be premature and could not be entertained. Accordingly, the interpretation placed by the C Division Bench on Rule 60 would result in reading in a proviso at the end of Rule 60 to the effect that once the 30-days black-out period specified in the Notification contemplated by Rule 59(1)(ii) is over, premature applications would revive. After taking such pains to make it clear that the applications would not be D entertained until the end of the 30-days period, surely the Legislature itself would have inserted such a proviso at the end of Rule 60 if that were its intention.

40. In *Amritlal Nathubhai Shah & Ors. vs. Union Government of India & Anr.,* (1976) 4 SCC 108 (para 7), this E Court observed as follows:

> "..... Rule 60 provides that an application for the grant of a prospecting licence or a mining lease in respect of an area for which no such notification has been issued, inter alia, F under Rule 59, for making the area available for grant of a licence or a lease, would be premature, and "shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded." It would therefore follow that as the areas which are the subject-matter of the present G appeals had been reserved by the State Government for the purpose stated in its notification, and as those lands did not become available for the grant of a prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature. The Central Government was thus H

justified in rejecting the revision applications which were filed against the orders of rejection passed by the State Government." A

41. Even thereafter, this Court has consistently taken the position that applications made prior to a Notification cannot be entertained. In our view, the purpose of Rule 59(1), which is to ensure that mining lease areas are not given by State Governments to favour persons of their choice without notice to the general public would be defeated. In fact, the learned single Judge correctly interpreted Section 11 read with Rules 59 and 60. The said conclusion also finds support in the decision of this Court in *State of Tamil Nadu vs. M.S. Hindstone & Ors.*, (1981) 2 SCC 205 at page 218, where it has been held in the context of the rules framed under the MMDR Act itself that a statutory rule, while subordinate to the parent statute, is otherwise to be treated as part of the statute and is effective. The same position has been reiterated in *State of U.P.* vs. *Babu Ram Upadhya*, (1961) 2 SCR 679 at 701 and *Gujarat Pradesh Panchayat Parishad & Ors.* vs. *State of Gujarat & Ors.*, (2007) 7 SCC 718. The Division Bench did not advert to these aspects as analyzed by the learned single Judge. On the other hand, the Division Bench accepted Jindal's contention that if Rule 60 is interpreted to render applications made prior to Rule 59(1) Notification *non est*, it would make Rule 59(2) unworkable because persons normally apply for mining lease areas along with an application for relaxation under Rule 59(2). This conclusion is clearly misplaced. It is only the request under Rule 59(2) of any person for relaxation in respect of an area that is considered and not the application for grant. Only after the relaxation under Rule 59(2) by the Central Government of the requirement of Notification under Rule 59(1) that applications could be considered for grant of mining lease. The decision relied on by the learned senior counsel for Jindal in *TISCO* (supra), (paras 42, 44 and 47), that applications made by certain parties were considered after a relaxation under Rule 59(2) cannot be taken as laying down any law. It is also seen that consideration of the applications made B C D E F G H

A by various parties in the *TISCO's* case was pursuant to the directions issued by this Court and not independently by the State Government under Section 11 of the Act. As a matter of fact, the issue whether premature applications revived for consideration after the relaxation under Rule 59(2) was neither expressly raised
B nor decided in the *TISCO's* case. In the light of the above discussion about Section 11(2) alongwith Rules 59 and 60, it should be interpreted that Section 11(2) is to cover virgin areas alone. In view of the same, the Jindal's application made prior to the Notification cannot be entertained along with the
C applications made pursuant to the Notification dated 15.03.2003 because it is Section 11(4) which covers the said Notification along with Rule 59(1) and not the first proviso to Section 11(2) as contended by the respondents.

D **Issue (c)**

Whether the order of the High Court of Karnataka in *Ziaulla Sharieff's (supra)* permit the consideration of the Jindal's application dated 24.10.2002 which was made prior to the notification dated 15.03.2003.

E

42. We have already discussed this issue. In addition to the same, perusal of the order of the High Court in Writ Petition No. 35915 of 2001 shows that the State Government was directed to consider only the application of the MSPL and the applications
F filed by the impleading applicants and others pursuant to the Notification dated 15.03.2003 in accordance with law and in terms of the provisions of the MMDR Act and MC Rules. In other words, the High Court did not issue any direction to consider all applications made prior to the notification. To put it clear, there was no *mandamus* from the High Court to consider prior
G applications. The word "others" qualify the phrase "pursuant to" and not the class of applicants who had applied even prior to the "Held Area Notification" dated 15.03.2003. As a matter of fact, the High Court had merely directed the State Government to consider the applications in accordance with the provisions
H of the MMDR Act and MC Rules. Even otherwise, the said order

was passed without going into the specific provisions in the Act or Rules. Further, the order does not deal with the interpretation of Section 11 or Rules 59 and 60. Hence, the order of the High Court of Karnataka in *Ziaulla Sharieff's case* does not permit the consideration of Jindal's application dated 24.10.2002 which was made prior to the notification dated 15.03.2003.

Issue (d):

Whether Rule 35 of the MC Rules justify the recommendation of the State Government and the proceedings of the Chief Minister in favour of the Respondents – Jindal & Kalyani?

> *"Rule 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. "

We have already adverted to the proceedings of the Chief Minister which heavily relied on Rule 35 to justify the recommendation in favour of the respondents – Jindal and Kalyani on the premise that it is intended to give preference to those who have made existing investments in industries based on iron ore and both of them qualify on this consideration. From a plain reading of Rule 35, it is clear that the rule permits the State Government to differentiate between the "end use" of the minerals for the purpose of sub-section (2) of Section 11 in addition to the matters in Section 11(3). In the case on hand, all the parties, namely, MSPL, Sandur, Jindal and Kalyani expressed their intention to use iron ore from the mines for producing steel and, therefore, the same "end use" requirement is satisfied.

A 43. Rule 35, at best, permits the State Government to differentiate between different "end uses", for example, the use of iron ore to produce sponge iron instead of steel, or the use of gold in jewellery as compared to medicines. Further, Rule 35 does not differentiate between "proposed" and "existing" end B use. Therefore, it could have enabled the State Government to take into account the claim of the respondents – Jindal and Kalyani, whose past investments would not have qualified on the "proposed" investment criterion under Section 11(3)(d), in addition to MSPL and Sandur. This could have been a basis to C exclude those with proposed investments in steel plants from consideration.

44. It is also relevant to point out that Rule 35 specifies one additional factor apart from the factors set out in Section 11(3). The plain language of Rule 35 requires its application only in D cases covered by Section 11(2) and not by Section 11(4). Therefore, to the extent that it is Section 11(4) that covers Notification under Rule 59(1) and not Section 11(2), in this way also, the State Government committed an error in relying on Rule 35 to exclude the appellants, i.e., MSPL and Sandur. To justify E the recommendation in favour of the respondents-Jindal and Kalyani, in the proceedings of the Chief Minister, State heavily relied on Rule 35 on the premise that it is intended to give preference to those who have made existing investments in industries based on iron ore and that the respondents – Jindal F and Kalyani, qualify on this consideration. However, as discussed above, Rule 35 only permits the State Government to take additional factor of the "end use" of the minerals and not the existing investments made by the applicants. Moreover, relying on the existing investments made, the respondents also does G not satisfy the requirements under Section 11(3)(d) which talks solely about proposed investments to be made and not the existing ones.

Issue (e):

H **Whether the criterion of captive consumption referred to**

in the TISCO's case has no application to the present case because it is not one of the factors referred to in Section 11(3) or even in Rule 35.

45. The criterion of captive consumption referred to in *TISCO's* case (supra) does not have any application in this case, which we will refer in the later part of this paragraph. Section 11(4) and even the second proviso to Section 11(2) provide that the State Government may grant, *inter alia*, a mining lease after taking into consideration the matters specified in Section 11(3). Section 11(3)(d) specifies "the investment which the applicant proposes to make in the mines and in the industry based on the minerals" as one of such matters and on a plain interpretation, it is clear that only the proposed investment is a relevant factor. If the Legislature had intended that it should include past investments also, the use of the word "proposed" is superfluous, which could never be the case. Learned senior counsel appearing for the respondents have not pointed out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments or for captive purposes in existing industries.

46. As observed in the earlier paragraphs, the strong reliance placed by the respondent-Jindal on the decision of this Court in ***TISCO's*** case (supra) (Paras 9,15,20,25,27,34,54,56 & 57) is misplaced. This case concerned solely on the interpretation of Section 8(3) of the MMDR Act in the context of a second renewal of a mining lease in favour of TISCO, and not a fresh grant. It is, in this context the phrase "interest on mineral development" in Section 8(3) was interpreted to include captive requirements. On the other hand, the case of fresh grant is covered by Section 11 of the MMDR Act. Paragraph 54 of the *TISCO's* case (supra) makes it clear that the case concerned is chromite whose known reserves were not abundant, whereas iron ore is in abundance. Even otherwise, this judgment is of no assistance even on Rule 59(1) of the MC Rules since it was a case of relaxation by the Central Government under Rule 59(2),

A as is clear from paragraph 15 of the judgment.

47) It is useful to mention that subsequent to the decision in *TISCO* (supra), this Court in *Indian Charge Chrome Ltd. & Anr.* vs. *Union of India & Ors.*, (2006) 12 SCC 331 (Paras 20 & 26) held that considerations of captive mining cannot be the controlling factor for grant of lease.

B

Issue (f):

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

C

48. As discussed earlier, the State Government is denuded of all legislative and executive power under Entry 23 of List-II read with Article 162 after passing of the MMDR Act which are as under:-

D

"**Entry 23, List II:** Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

E

"**Article 162. Extent of executive power of State.-** Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

F

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

G

It is clear that the State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of

H

Section 11(3) of the Act, hence it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the MMDR Act in the grant of mining leases. Furthermore, Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. As a matter of fact, the respondents have not been able to point out any other provision in the MMDR Act or MC Rules permitting grant of mining lease based on past commitments. As rightly pointed out, the State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event that the person makes investment in any project. Assuming that the State Government had made any such commitment, it could not be possible for it to take an inconsistent position and proceed to notify a particular area. Further, having notified the area, the State Government certainly could not thereafter to honour an alleged commitment by ousting other applicants even if they are more deserving on the merit criteria as provided in Section 11(3).

49. In the case of *State of Assam & Ors. vs. Om Prakash Mehta & Ors.*, AIR 1973 SC 678, this Court observed that the MMDR Act and MC Rules contain the complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to Government. In *Quarry Owners Association* (supra), this Court again reaffirmed the notion that both the Central as well as the State Government act as a mere delegates of Parliament while exercising the powers under the Act and Rules. [Vide *M.A. Tulloch* (supra), *Baijnath Kedio* (supra), *Kesoram's* case (supra), and *Bharat Cooking Coal Ltd.* (supra)]. From this, it becomes amply clear that the State Government has divested of legislative and executive powers with respect to mines and minerals development. In addition to the same, *Anjum M.H. Gaswala* (supra), *Captain Sube Singh* (supra), *Singhara Singh's* case (supra), this Court repeatedly held that the field of granting mining leases is covered by express statute and rules and the grants must be made in

A accordance with the provisions of the Act and Rules and no other consideration. From a perusal of the above settled legal position, it becomes clear that the State Government cannot grant mining leases keeping in mind any considerations apart from the ones mentioned in the MMDR Act and MC Rules. In those
B circumstances, no extraneous considerations such as past commitments made by the State Government to Jindal and Kalyani who have already set up steel plants can be entertained by the State Government while granting mining leases and must abide by the Act and Rules.

C **Issue (g):**

Whether the recommendation in favour of Jindal and Kalyani saved by operation of law of equity?

D 50. The Law of Equity cannot save the recommendation in favour of Jindal and Kalyani because it is a well settled principle that equity stands excluded when a matter is governed by statute. This principle was clearly stated by this Court in the cases of *Kedar Lal* vs. *Hari Lal Sea*, (1952) SCR 179 at 186 and *Raja*
E *Ram* vs. *Aba Maruti Mali* (1962) Supp. 1 SCR 739 at 745. It is clear that where the field is covered expressly by Section 11 of the MMDR Act, equitable considerations cannot be taken into account to assess Jindal and Kalyani, when the recommendation in their favour is in violation of statute. It was
F pointed out that Kalyani does not have a commitment from the State Government regarding its iron ore needs. In the proceedings of the State Government, there is only a statement that it may apply for a lease. No doubt, Jindal has emphasized that it has already set up its steel plant based on the commitments made by the State Government to grant a mining
G lease and it is in need of iron ore for these steel plants. As observed earlier, commitments made by the State Government cannot be a relevant factor for grant of lease in the teeth of the consideration set out in Section 11(3). If that was to be the sole criterion, the State Government ought not to have notified the
H area vide 'Held Area Notification' dated 15.03.2003.

51. It was also pointed out that Jindal has been mining a lease area of 85.50 hectares of Mysore Minerals Limited, a Public Sector Undertaking through a joint venture in terms of the commitment made by the State Government. In addition, the State Government has made a recommendation for grant of mining lease in favour of Jindal and its sister concerns in the following areas:

(i) 188.128 hectares in favour of M/s JSW Steel Limited in Donimalai Range, Sandur Taluk, Bellary District.

(ii) 181.70 hectares in favour of M/s. Vijaynagara Minerals Pvt. Ltd. In Donimalai Range, Sandur Taluk, Bellary District.

(iii) 184.14 hectares in favour of M/s. South West Mining Ltd. In Donimalai Range, Sandur Taluk, Bellary District.

(iv) 200.73 hectares in favour of M/s JVSL in Kumaraswamy range of Sandur Taluk, Bellary District, which si the subject matter of the present SLP.

As a matter of fact, MSPL had filed an affidavit in this regard before the Division Bench. It is not clear whether Jindal has specifically denied the specific grants. By drawing our attention to certain factual details, it was contended that Jindal has so much iron ore and it actually exported iron ore for which reliance was made to its annual reports during the years 2002-03 to 2005-06. On the other hand, it is the claim of the MSPL that in accordance with Section 11(3)(d) it had proposed to set up a steel plant for which it required iron ore. It was also brought to our notice that it had received permission from the State Government in this regard. With reference to the allegation that MSPL has a mining lease over an area of 722.94 hectares, it was pointed out that in actual it has a lease over an area of 347.22 hectares only. On 05.06.2009, MSPL filed an affidavit before the

A Division Bench stating that it holds only a single mining lease granted over five decades ago and the major proportion of which has been afforestated. It is also their grievance that the iron ore reserves in this lease have almost been exhausted over a period of 58 years, since 1952. The remaining iron ore cannot support
B a steel plant of the size that is being set up by MSPL. Since the entire field of granting mining lease is covered by MMDR Act and MC Rules, the State Government cannot use any consideration apart from the ones mentioned in the Act and Rules.

C **Issue (h):**

About the impugned judgments of the single Judge and Division Bench:

52. In view of our conclusion, the Division Bench has erred
D in concluding that the Jindal's application made prior to the Notification can be entertained along with the applications made pursuant to the said Notification because it is not Section 11(4) which covers the said Notification under Rule 59(1) but the first proviso to Section 11(2). As a matter of fact, the Division Bench
E did not even mention Section 11(4) in its reasoning apart from stray references even though the conclusion of the learned single Judge hinged on how Section 11(4) would be rendered otiose and redundant if the first proviso to Section 11(2) was taken as governing the consideration of applications under a Notification
F pursuant to Rule 59(1).

53. The Division Bench has also faulted in arriving at the conclusion that the applications made prior to Notification under Rule 59(1) which are premature and cannot be entertained under Rule 60 would revive upon issuance of the Notification which is
G clearly not the case. As pointed out earlier, had that been the intention of the Legislature, there was no reason for the Legislature to take pains under Rule 60(b) that an application made during the period of 30 days specified in the Notification also would be premature and could not be entertained. If the
H decision of the Division Bench is taken to its logical conclusion,

then it would result in reading in a proviso at the end of Rule 60 to the effect that once the 30 days' period specified in the Notification contemplated by Rule 59(1) sub-clause (ii) is over, premature applications would revive. After taking such pains to make it clear that the application would not be entertained until the end of 30 days' period, surely the Legislature itself would not have inserted such proviso in Rule 60 if that were its intention. If such premature applications are allowed to be entertained, it would result in the State Government giving out mining leases to favoured persons without notice to the general public.

54. The Division Bench has also accepted Jindal's contention that if Rule 60 is interpreted to render applications made prior to Rule 59(1) Notification *non est*, in that event, it would make Rule 59(2) unworkable because persons will normally apply mining lease areas along with an application for relaxation under Rule 59(2). In view of our earlier reasons, this conclusion is clearly misplaced. It is only the request under Rule 59(2) for relaxation in respect of an area that is considered and not the application for grant. It is only after the relaxation under Rule 59(2) by the Central Government of the requirement of the Notification under Rule 59(1) that the applications could be considered for grant of mining lease.

55. Though the learned single Judge in his order dated 07.08.2008 quashed the communication/recommendation of the State Government dated 06.12.2004 proposing to grant mining lease to Jindal and Kalyani, however, the learned single Judge traveled much beyond the reliefs sought for in the writ petition and quashed the entire Notification No. CI.16:MMM.2003 dated 15.03.2003. In our view, while approving earlier part of his order and quashing the communication/recommendation of the State Government dated 06.12.2004, the other observations/ directions are not warranted in the light of the provisions of the Act and the Rules. The said observations/directions are deleted.

A **Issue (i):**

Whether it is advisable to remit it to the Central Government:

B 56. Learned senior counsel appearing for Jindal and Kalyani requested that inasmuch as the Central Government has already given its approval under Section 5 of the MMDR Act in their favour during the pendency of the writ petition, if this Court feels that fresh decision is to be arrived, the same may be remitted to the Central Government. In the earlier part of our judgment, we C have pointed out that the Central Government considers only the materials forwarded by the State Government along with its recommendation. As rightly pointed out, if the recommendation of the State Government cannot be upheld in law, all consequential orders including the subsequent approval by the D Central Government are also liable to be quashed. It is useful to refer *Barnard* vs. *National Dock Labour Board* (1953) 1 All E.R. 1113 at 1120 para 1, *McFoy* vs. *United Africa Co.* (1961) All E.R. 1169, *Pavani Sridhara Rao* vs. *Govt. of A.P & Ors.* (1996) 8 SCC 298 (para 5) and *State of Kerala* vs. *Puthenkavu N.S.S.* E *Karayogam & Anr.*, (2001) 10 SCC 191 (para 9). If the very same recommendation of the State Government is sent back to the Central Government on the administrative side in its role as an approving authority under Section 5(1) without setting aside the impugned judgment, it is more likely that the Central F Government would simply follow its previous order. In that event, the Central Government would be influenced by the judgment passed by the Division Bench upholding the grant made in favour of Jindal and Kalyani. Such an exercise would be in the nature of post-decisional hearing which would be impermissible. [Vide G *H.L. Trehan & Ors.* vs. *Union of India & Ors.*, (1989) 1 SCC 764 (paras 12 & 13) *K.I. Shephard & Ors.* vs. *Union of India & Ors.*, (1987) 4 SCC 431 (para 16) and *Shekhar Ghosh* vs. *Union of India & Anr.*, (2007) 1 SCC 331]. It is also brought to our notice that as on date the Central Government hears revision petitions through an Executive Officer and without participation of a H

Judicial Member. It is also pointed out that the exact procedure of the revisional Tribunal has kept changing over the last few months. It is clear that it would not be an independent and efficacious alternative forum in terms of the guidelines laid down by the Constitution Bench in *Union of India* vs. *R. Gandhi, President, Madras Bar Association,* JT 2010 (5) SC 553. As observed by three Judge Bench of this Court in *Indian Charge Chrome Ltd.* (supra), when there was no valid recommendation by the State Government for the grant of lease, there cannot be any valid approval of the Central Government relying on the defective recommendation. We have already concluded that the recommendation of the State Government dated 06.12.2004 is not valid with reference to the provisions of MMDR Act and the Rules, hence the invalid recommendation cannot be looked into by the Central Government. Further, proviso to Section 5(1) itself provides only for the Central Government either to grant or reject its approval to the State Government's recommendation in the case of mining lease for a mineral such as iron ore in the First Schedule. In our view, such consideration on the administrative side does not involve consideration of all the applicants based on their mining lease applications and after giving an opportunity of hearing. Inasmuch as the Central Government does not have all relevant materials before it, it may not be in a position to substitute itself for the State Government and, if not, it would be proper, in fact, it would be inconsistent with the provisions of the MMDR Act and the Rules to frame the issue on the administrative side of the Central Government. Even otherwise, inasmuch as we have heard the matter at length and we satisfy that there is a flaw in the recommendation of the State Government which requires reconsideration, we reject the request for remitting the matter to the Central Government for its decision.

Conclusion:

57. In the light of the above discussion, the impugned order of the Division Bench of the High Court dated 05.06.2009 in Writ Appeal No. 5084 of 2008 and allied matters as well as the

A decision of the State Government dated 26/27.02.2002 and the subsequent decision of the Central Government dated 29.07.2003 are quashed. We direct the State Government to consider all applications afresh in light of our interpretation of Section 11 of the Act and Rules 35, 59 and 60 of MC Rules and
B make a recommendation to the Central Government within a period of four months from the date of receipt of the copy of this judgment. It is made clear that we have not expressed anything on the eligibility or merits of any of the parties before us and our conclusion as to the decision of the State Government is based
C on the interpretation of the statutory provisions mentioned above for which we adverted to certain factual details of the parties. The State Government is free to consider the applications and take a decision one way or other in accordance with law, as discussed above, within the time scheduled.

D 58. All the appeals are allowed to the extent mentioned above. No costs.

N.J. Appeals partly allowed.