*** THE HON'BLE Ms. JUSTICE G. ROHINI**

+ WRIT PETITION NO.9723 OF 2007,
WRIT PETITION NO.14116 OF 2007
AND
WRIT PETITION NO.14818 OF 2007

% 31/08/2007

 # In W.P.No.9723 of 2007 :

1. M/s. Tapal Timmappa & Sons, a partnership firm Mineral Dealers, Lingareddy Complex, 1st Cross, Gandhi Nagar, Bellary, rep. By its Partner T. Raamdas S/o. Late Sri Tapal Timmappa, 62 years Occ. Retired, R/o. Bellary, Karanataka State and 4 others. ...Petitioners

Vs.

$ 1. State of A.P. rep. By its Secretary, Department of Industries & Commerce, Secretariat, Hyderabad., And 5 others. ... Respondents

 # In W.P.No.14116 of 2007 :

Tapal Syam Prasad, S/o. Tapal Thipareddy, 47 years, Occ: Trader, R/o. D.No.12-5-9, State Bank of India Colony, Near Housing Board, Anathapur. ... Petitioner

Vs.

$ 1.The Government of A.P. rep. By its Secretary, Industries & Commerce, Secretariat Buildings, Government of Andhra Pradesh., Hyderabad, And 11 others. ... Respondents

 # In W.P.No.14818 of 2007:

M/s. Tapal Timmappa & Sons, a partnership firm Mineral Dealers, Lingareddy Complex, 1st Cross, Gandhi Nagar, Bellary, rep. By its Partner T. Raamdas S/o. Late Sri Tapal Timmappa, 62 years Occ. Retired, R/o. Bellary, Karanataka State. ...Petitioner

Vs.

$ 1. State of A.P. rep. By its Secretary, Department of Industries & Commerce (M.III) Department, Secretariat, Hyderabad. And 9 others. ... Respondents

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! Counsel for the petitioner in W.P.No.14116/2007 : Sri Govardhan Venu

Counsel for the petitioner in W.P.No.14818 of 2007 : Sri P.Venugopal for Sri N. V. Raghava Reddy

Counsel for the petitioners in W.P.No.9723 of 2007 : Sri C. Sudesh Anand

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Sri K. Raghavacharyulu
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A. Rajasekhar Reddy(Asst.Solicitor Gen)
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Sri S.V. Bhatt
Sri V.Subrahmanyam

Cases referred :

[1] AIR 1995 SC 333

2 AIR 1985 SC 330

3(2007) 2 SCC 112

4 1998 (5) ALD 549

[5] (1998) 8 SCC 1
[6] (2003) 2 SCC 107
[7] (2005) 8 SCC 264
[8] (2004) 3 SCC 553
[9] AIR 1961 SC 1506
[10] (1996) 6 SCC 442
[11] AIR 1991 SC 818
[12] (2003) 9 SCC 731
[13] (2003) 7 SCC 689

THE HON'BLE Ms. JUSTICE G. ROHINI

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Dated: 31-08-2007

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M/s. Tapal Timmappa & Sons, a partnership firm

Mineral Dealers, Lingareddy Complex, 1st Cross, Gandhi Nagar, Bellary, rep. By its Partner T. Raamdas S/o. Late Sri Tapal Timmappa, 62 years Occ. Retired, R/o. Bellary, Karanataka State. …Petitioner

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.9723 OF 2007,
WRIT PETITION NO.14116 OF 2007
AND
WRIT PETITION NO.14818 OF 2007

COMMON ORDER :

One Tapal Thimmappa was granted a mining lease for ***Iron ore*** over an area of 231 acres in Sy.Nos.1 and 2 of Malapanagudi Village, D. Hirehal Mandal, Ananthapur District on 16-8-1955 for a period of 20 years which expired on 15-5-1977.

Thereafter, on 12-7-2004 a notification was published under Rule 59 (1) (a) & (ii) of Mineral Concession Rules, 1960 (for short, 'the Rules') declaring that the said 231 acres of land situated in Sy.Nos.1 & 2 of Malapanagudi Village was available for regrant of a mining lease after expiry of 30 days from the date of publication of the notification. In pursuance thereof, M/s. Obulapuram Mining Company (P) Limited (9th respondent in W.P.Nos.14116 & 14818 of 2007) applied for grant of mining lease on 28-8-2004 over an extent of 93.52 hectares (231 acres). The petitioner in W.P.Nos.9723 & 14818 of 2007 - M/s. Tapal Thimmappa and Sons, a Partnership Firm made

an application on 15-1-2005 for grant of mining lease over an area of 40.47 hectares. The petitioner in W.P.No.14116 of 2007 also made an application on 19-4-2006 (according to the respondents on 19-4-2007) for grant of mining lease over the notified area. Having processed the applications, the Government of A.P., by order dated 10.11.2005, provisionally proposed to grant a mining lease in favour of the 9th respondent over an extent of 68.52 hectares for a period of 20 years subject to prior approval of the Government of India under Section 5 of the Mines and Minerals (Development & Regulation) Act, 1957.

Aggrieved by the said order, dated 10.11.2005, ***W.P.No.9723 of 2007*** was filed by M/s. Tapal Thimmappa and sons along with four others.

This Court ordered Rule Nisi on 1-5-2007 and while the writ petition was coming up for the counter-affidavit of the respondents, the Government of A.P., on the basis of the prior approval of the Government of India, dated 25-5-2007, passed orders granting a mining lease in favour of the 9th respondent vide G.O.Ms.No.151, Industries and Commerce (M-III) Department, dated 18.6.2007. On the same day, by a separate order, the application of M/s. Tapal Thimmappa and Sons for grant of mining lease was rejected.

Challenging the said order dated 18-06-2007, M/s. Tapal Thimmappa and Sons filed ***W.P.No.14818 of 2007***.

The order dated 18.6.2007, granting a mining lease in favour of the 9th respondent has also been challenged in ***W.P.No.14116 of 2007*** by one Tapal Syam Prasad contending that, while keeping his application dated 19-4-2007 pending, the decision taken to grant the mining lease in favour of the 9th respondent was in gross violation of the procedure prescribed under Section 11 of the Mines and Minerals (Development & Regulation) Act, 1957 (for short, 'MM(D&R) Act').

In W.P.No.9723 of 2007 though Rule Nisi was ordered on 1-5-2007 no counter-affidavit is filed by any of the respondents.

In W.P.No.14116 of 2007 and W.P.No.14818 of 2007 the learned Government Pleader for Mines & Geology accepted notice for the Government of Andhra Pradesh and filed a detailed counter-affidavit in W.P.No.14116 of 2007 at the admission stage itself on behalf of the 1st respondent. The said counter-affidavit has been adopted in W.P.No.14818 of 2007 also by the 1st respondent – Government of A.P.

On behalf of the respondent No.9 – M/s. Obulapuram Mining Company Private Limited Sri K. Raghavacharyulu, Advocate, entered appearance in W.P.Nos.14116 & 14818 of 2007 at the admission stage itself and addressed elaborate arguments raising a preliminary objection as to the maintainability of the writ petitions and also on merits.

Sri K. Raghavacharyulu filed his vakalat for M/s. Obulapuram Mining Company Private Limited (respondent No.4) in W.P.No.9723 of 2007 as well, however no counter-affidavit has been filed.

Similarly for respondent No.10 (A.P. Mineral Development Corporation, Hyderabad) in W.P.Nos.14116 of 2007 and 14818 of 2007, Sri V. Subrahmanyam entered appearance and participated in the hearing opposing the writ petitions.

Though both the respondents 9 & 10 did not choose to file counter-affidavits in any of the writ petitions, the learned Counsel appearing for the respondent Nos.9 & 10 agreed for disposal of the writ petitions at the stage of admission since all the parties made their submissions in detail on all aspects and the original record has also been produced by the learned Government Pleader before this Court.

Thus, with the consent of the learned Counsel appearing for the petitioners as well as the respondents for deciding W.P.Nos.14116/2007 and 14818/2007 at the stage of admission, these two writ petitions along with W.P.No.9723 of 2007 are heard

together and since all the three writ petitions are based on the same set of facts involving common questions of fact and law, they are decided by this common order.

The facts, in brief, as pleaded in the affidavit filed in support of W.P.No.14116 of 2007 are as under :

The petitioner is the grand son of the original lessee – Tapal Thimmappa - who was initially granted a mining lease for iron ore over an area of 231 acres in Sy.Nos.1 & 2 of Malapanagudi Village, D. Hirehal Mandal, Ananthapur District on 16-8-1955. Pursuant to the said order a lease deed 16-5-1957 was executed in favour of Tapal Thimmappa for a period of 20 years who, having invested huge amounts, made the area fit for mining operations and extracted Iron ore and Red Oxide during the period of lease. Prior to expiry of the lease, Tapal Thimmappa made an application for renewal and was permitted by the concerned Collector to carry on mining operations on payment of royalty. Accordingly, though the lease granted in favour of Tapal Thimmapa expired on 15-5-1977, he continued in possession of the leased area and was carrying on mining operations till his death in the year 1986. Thereafter, his son Tapal Thippa Reddy i.e., the father of the petitioner herein continued in possession and extracted the minerals assisted by the petitioner. The petitioner's father Tapal Thippa Reddy also died in the year 1991 and the petitioner who continued in possession of the leased area has been operating the mines as a tenant-holding over. While so, the 9th respondent herein through one D. Rajasekhar approached the petitioner with a proposal to enter into an agreement for transfer of leasehold rights. Pursuant thereto, an unregistered agreement was executed. However, subsequently no further steps were taken and in the meanwhile a notification dated 12-7-2004 was published under Rule 59 (1) (a) & (ii) of Mineral Concession Rules, 1960 declaring that the said 231 acres of land situated in Sy.Nos.1 and 2 of

Malapanagudi village which is in possession of the petitioner is available for re-grant showing the name of the petitioner's grandfather as the previous lessee. It is alleged that thereafter D. Rajasekhar who is none other than the brother-in-law of V.D. Rajagopal, Director of Mines & Geology, Hyderabad started threatening and harassing the petitioner so as to make him yield to their illegal demands of not insisting or pursuing the rights for the mining lease as a previous lessee in possession. The petitioner was intimidated including criminal trespass of his house, and all the documents and papers including the correspondence with Collector and the receipt of application for renewal of lease, were taken away by using criminal force on 20.9.2006. When the petitioner approached the local police on 21-9-2006 they were not inclined to receive the complaint. Upon the insistence of the petitioner, though the complaint was received on 28-9-2006, no action was taken. Ultimately, on 26.12.2006 the petitioner has lodged a private complaint in the Court of the Additional Judicial Magistrate, Ananthapur against all the concerned for appropriate action in accordance with law. The complaint was referred to the police for investigation under Section 156(3) of Cr.P.C. pursuant to which the Ananthapur I-Town Police Station registered the Crime in FIR NO.2 of 2007 dated 5-1-2007 for offences under Sections 384, 379, 420, 426 and 448 of IPC against the said D. Rajasekhar and three other known accused including Sri V.D. Rajagopal, Director of Mines & Geology, Government of Andhra Pradesh, Hyderabad.

Even prior to that on 19-4-2006 the petitioner made an application for grant of lease in response to the notification dated 12-7-2004 as an abundant measure of caution. The 4th respondent – Assistant Director of Mines & Geology, having received the said application, proposed inspection of the lands on 26-6-2007. However, in spite of the several requests made by the petitioner, the 4th respondent did not furnish the details of the status of the petitioner's application.

While so, the petitioner came to know that some of the applicants for the mining lease, pursuant to the notification dated 12-7-2004, were served with show-cause notices as to why their applications should not be rejected. Since the petitioner was not served with any communication and his application dated 19-4-2006 remained in suspended animation, the petitioner made applications to the 2nd respondent – Director of Mines & Geology and also the 4th respondent seeking information in respect of the status of the applications pursuant to the notification dated 12-7-2004 under the Right to Information Act, 2005. In the meanwhile, a press statement was made by the concerned Minister of Government of A.P. stating that the application of the petitioner was rejected on 18-6-2007. However, no such communication was received by the petitioner. On the other hand, the petitioner was put in constant pressure and there was also a threat of forcible dispossession from the mining leased area by the respondents at the behest of the 9th respondent through D. Rajasekhar. In the circumstances, the petitioner was constrained to file O.S.No.17 of 2007 in the Court of the Additional District Judge, Ananthapur seeking perpetual injunction against the Director of Mines and Geology and the Assistant Director of Mines & Geology on 18-6-2007 in which an interim order of status quo was granted on 20-6-2007.

In the meanwhile, the 1st respondent passed the impugned order vide G.O.Ms.No.151, dated 18-6-2007 granting lease in favour of the 9th respondent. Hence, W.P.No.14116 of 2007 seeking a declaration that G.O.Ms.No.151, dated 18-6-2007 granting mining lease in favour of the 9th respondent is arbitrary, illegal, mala fide and in violation of the principles of natural justice as well as the provisions of Mineral Concession Rules, 1960 and accordingly to set aside the same.

The facts in W.P.No.9723 and W.P.No.14818 of 2007 :

The petitioner in these two writ petitions is a partnership firm constituted by the children/legal heirs of late Tapal Thimmappa, the previous lessee in respect of 231 acres of area under the lease deed dated 16-5-1977 for extraction of Iron ore and Redoxide. In response to the Notification dated 12-7-2004 published under Rule 59 (1) (a) & (ii) of the Mineral Concession Rules, 1960 for re-grant of the mining lease for the said area, the petitioner firm made an application on 15-1-2005 for grant of mining lease in respect of 40.47 hectares specifically bringing to the notice of the Assistant Director of Mines & Geology that when the lease was with late Sri Tapal Thimmappa there remained about 1 lakh metric tons of low grade iron ore which could not be marketed through Minerals and Metals Trading Corporation which was the sole buying agent to the Government as low grade iron ore was not saleable at that point of time. It was also stated that since low grade iron ore dumps were existing on ground the children of late Sri Tapal Thimmappa are entitled to remove the same after paying the necessary royalty and other allied charges under the provisions of the MM(D&R) Act by getting transport permits. While the said application was still under process, one of the sons of late Sri Tapal Thimappa requested the authorities to inform whether there are any arrears outstanding. In response, the Director of Mines & Geology by letter dated 27-2-2006 informed that there were no dues. However, since the application of the petitioner for taking away the already extracted ore was not considered, W.P.No.13985 of 2006 was filed before this Court. The said writ petition was disposed of by this Court by order dated 21-7-2006 with a direction to the Assistant Director of Mines & Geology to dispose of the representation in accordance with law within a period of six weeks. Thereafter, the Director of Mines & Geology vide letter dated 23-9-2006 informed the petitioner firm that their request for lifting the mineral was rejected. Aggrieved by the same, the petitioner firm filed

W.P.No.24459 of 2006. This Court while directing Rule Nisi, by order dated 24-11-2006 passed an interim order in WPMP.No.31274/2006 directing to maintain Status Quo as on that date with respect to extraction for carting away of the major mineral in the schedule land. The said writ petition is still pending and the interim order continues to be in operation.

While so, the 6th respondent - Director of Mines & Geology – had recommended grant of mining lease in favour of the respondents 9 and 10 herein over an extent of 68.52 hectares and 25 hectares respectively and pursuant thereto the Government of Andhra Pradesh vide Memo dated 10.11.2005 passed orders proposing to grant mining lease over an extent of 68.52 hectares in favour of the 9th respondent for a period of 20 years subject to prior approval of the Government of India under Section 5 of the MM(D&R) Act and also subject to obtaining forest clearance and submission of approved mining plan under Rule 22 (4) of the Rules within 6 months.

Contending that the action of the 1st respondent in provisionally deciding to grant the mining lease in favour of the 9th respondent without considering on merits all other applications received in response to the Notification dated 12-7-2004 is arbitrary, illegal and contrary to the procedure prescribed under Section 11 of the MM(D&R) Act, the petitioner firm filed W.P.No.9723 of 2007 seeking a Writ of Certiorari to call for the records relating to the order of the 1st respondent dated 10.11.2005 and to quash the same. This Court by order dated 1-5-2007 directed Rule Nisi and adjourned the matter to enable the respondents to file their counter-affidavits.

While the said writ petition is pending, the 1st respondent issued a show-cause notice dated 31-5-2007 calling upon the petitioner firm to show-cause within fifteen days as to why their application should not be rejected as their application is a later application and that apart their application does not have merit when

compared to the application of the 9th respondent as per the criteria laid down under Section 11 (3) of the MM(D&R) Act. The petitioner firm submitted a representation dated 12.6.2007 stating that since W.P.Nos.24459 of 2006 and 9723 of 2007 filed by them are pending the show-cause notice would amount to interfering with the judicial process and therefore the proceedings proposed may be rescinded. However, the 1st respondent proceeded further and issued the impugned G.O.Ms.No.151, dated 18.6.2007 granting mining lease in favour of the 9th respondent over an extent of 68.52 hectares. On the same day, by a separate order dated 18.6.2007 the application made by the petitioner firm dated 15.1.2005 for grant of mining lease was rejected.

Hence, the petitioner firm filed W.P.No.14818 of 2007 seeking a Mandamus declaring G.O.Ms.No.151, dated 18.6.2007 as well as the consequential rejection order dated 18.6.2007 as arbitrary and illegal. The petitioner also sought a direction to the respondents not to lift the already extracted 29,700 MT of Iron ore mineral lying in the land admeasuring 231 acres in Sy.Nos. 1 & 2 of Malapanagudi Village.

Counter-affidavit filed by the respondents :

A detailed counter-affidavit has been filed on behalf of the Government of A.P., Industries and Commerce Department in W.P.No.14116 of 2007 and the same has been adopted in W.P.No.14818 of 2007.

The other respondents did not choose to file counter-affidavits though their respective Counsel made their submissions opposing the writ petitions.

In the counter-affidavit filed on behalf of the 1st respondent, the plea of the petitioner that his grandfather Tapal Thimmappa continued in possession of the leased area even after expiry of the period of lease has been denied. The further plea that prior to expiry of the lease Tapal Thimmappa made an application for renewal to the then

concerned Collector who issued a communication permitting him to do mining operations has also been categorically denied. It is stated that as per the records no such permissions were granted by the Government or the District Collector. It is also stated that as per the affidavit filed by the sons of Tapal Thimmappa in W.P.No.9723 of 2007 their father did not file any application for renewal. Even assuming that such an application for renewal was made by the petitioner's grandfather, the same shall be deemed to have been refused since it was not disposed of within one year as provided under Rule 24 of the Rules. It is further stated that after expiry of lease in favour of Tapal Thimmappa in the year 1977 the leased area which is a forest land stood restored to the Government and nobody can claim to have possessed any rights over the said land without the clearance from the Forest Department under the Forest (Conservation) Act, 1980. At any rate, since the land was notified for re-grant on 12-7-2004 and the petitioner never challenged the said notification but on the other hand made an application for lease it is not open to him to claim any right as the legal heir of the previous lessee. It is also stated that as a matter of fact the petitioner made his application on 19-4-2007 but not on 19-4-2006 as pleaded by him. By the date of the petitioner's application dated 19-4-2007, the Government had in principle, accepted to grant mining lease in favour of the 9th respondent. However, in order to verify whether any area is still available after granting of mining lease to the priority applicants, the Department is processing the petitioner's application. Soon after survey and inspection necessary orders would be passed on the petitioner's application and the said fact was well within the knowledge of the petitioner. While denying the other allegation that the entire issue was prejudged and the grant of lease in favour of the 9th respondent under the impugned order was vitiated for extraneous considerations, it is contended that the impugned order which was passed duly following the provisions of the MM(D&R) Act and the

Rules does not warrant interference.

It is explained that the notification was published in the District Gazette, Anantapur dated 12.7.2004 inviting applications for grant of a mining lease after 30 days with effect from 12.7.2004 i.e., from 11.8.2004. Pursuant to the said notification 25 applications were received after 11-8-2004 and after processing the applications, the 4th respondent recommended for grant of mining lease in favour of the 9th respondent over an extent of 68.500 hectares and 25 hectares in favour of the 10th respondent-A.P. Mineral Development Corporation, a State Public Sector Undertaking. The remaining applications were recommended for rejection. Basing on the recommendations of the 4th respondent, the Director of Mines and Geology submitted proposals on 2.11.2005, recommending for grant of lease in favour of the respondents 9 and 10, subject to clearance under the Forest (Conservation) Act, 1980 and also obtaining the concurrence of the Government of India, since iron ore falls under the 1st Schedule. Pursuant thereto, the Government vide memo dated 10.11.2005, while accepting the proposal in principle, directed the 9th respondent to submit the approved mining plan as required under Rule 22(4) of the Rules and also the Forest clearance. After such clearance was granted and the mining plan was approved in favour of the 9th respondent the 1st respondent by letter dated 18-1-2007, sought for prior approval of the Central Government which was granted on 25-5-2007. Thereafter, the impugned order dated 18-6-2007 was passed granting a mining lease in favour of the 9th respondent.

It is also contended that in view of the alternative remedy available under Rule 54 of the Mineral Concession Rules, the petitioner cannot maintain this writ petition under Article 226 of the Constitution of India.

Preliminary objection as to the maintainability of the writ petition on the ground that the petitioners failed to exhaust the alternative

statutory remedy.

It is not in dispute that against the impugned order dated 18-6-2007 passed by the 1st respondent under Section 10 of the MM(D&R) Act granting lease in favour of the 9th respondent and refusing the application of the petitioner in W.P.Nos.9723 & 14818 of 2007 for grant of a mining lease, a Revision lies to the Central Government (Mines Tribunal) under Section 30 of the MM(D&R) Act read with Rule 54 of the Rules.

In the light of the said statutory remedy, it is contended by the learned Government Pleader as well as the learned Counsel for the 9th respondent that, without exhausting such efficacious alternative remedy, the petitioners cannot maintain the writ petitions under Article 226 of the Constitution of India.

The learned Counsel for the 9th respondent while placing reliance upon the decisions of STATE OF GOA vs. M/S. A.H. JAFFAR AND SONS[1], ASSTT. COLLECTOR, C.E., CHANDAN NAGAR vs. DUNLOP INDIA LIMITED[2] and UTTARANCHAL FOREST DEVELOPMENT CORPN. vs. JABAR SINGH[3] as well as a decision of this Court in P.V. SURENDER BABU vs. PROHIBITION & EXCISE SUPDT., CHITTOOR[4] vehemently contended that absolutely no case is made out by the writ petitioners to bypass the alternative remedy provided by the Statute and therefore the petitioners are not entitled for any relief in the writ petitions.

While pointing out that the petitioners have neither questioned the jurisdiction of the 1st respondent to pass the impugned orders nor the vires of any Statute is questioned and moreover certain disputed questions of fact are raised, it is contended by the learned Counsel for the 9th respondent that the writ petitions are liable to be dismissed in *limini* as not maintainable.

There can be no dispute about the ratio laid down in the above decisions. However, the law is equally well-settled that that the existence of alternative remedy is not an absolute bar to grant relief in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and that the discretionary jurisdiction is to be exercised or refused to be exercised by the High Court having regard to the facts and circumstances of each case. The rejection of relief under Article 226 on the ground of availability of alternative remedy being only a self-imposed restriction, in appropriate cases where there exist good grounds to invoke the extraordinary jurisdiction and a strong case is made out, the High Court has always the discretion to grant any writ.

It has been held by the Apex Court in a catena of decisions that the alternative remedy is not a rule of law but it is essentially a rule of policy and convenience and therefore despite the existence of an alternative remedy it is within the discretionary jurisdiction of a High Court to grant relief under Article 226 of the Constitution of India.

In WHIRLPOOL CORPN. vs. REGISTRAR OF TRADE MARKS[5], the Supreme Court while observing that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution further held that the alternative remedy does not operate as a bar in at least 3 contingencies namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In HARBANS LAL SAHNIA vs. INDIAN OIL CORPORATION LTD.[6] it was held that the rule of exclusion of writ jurisdiction by availability of alternative remedy is a rule of discretion and not one of compulsion and the Court must consider the pros and cons of the

case and may interfere if it comes to the conclusion that the petitioner seeks enforcement of any of the Fundamental Rights, where there is failure of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In U.P. STATE SPINNING CO. LTD. Vs. R.S. PANDEY AND ANOTHER[7] the Supreme Court after reviewing the relevant decisions further added that where the proceedings itself are an abuse of process of law and where it is shown that it is a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the Statute, the High Court in an appropriate case can entertain a writ petition.

In ABL INTERNATIONAL LTD. vs. EXPORT CREDIT GUARANTEE CORPN. OF INDIA LTD.[8] while observing that in certain cases even a disputed question of fact can be gone into by the Court entertaining a petition under Article 226 of the Constitution of India, it was held as under :

> *While entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and not is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks) and this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.*

In the light of the principles laid down in the above decisions, it is clear that a discretion is vested in this Court to entertain a petition under Article 226 of the Constitution of India and grant the relief notwithstanding the existence of an alternative remedy. As held by the Apex Court in V.VENKATESWARAN vs. R.S. VADHANI[9] the exercise of power under Article 226 notwithstanding the availability of the alternative remedy is preeminently one of discretion depending upon a variety of individual facts.

In the cases on hand, the specific plea of the petitioners is that the entire issue was prejudged. It is contended that since a decision was taken to grant the mining lease in favour of the 9th respondent even before considering and refusing the applications of the petitioners, the impugned orders are violative of the fundamental principles of natural justice.

For proper appreciation of the above contention, it is necessary to notice the relevant statutory provisions governing grant of mining lease.

It is to be noted that ***Iron ore*** is a mineral specified in Part-C of the 1st Schedule to the Act.

Sub-section (1) of Section 4 of the Act provides that no person shall undertake any mining operations in any area except under and in accordance with the terms and conditions of a mining lease granted under the Act and the Rules made thereunder. Sub-section (2) further makes it clear that no mining lease shall be granted otherwise than in accordance with the provisions of the Act and the Rules made thereunder.

Sub-section (1) of Section 5 of the Act provides that in respect of any mineral specified in the 1st Schedule, no mining lease shall be granted except with the previous approval of the Central Government. Sub-section (2) of Section 5 further provides that no mining lease shall

be granted by the State Government unless it is satisfied that there is a mining plan duly approved by the Central Government or by the State Government in respect of such category of mines as may be specified by the Central Government for the development of mineral deposits in the area concerned.

Section 10 of the Act provides that the application for mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and that the State Government may, having regard to the provisions of the Act and the Rules made thereunder, grant or refuse to grant the lease.

Section 11 of the MM(D&R) Act which provides for preferential right of certain persons runs as under :

11. Preferential right of certain persons:-

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

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

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(c) has not become ineligible under the provisions of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting

licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later :

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

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

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

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

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based o the minerals;

(e) such other matters as may be prescribed;

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such

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

(5) --- Omitted since not relevant ----

In exercise of the rule making power conferred under Section 13 of the Act, the Central Government made the Mineral Concession Rules, 1960. Chapter IV of the said Rules consisting of Rules 22 to 40 deals with grant of mining leases in respect of the land in which the minerals vest in the Government.

Rule 26 which deals with refusal of the application for grant of mining lease, to the extent it is relevant, may be extracted hereunder:

*26 (1). The State Government may **after giving an opportunity of being heard** and for the reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.*

(2) … … .. .. …

(3) … …. …. … …

Whereas sub-section (2) of Section 11 deals with the areas which are not notified by the State Government in the Official Gazette for grant of mining lease, sub-section (4) of Section 11 provides the procedure to be followed where the State Government notifies an area in the Official Gazette for grant of mining lease.

In the instant cases, since the area in question was notified in the Official Gazette under Rule 59 (1)(a), undoubtedly sub-section (4) of Section 11 applies. Consequently, all the applications received during the period specified in the notification dated 12-7-2004 are required to be considered simultaneously as if all such applications have been received on the same day and thereafter the State

Government after taking into consideration the matters specified in sub-section (3) has to grant the mining lease to one of the applicants as it may deem fit.

Similarly it is not in dispute that before refusing any application for grant of a mining lease over the whole or part of the area applied for, it is mandatory for the State Government to give an opportunity of being heard to the applicant as provided under Rule 26 (1) of the Rules.

In the counter-affidavit filed on behalf of the 1st respondent, it is stated that altogether 30 applications were received for grant of lease over the area in question and after processing the same the Director of Mines & Geology submitted proposals on 3-11-2005 recommending grant of a mining lease in favour of the 9th respondent over an extent of 68.5 hectares. On the basis of the same, the 1st respondent by order dated 10.11.2005, while provisionally proposing to grant a mining lease in favour of the 9th respondent for a period of 20 years, called upon the 9th respondent to obtain forest clearance and approved mining plan since the notified area is situated in a Reserved Forest. After the 9th respondent obtained forest clearance, the 1st respondent vide letter dated 18.1.2007 sought prior approval of the Government of India under Section 5 (1) of the Act and such approval was granted on 25.5.2007.

Thus, it is clear that except passing a formal order under Section 10 of the Act, a decision was taken at all levels by 25-5-2007 itself to grant a mining lease in favour of the 9th respondent.

Thereafter, the 1st respondent issued show-cause notices dated 31.5.2007 to all other applicants, including the petitioner in W.P.Nos.9723 & 14818 of 2007, under Rule 26 (1) of the Rules calling upon them to show-cause as to why their applications should not be refused, followed by the orders of refusal dated 18.6.2007 on the

ground that they do not have merit when compared to the application of the 9th respondent.

From the events narrated above, which are not in dispute, it is apparent that the show-cause notice under Rule 26 (1) of the Rules was sent to the petitioner in W.P.Nos.9723 & 14818 of 2007 as well as all other applicants after a decision had been taken by the 1st respondent in favour of the 9th respondent and prior approval of the Government of India had been obtained under Section 5 (1) of the Act.

As noticed above, the rule of *audi alteram partem* being an integral part of Rule 26(1) of the Rules the 1st respondent is bound to provide an opportunity of being heard to the applicants before refusing their applications. The 1st respondent is also bound to record reasons in support of its decision for refusing the application.

Apparently, the purpose of incorporating the said twin requirements in Rule 26 (1) of the Rules is not only to apprise the applicant the grounds on which his application is proposed to be refused but also to ensure that the authority taking decision applies its mind to the explanation furnished by the applicant before passing an order refusing his application for grant of a mining lease. Needless to mention that the said purpose can be said to be achieved only where a fair and meaningful opportunity is given to the applicants before taking a decision.

That being the object and purpose of the "opportunity" required to be provided under Rule 26 (1) of the Rules, the show-cause notice issued to the petitioner after a decision was already taken in favour of the 9th respondent was nothing but an empty formality. Since the issue was decided in favour of the 9th respondent by 25-5-2007, the show-cause notice issued to the petitioner in W.P.No.14818 of 2007, subsequently on 31-5-2007 cannot be held to be in conformity with the requirements of Rule 26 (1) of the Rules. As a natural corollary, it also

resulted in infringement of the principles of natural justice which is one of the grounds to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India without exhausting the Statutory remedy.

It is also relevant to note that the facts in the cases on hand are not at all in dispute, but the only question that arises for consideration is whether the procedure followed by respondents 1 to 4 in granting the mining lease in favour of the 9th respondent is in accordance with the procedure prescribed under law.

Hence, notwithstanding the alternative remedy of a Revision available under the Statute, I am of the opinion that the petitioners can maintain these writ petitions.

On merits :

CONTENTIONS :

Sri Govardhan Venu, the learned Counsel for the petitioner in W.P.No.14116 of 2007 contended as under :

(i) The notification dated 12-7-2004 itself is contrary to law since the same was published without intimating the petitioner or the previous lessee that his lease had expired and particularly without taking physical possession of the area in question from the petitioner following due process of law.

(ii) Having entertained the petitioner's application dated 19-4-2006, and having proposed to inspect the lands on 26-6-2007, it was not open to the 1st respondent to grant the lease in favour of the 9th respondent while keeping the petitioner's application pending. The lease granted in favour of the 9th respondent under the impugned order, being in gross violation of the mandatory procedure prescribed in law, is arbitrary and illegal.

(iii) The entire issue was prejudged by the 1st respondent and the lease was granted in favour of the 9th respondent in post haste

without assessing the relative merits of all the applicants as provided under Section 11 (3) of Mines and Minerals (Development & Regulation) Act, 1957 (for short, MM(D&R) Act, 1957). It is contended that respondents 1 to 4 have abused the discretionary power vested in them by law and adjudicated the issue in favour of the 9th respondent on extraneous considerations.

(iv) As per Section 11 of the Act all the applications for grant of a mining lease shall be disposed of simultaneously in a single file by giving reasons for acceptance. Rejection of the other applications shall be only after issuing a show-cause notice and an opportunity of being heard being given to the applicants. Since the said mandatory procedure has not been followed, the entire selection procedure is vitiated and the lease granted in favour of the 9th respondent is liable to be set aside.

(v) Even assuming that the lease granted in favour of the 9th respondent is valid the petitioners cannot be dispossessed from the lands in question without following due process of law and the 9th respondent cannot be inducted into the leased area to proceed with the mining illegally.

(vi) The notification dated 12-7-2004 did not mention the separate extents of lands in Sy.Nos.1 & 2 except citing the total extent of the area as 231 acres. Out of the said land, the 9th respondent was granted mining lease, under the impugned order dated 18-6-2007, to an extent of 68.5 hectares equivalent to 169.27 acres only. In the absence of clear demarcation of the said 68.5 hectares (169.27 acres) out of the total notified area of 231 acres the lease granted in favour of the 9th respondent is arbitrary and illegal. It is alleged that as a matter of fact the land for which the mining lease is granted to the respondent No.9 falls outside the 231 acres of land in Sy.Nos.1 & 2 and the map showing the leased area in favour of the 9th respondent does not tally with the tounch maps appended to the registered lease

granted to Tapal Thimmappa in the year 1957. It is alleged that 68.5 hectares of land in respect of which lease was granted to the 9th respondent was never prospected for mining purpose and the same did not form part of the area notified in the Notification dated 12-7-2004. It is alleged that the said land was never inspected by the Assistant Director of Mines & Geology or the Mandal Revenue Officer or the District Collector, Ananthapur before granting the lease.

The submissions of Sri P. Venugopal, the learned Counsel for the petitioners in W.P.Nos.9723 & 14818 of 2007 may be summed up hereunder :

(i) The entire issue was pre-judged by the 1st respondent and there was no proper application of mind in the matter of grant of lease in favour of the 9th respondent.

(ii) The mining lease was granted in favor of the 9th respondent without following the mandatory procedure prescribed under the Act and the Rules made thereunder.

(iii) The exercise contemplated under Section 5(1) of the Act was not carried out before granting the mining lease in favor of the 9th respondent.

(iv) The petitioner's application cannot be rejected merely on the ground that it was later in time.

(v) The conclusion that the petitioner's application did not have merit when compared to the application of the 9th respondent is without any basis and, as a matter of fact, the petitioner's application was not evaluated at all before granting the lease in favor of the 9th respondent.

(vi) Since no opportunity of personal hearing was given to the petitioner before rejecting its application as required under Rule 26(1) of the Rules, the impugned action is in violation of the principles of natural justice.

Per contra, the learned Government Pleader for Mines &

Geology contended that the notification dated 12.7.2004 declaring that the notified area is available for re-grant after expiry of 30 days from the date of publication of the notification in the Official Gazette is in terms of Rule 59 (1) (ii). The learned Government Pleader further contended that all the applications received pursuant to the notification dated 12.7.2004 i.e., from 11.8.2004 upto the submission of proposals by the Assistant Director of Mines & Geology were processed strictly in accordance with the procedure prescribed under Section 11 of the MM(D&R) Act and since the petitioners have neither any vested nor any statutory right to get the mining lease the writ petitions are misconceived and liable to be dismissed.

Sri K. Raghavacharyulu, the learned Counsel appearing for the 9th respondent in W.P.No.14116 & 14818 of 2007 contended that since there was no cut-off date in the notification dated 12.7.2004 it is implied in terms of Rule 63-A and Rule 22 (4) of the Rules that the applications received before the date of the recommendation by the State Government to the Central Government would only be accepted and processed. While pointing out that such a recommendation was made by the State Government on 10.11.2005, it is contended that the petitioner in W.P.No.14116 of 2007 cannot complain that no order has been passed on his application for grant of lease since by the date of his application dated 19-4-2007 the 1st respondent had already taken a decision in principle to grant the lease in favour of the 9th respondent and submitted the recommendation dated 10.11.2005 to the Central Government under Rule 63-A read with Rule 22 (4) of the Rules. Thus, by the date of the petitioner's application the land notified under the Notification dated 12.7.2004 was not available for grant of lease and consequently the application itself was not entertainable.

While relying upon DIVISIONAL FOREST OFFICER vs. S. NAGESWARAMMA[10] it is further contended by the learned Counsel

for the 9th respondent that, by virtue of the express prohibition under the Forest (Conservation) Act, 1980 which came into force w.e.f. 25-10-1980 neither Tapal Thimmappa nor his legal heirs can extract or remove even the stocked iron ore from the leased area, which is admittedly situated in a Reserved Forest without obtaining the prior concurrence of the Central Government.

Points for Consideration :

Having regard to the rival submissions made by the parties, the following points arise for consideration :

(i) Whether the procedure followed by the respondents 1 to 4 in processing the applications received pursuant to the notification dated 12.7.2004 and in selecting and granting lease in favour of the 9th respondent is in accordance with law?

(ii) Whether the notification dated 12.7.2004 is valid?

(iii) Whether the action of the respondent No.1 in granting the mining lease in favour of the 9th respondent while keeping the application of the petitioner in W.P.No14116 of 2007 pending is in accordance with law?

(iv) Whether the petitioner in W.P.No.14116 of 2007 is entitled to any preferential right for grant of mining lease on the ground that he is the legal heir of the previous lessee and continuing in possession and enjoyment of the leased area as tenant holding over?

POINT NOs.1 & 2 :

At the outset, the whole of Rule 59 of the Rules, which mandates notifying the availability of the areas for re-grant, may be reproduced hereunder:

59. Availability of areas for re-grant to be notified :--

(1) No area –

(a) ***Which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease****; or*

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

(c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) of Rule 7A or sub-rule (1) of Rule 15 or sub-rule (1) of Rule 31, as the case may be; or

(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 or under Section 17A of the Act

shall be available for grant unless—

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

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

-

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

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

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of sub-section (1) of Section 11, no

notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of Rule (1) in any special case. (emphasis supplied)

A plain reading of the above rule shows that no area which was previously held under a mining lease shall be available for re-grant unless the availability of the area for grant is notified in the Official Gazette specifying a date from which such area shall be available for grant. Such date shall not be earlier than 30 days from the date of the publication of the notification.

In the present cases, since the lease was previously held by Sri Tapal Thimappa till 1977, it is mandatory under Rule 59 (1) (a) to notify the availability of the area for re-grant in the Official Gazette. Admittedly, such notification was issued on 12.7.2004. As required under Rule 59 (1) (ii), it was made clear in the notification itself that the area will be available for re-grant after 30 days from the date of publication of the notification. Thus, the area was available for re-grant from 11.8.2004 onwards.

The record placed before this Court by the learned Government Pleader shows that altogether 30 applications were received for grant of lease over the area in question. The details are as under :

ɔ	*Name of the Applicant*	*Date of receipt*
	M/s. Shiva Minerals	*16.12.2002*
	M/s. S.J.K. Steel Corporation Limited	*15.11.2003*
	M/s. Sathavahana Ispat Limited	*29.3.2004*
	M/s. SJK Steel Corporation Limited	*21.5.2004*
	M/s. APMDC Limited	*4.8.2004*
===	*==========*	*==========*
	M/s. Obulapuram Mining Corporation Private Limited	***28.8.2004***
	M/s. Vinayaka Mining Company	*28.8.2004*
	Sri T. Ekambaram	*5.10.2004*
	M/s. SR Minerals	*12.10.2004*
	M/s. APMDC Limited	*27.10.2004*

	M/s. Gimpex Limited	*6.11.2004*
	M/s. Sathavahana Ispat Limited	*8.11.2004*
	M/s. Sathavahana Ispat Limited	*8.11.2004*
	M/s. Obulapuram Mining Corporation Private Limited	*18.11.2004*
	M/s. Gouthami Minerals	*18.11.2004*
	M/s. Prabhakar Minerals	*3.1.2005*
	M/s. Trident Mines and Minerals	*3.1.2005*
	M/s. Tapal Thimmappa and sons	***15.1.2005***
	M/s. Iliyas and company	*18.2.2005*
	M/s. RS Minerals	*8.4.2005*
	Sri C. Shashi Kumar	*11.5.2005*
	Sri P. Raghavendra Reddy	*13.6.2005*
	M/s. Shanthi Mining Company	*5.7.2005*
	M/s. Elite Mining Company	*5.7.2005*
	M/s. Variegate Mining Company	*5.7.2005*
	M/s. Malapanagudi Iron Ore Agencies	*10.8.2005*
	Sri K. Ramachandra Reddy	*17.8.2005*
	M/s. Sri Veerabrahmam Mines & Minerals Private Limited	*25.8.2005*
	M/s. APMDC Limited	*19.9.2005*
	M/s. PH Minerals	*22.9.2005*

So far as the procedure to be followed for considering the applications received is concerned, the learned Counsel for the petitioners while placing reliance upon the decision of the Supreme Court in INDIAN METALS & FERRO ALLOYS LTD. v. UNION OF INDIA[11] wherein it was held that the applications for grant of mining lease cannot be disposed of on a 'first-cum-first-served' basis, contended that no preferential right would accrue to the earliest applicant for grant of a lease.

It is to be noted that the above decision was rendered by the Supreme Court while interpreting the scope and the extent of power conferred on the State Government under sub-sections (1), (2) & (3) of Section 11 of the MM(D&R) Act as it stood prior to its amendment by Act 38 of 1999.

Subsequently, Section 11 of the MM(D&R) Act was

substituted by Act No.38 of 1999 w.e.f. 20.12.1999 by inserting sub-section (4) which specifically deals with grant of mining lease over an area notified in the Official Gazette.

Sub-section (4) of Section 11 of the MM(D&R) Act may be extracted hereunder for ready reference.

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

It is not disputed by the learned Counsel for the respondents that the procedure prescribed under sub-section (4) of Section 11 of the MM(D&R) Act applies to the cases on hand since the area was notified for regrant under Rule 59 (1) (a) of the Rules.

Before proceeding further, it is relevant to refer to Rule 60 of the Rules which provides for premature applications :

> ***60. Premature applications :-*** *Applications for the grant of reconnaissance permit, prospecting licence or 5mining 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.*
>
> *(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.*

A reading of Rule 60 shows that the applications for grant of mining lease in respect of areas whose availability for grant is required to be notified under Rule 59 shall, if no notification has been issued under that Rule or 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.

In terms of the above Rule, all the applications received prior to 11.8.2004 pursuant to the notification dated 12.7.2004 shall be deemed to be premature and they shall not be entertained.

The statement of the applications received for grant of lease over the area in question (extracted above) shows that five applications (Sl.Nos.1 to 5) were received prior to 11.8.2004. All the said five applications being premature under Rule 60 cannot be entertained.

As per sub-section (4) of Section 11 of the MM(D&R) Act, the remaining 25 applications (Sl.Nos.6 to 30) are required to be considered simultaneously as if all such applications have been received on the same day after taking into consideration their relative merits in terms of sub-section (3) of Section 11 of the MM(D&R) Act.

It is to be noted that in the statement extracted above, the application of the 9th respondent is at Sl.No.6, where as the application of petitioner in W.P.Nos.9723 & 14818 of 2007 is at Sl.No.18.

The learned Counsel for the petitioners contended that a reading of the counter-affidavit filed on behalf of the 1st respondent itself shows that while granting the mining lease in favour of the 9th respondent there was a clear departure from the mandatory procedure prescribed under sub-section (4) of Section 11 of the MM(D&R) Act.

On a careful consideration of the original record placed before this Court by the learned Government Pleader as well as the contents of the counter-affidavit filed on behalf of the 1st respondent, I find force in the submission of the learned Counsel for the petitioners.

In this context, it would be useful to extract the following passages from the counter-affidavit filed on behalf of the 1st respondent :

> *3 (d) The Assistant Director of Mines & Geology, Anantapur (4th respondent), after processing of the applications submitted his recommendations to the*

Director of Mines & Geology (2nd respondent). The Assistant Director of Mines & Geology, Ananthapur submitted proposals on all the applications stating that the applications filed prior to the notification stands premature under Rule 60 of Mineral Concession Rules 1960 and hence recommended for rejection of the said five applications. Out of the remaining 25 applications two applications were received within 30 days from the date of notification i.e., between 11-8-2004 and 11-9-2004. Out of the two applications the Assistant Director of Mines & Geology, Ananthapur considering the merits under Section 11 (3) of the MM(D&R) Act such as financial capacity and other aspects into consideration recommended for grant of mining lease in favour of M/s. Obulapuram Mining Company Private Limited over an extent of 68.5 hectares and recommended for rejection of the application of M/s. Vinayaka Mining Company which was received on the same day. Out of the remaining other applications, the Assistant Director of Mines & Geology, Ananthapur has recommended 25 hectares in favour of A.P. Mineral Development Corporation since it is a State Public Sector Undertaking even though this was received subsequent to the application of M/s. Obulapuram Mining Company Private Limited under Section 11 (3) of the MM(D&R) Act. The remaining applications for the said area have been recommended for rejection.

3 (h) Thus, out of the total applications of 30, the applications received prior to the notification and applications received within 30 days from the date of calling for applications i.e., between 11.8.2004 and 10.9.2004 are only considered. However in the second category of applications i.e, applications received after 30 days i.e, after 11.9.2004 there are 23 applications out of which one application belongs to Andhra Pradesh Mineral Development Corporation which was received on 27.7.2004 for 25 hectares. Though it is a later application, the granting authority is having the discretion to overlook the priority under Section 11(5) of M & M (D & R) Act, 1957.

3 (i) By exercising the above discretionary powers,

Government of Andhra Pradesh intended to consider the application of A.P. Mineral Development Corporation. Therefore, only the balance area of 68.5 hectares was considered in favour of M/s. Obulapuram Mining Company (P) Ltd. Considering the detailed proposals of Government of Andhra Pradesh, the Government of India vide Memo No.5/14/2007/M-IV, dated 25.5.2007 has given permission under Section 5 (1) of M & M (D&R) Act, to consider the application of M/s. Obulapuram Mining Company (P) Ltd. The Government of Andhra Pradesh, after receipt of the clearances from Government of India and Forest Department issued show-cause notices to applicants who are not considered to show-cause as to why their applications should not be rejected duly mentioning the reasons for rejection vide show-cause notices dated 31-5-2007. Pursuant to the said show-cause notices some of the companies have filed replies and some companies have not even replied. By considering the replies given by the applicants, all the applications except the application of M/s. Andhra Pradesh Mineral Development Corporation and the application of M/s. S.R. Minerals, which is totally overlapping with the application of M/s. A.P. Mineral Development Corporation have been rejected, after examining all the aspects under Section 11 (3) in respect of all the applications and after following due process of law. Thus, an opportunity of being heard is provided to all the applicants before issuing final orders.

From the above, it is clear that the 25 applications received after 11.8.2004 (shown from Sl.Nos.6 to 30) were made into two categories namely (i) applications received within 30 days from the date of calling for applications i.e., between 11.8.2004 and 10.9.2004 and (ii) the applications received after 11.9.2004. The statement of applications extracted above shows that only two applications at Sl.Nos.6 & 7 i.e., the application of the 9th respondent and the application of one Vinayaka Mining Company were received between 11.8.2004 and 10.9.2004 and therefore they were included in the first category. The remaining 23 applications i.e., from Sl.No.8 onwards

were included in the second category on the ground that they were received beyond 11.9.2004 i.e., after 30 days from the date of calling for applications.

Out of the two applications included in the first category, it is stated that the Assistant Director of Mines & Geology after considering the merits under Section 11 (3) of the MM(D&R) Act recommended for grant of a mining lease in favour of the 9th respondent over an extent of 68.5 hectares and recommended for rejection of the application of M/s. Vinayaka Mining company. Out of the remaining 23 applications included in the second category, except the application of A.P. Mineral Development Corporation Limited (Sl.No.29) all other applications were recommended for rejection without considering their merits in terms of Section 11 (3) of the MM(D&R) Act merely on the ground that they were received after 11.9.2004.

The record placed before this Court, particularly the memo dated 10.11.2005 issued by the 1st respondent provisionally proposing to grant mining lease for a period of 20 years in favour of the 9th respondent (which is under challenge in W.P.No.9723 of 2007) substantiates the fact that all the 23 applications received after 11.9.2004 were not considered on merits in terms of Section 11 (3) of the MM(D&R) Act and that the application of the 9th respondent was recommended on the sole ground that it was the earliest application after the publication of the notification dated 12.7.2004. The two relevant paragraphs from the Memo dated 10.11.2005 may be extracted hereunder :

> *(2) In the reference 2nd cited, the Director of Mines and Geology has recommended for grant of Mining Lease for Iron Ore over an extent of 68.52 hectares in Sy.Nos.1 & 2 of Antaragangamma Konda of Siddapuram and Malapanagudi Villages of Kalyana Durga Reserve Forest, D-Hirehal Mandal, Ananthapur District in favour of M/s. Obulapuram Mining Company Private Limited for a period of 20 years, as it is the first application received*

after the notification was issued. However there is also one more application received on the same day from M/s. Vinayaka Mining Company Limited and when both the applications are considered together taking into consideration the other aspects under Section 11 (3) of the MM (D&R) Act, 1957, M/s. Obulapuram Mining Company Private Limited stands on better footing from the merits point of view. … ….

(3) … … … .. .. Further, it is noticed that M/s. Obulapuram Mining Company (P) Limited and M/s. Vinayaka Mining Company Limited are the first applicants received on the same day i.e., 28.8.2004. However, their applications were examined taking into the other aspects under Section 11(3) of MM (D&R) Act, 1957 and the merits enjoyed by both of them. After examining the cases of both the applicant companies together taking into consideration the other aspects under Section 11 (3) of MM (D&R) Act, 1957, M/s. Obulapuram Mining Company Private Limited stands on better footing from the merit point of view. … ….. ….

Thus, it is obvious that the Assistant Director of Mines & Geology did not consider all the applications received pursuant to the notification dated 12.7.2004 simultaneously, but recommended the application of the 9th respondent alone assuming that being the first applicant the 9th respondent shall have a preferential right.

Though, on the face of it, the procedure adopted by the Assistant Director of Mines & Geology was quite contrary to the provisions of sub-section (4) Section 11 of the MM(D&R) Act, his recommendation was accepted by the Director of Mines & Geology and also by the 1st respondent in toto without raising any objection.

It is also relevant to note that there is no provision either under the MM(D&R) Act or the Rules made thereunder prescribing the time limit of 30 days from the date of calling for applications under the Notification, for filing applications. Therefore, fixation of 30 days cut-off upto 10.9.2004, as was done by the Assistant Director of Mines &

Geology, has no statutory basis at all and consequently there is no justification in segregating the 25 applications received after 11.8.2004 into two categories.

The record placed before this Court shows that, basing on the recommendations of the Assistant Director of Mines & Geology, Ananthapur proposals were submitted to the Government vide proceedings of the Director of Mines & Geology dated 2-11-2005 recommending for grant of lease in favour of the 9th respondent over an extent of 68.5 hectares and for grant of lease in favour of the 10th respondent over an extent of 25 hectares subject to clearance of the Government of India under Section 5 (1) of the MM(D&R) Act. Pursuant thereto, the 1st respondent vide Memo dated 10.11.2005 while accepting in principle for grant of mining lease directed the 9th respondent to submit the approved mining plan as required under Rule 22 (4) of the Rules as well as the forest clearance since the entire area falls under Reserved Forest.

It appears that the 9th respondent has complied with the requirement of forest clearance and the mining plan submitted by it was also approved by the Indian Bureau of Mines, Nagapur. Thereafter, the 1st respondent by letter dated 18.1.2007 requested the Government of India to convey its prior approval under Section 5 (1) of the MM(D&R) Act stating that the State Government after careful examination of the matter have proposed to grant a mining lease for iron ore over an extent of 68.50 hectares for a period of 20 years in favour of the 9th respondent.

It is necessary to extract the following two paragraphs from the said letter dated 18.1.2007:

> *7. The applications, which are received after notification are shown in the Table-II above and dealt with as per the priority except Sl.No.5. M/s. Obulapuram Mining Company Private Limited and M/s. Vinayaka Mining*

Company are received on the same day i.e., 28.8.2004 i.e., after issue of notification. Hence, section 11 (3) of MM(D&R) Act, 1957 has been attracted in this case. Accordingly, the case has been considered in favour of M/s. Obulapuram Mining Company (P) Limited by taking all the aspects mentioned therein i.e., merits of each case shown below.

-- Comparative table omitted --

8. Regarding all other applications from Sl.No.3 to 25 are later applications and they are proposed to be rejected (except Sl.No.5) to the extent of 68.50 hectares as the said area has been proposed for grant in favour of M/s. Obulapuram Mining Company (P) Limited and accordingly it was decided to seek the prior permission of Government of India under Section 5 (2) (b) of the MM (D&R) Act, 1957.

In pursuance thereof, the Government of India vide letter dated 30.3.2007 called upon the State Government to furnish comparative chart of merits in respect of all the applicants, observing that all applications are required to be considered simultaneously. The said letter may be extracted hereunder :

Sir,

I am directed to refer to your letter No.491/M-III(1)/2007-1, dated 22-1-2007 on the above mentioned subject and ***hereby clarify that since the area is notified area, all applicants over the area are required to be considered as simultaneous applicants****.*

State Government is therefore requested to

(i) furnish comparative chart of merits in respect of all the applicants for the area (including those who have been treated as premature) and

(ii) pass and send a copy of reasoned orders for rejecting the applications of remaining applicants after evaluating all 30 applications in terms of criteria laid down in Section 11 (3) of the MM(D&R) Act, 1957.

State Government is also requested to send map clearly highlighting the area recommended in favour of M/s. Obulapuram Mining Company Private Limited.

Yours faithfully,
Sd/xxxxx
Under Secretary to the Government of India.

In response to the above letter, the Government of A.P.

furnished the clarifications vide letter dated 21-4-2007. The contents of the said letter are extracted hereunder :

> *It is to inform you that the notification dated 12-7-2004 issued by the State of Andhra Pradesh notifying the availability of the area over an extent of 93.50 hectares for regrant under Rule 59 (i)(a) & (ii) of M.C. Rules, 1960 (copy enclosed). It may be appreciated that Section 11 (4) of the MM(D&R) Act deals with the applications received for the area which is notified by the State Government. Further, Section 11 (4) does not contemplate consideration of the applications prior to the date of availability of the notification. Proviso to Section 11 (2) applies to the cases of Section 11 (2) only which deals with virgin areas and not the areas which were previously under lease. A combined reading of Section 11 (4) read with Rules 59 & 60 of the M.C. Rules makes it clear that in case of re-grant / not virgin areas Rules 59 & 60 of MC Rules shall apply more particularly in view of sub-rule (b) of Rule 60 introduced vide GSR.No.56 E w.e.f. 17-1-2000 after amending Section 11 vide Act No.38 of 1999 w.e.f. 20-12-1999*
>
> *However, since a clarification is sought for in respect of all the applications, vide reference 4 cited a statement in tabular form showing merits and demerits of each applicant is annexed herewith.* ***It may please be seen from the enclosed statements the applications received prior to notification and applications received within 30 days from the date of availability of area constitute as received on the same day. There are seven such cases as shown in ANNEXURE-I****. Out of seven applications, two Prospecting Licence applications are not considered since notification was issued for re-grant of mining lease and not for Prospecting Licence. Therefore, only 5 mining lease applications which are deemed to have been received on the same day fall under zone of consideration. Out of all the five applications as seen from the merits and demerits such as experience in mining, financial status etc., as laid down under Section 11 (3) of the MM(D&R) Act the application of the M/s. Obulapuram Mining Company Private Limited emerges as meritorious application in terms of its experience, financial*

capability. The Project Report submitted by the Company indicates that they intend to set up an integrated steel plant consisting of 2 x 20 tonnes induction furnace, 20 tonnes continuous casting and 500 TDP Rolling Mill by utilization ore available in this area with an investment of Rs.450 crores.

With reference to other applications, it is informed that they are received subsequent to the expiry of 30 days period from the date of notification of availability of area i.e., after 10-9-2004 and treated as the second category which does not fall under zone of consideration. Even if we consider all the applications which are shown in ANNEXURE-II the M/s. Obulapuram Mining Company Private Limited emerges more meritorious as per the criteria laid down under Section 11 (3). *However, from the second category of applications the State Government intends to consider the application of State Public Sector Undertaking namely M/s. Andhra Pradesh Mineral Development Corporation Limited only over an extent of 25 hectares by invoking Section 11 (5) of the MM(D&R) Act, 1957 as a special case subject to prior permission of the Government of India. Hence, the balanced area of 68.50 hectares (out of 93.50 hectares) is proposed in favour of M/s. Obulapuram Mining Company Private Limited for which the said company has already obtained forest clearance in G.O.Ms.No.7, Environment, Forest, Science & Technology Department, dated 10-1-2007. It is also proposed to send separate proposals in respect of M/s. Andhra Pradesh Mineral Development Corporation Limited for clearance under Sections 5 (1) & 11 (5) of MM(D&R) Act, 1957 to the Government of India after obtaining the clearance from Forest Department.*

Insofar as passing and sending a copy of reasoned orders for rejecting the applications of remaining applicants after evaluating all 30 applications in terms of criteria laid down in Section 11 (3) of the MM(D&R) Act, 1957 is concerned, the table shown as Annexures-I & II would suffice and clarify the position relating to all the applicants. However, formal orders to that effect would be communicated to the parties on receipt of prior approval of Government of India under Section 5 (1) of MM(D&R) Act, 1957. The map clearly demarcating

the area recommended to M/s. Obulapuram Mining Company Private Limited is also enclosed as desired.

In view of the above, I am to request you once again to convey the prior approval of the Government of India under Section 5 (1) of the MM(D&R) Act, 1957 for grant of mining lease over an extent of 68.50 hectares in Sy.Nos.1 & 2 of Malapanagudi Village, D. Hirehal Mandal, Ananthapur District for a period of 20 years in favour of M/s. Obulapuram Mining Company Private Limited.

Yours faithfully,
Sd/xxxxx
Secretary to Government of A.P.

It is relevant to note that Annexure-I enclosed to the above letter contains the following 7 applications :

(1) M/s. Shiva Minerals (ML) dated 16-12-2002
(2) M/s. SJK Steel Corporation Limited (PL) dated 15-11-2003
(3) M/s. Sathavahana Ispat Limited (ML) dated 29-3-2004
(4) M/s. SJK Steel Corporation Limited (ML) dated 21-5-2004
(5) M/s. A.P. Mineral Development Corporation (PL) dated 4-8-2004
(6) Obulapuram Mining Company Pvt. Ltd. (ML) dated 28-8-2004
(7) M/s. Vinayaka Mining Company (ML) dated 28-8-2004.

Annexure-II contained the remaining 23 applications which were received subsequent to expiry of 30 days period from the date of notification of availability of area i.e., after 10.9.2004 which according to the 1st respondent did not fall under the zone of consideration.

The above material demonstrates that the relative merits specified under Section 11 (3) of the Act were considered only among the two applicants whose applications were received on 28.8.2004 on the premise that only those two applications which were received within 30 days from the date of notification i.e., between 11.8.2004 and 10.9.2004 fell under the zone of consideration. All other applications received after 10.9.2004, except the application of the 10th respondent dated 19.9.2005, were rejected without considering the merits specified under Section 11 (3) of the MM(D&R) Act on the ground that they were received after expiry of 30 days from the date of

notification i.e., beyond 11.9.2004 and therefore did not fall the under the zone of consideration.

Though pursuant to the clarification sought by the Government of India, Ministry of Mines vide letter dated 30.3.2007 the 1st respondent furnished a statement in tabular form showing merits and demerits of the other applicants, it is apparent from the contents of the 1st respondent's letter dated 21.4.2007 that the remaining 23 applications received after 11.9.2004 were still treated as a different category and the decision already taken to grant the mining lease in favour of the 9th respondent was reiterated stating that the application of the 9th respondent emerged as meritorious application.

The said procedure adopted by the 1st respondent was not in accordance with the procedure prescribed under sub-section (4) of Section 11 of the Act which mandated consideration of all the applications received during the period specified in the notification simultaneously as if all such applications have been received on the same day. Therefore, on that ground alone, the mining lease granted in favour of the 9th respondent is liable to be set aside.

The action of the 1st respondent in granting the mining lease in favour of the 9th respondent was also bad and illegal for the reason that the decision to grant a mining lease in favour of the 9th respondent was taken even before the applications of other applicants were considered and refused following the procedure prescribed under Rule 26(1) of the Rules.

To substantiate the above conclusion, the relevant dates may be noticed again at the cost of repetition :

12.7.2004	*Notification under Rule 59 (1) (a) was published*
11.8.2004	*The gestation period of 30 days expired*
28.8.2004	*The application of the 9th respondent and another applicant M/s. Vinayaka Mining Company for grant of lease over an extent of 93.52 hectares were received.*

15.1.2005	*The application of the petitioner in W.P.No.14818 of 2007 was received for grant of lease over an area of 40.470 hectares.*
3.11.2005	*The Director of Mines & Geology submitted proposals for grant of mining lease in favour of the 9th respondent over an extent of 68.5 hectares*
10.11.2005	*The Government of A.P. provisionally proposed to grant mining lease in favour of the 9th respondent for a period of 20 years subject to prior approval of Government of India and subject to obtaining forest clearance and approved mining plan within 6 months.*
11.1.2007	*The Director of Mines and Geology submitted proposals for grant of mining lease in favour of the 9th respondent informing the Government of A.P. that the EFS & T Department have accorded permission for diversion of forest land over an extent of 68.50 hectares in favour of the 9th respondent.*
18.1.2007	*The Government of A.P. submitted proposals to grant mining lease in favour of the 9th respondent to the Government of India seeking prior approval under Section 5 (1) of the Act.*
30.3.2007	*Government of India directed to furnish comparative chart of merits in respect of all the applicants.*
19.4.2007	*Petitioner in W.P.No.14116 of 2007 made application for mining lease.*
21.4.2007	*Government of A.P. submitted the clarifications.*
25.5.2007	*Government of India granted the prior approval under Section 5 (1) of the Act.*
31.5.2007	*Show-cause notice issued by the Government of A.P. to the petitioner in W.P.No.14818 of 2007 calling upon to show-cause as to why their application should not be rejected.*
12.6.2007	*Petitioner in W.P.No.14818 of 2007 submitted the explanation to the show-cause notice.*
18.6.2007	*The application of the petitioner in W.P.No.14818 of 2007 was rejected by the Government of A.P. under Rule 26 of the Rules.*
18.6.2007	*G.O.Ms.No.151, dated 18.6.2007 was issued by the Government of A.P. granting mining lease in favour of the 9th respondent.*

From the events noticed above, which are borne out of the record, it is clear that the application of the petitioner in W.P.No.9723 of 2007 and W.P.No.14818 of 2007 dated 15-1-2005 was received much prior to the submission of the proposals by the Director of Mines & Geology recommending for grant of a mining lease in favour of the 9th respondent. However, the merits of the petitioner's

application dated 15-1-2005 or any other application, except the application of M/s. Vinayaka Mining Company, were not considered in terms of sub-section (3) of Section 11 of the MM(D&R) Act. The said proposals were accepted by the 1st respondent without application of mind to the rule position and the provisional order dated 10-11-2005 was passed in favour of the 9th respondent.

It appears that it took about two years for the 9th respondent to comply with the conditions of obtaining forest clearance and approval of mining plan as required in the provisional order of the 1st respondent dated 10.11.2005. Thereafter, the 1st respondent vide letter dated 18.1.2007 sought prior approval of the Government of India under Section 5(1) of the Act and such approval was granted on 25-5-2007.

At that stage, the 1st respondent called upon the other applicants, including the petitioner in W.P.No.14818 of 2007, to show-cause as to why their applications should not be rejected. The record shows that all the applicants were issued show-cause notices dated 31.5.2007 calling upon them to submit their explanations within 15 days from the date of the notice. The record also shows that the said notices were dispatched by registered post on 2.6.2007. Some of the applicants submitted their explanations and some of them sought further time. Thereafter, by separate orders passed on 18-6-2007 all the applicants were informed that their applications for mining lease were rejected since they did not have merit when compared to the application of the 9th respondent.

Having regard to the admitted facts, it is clear that the entire issue was prejudged in favour of the 9th respondent even before issuing the show-cause notices to the other applicants under Rule 26 (1) of the Rules.

The language of sub-section (4) of Section 11 of the MM(D&R) Act read with Rule 26 (1) of the Rules is unambiguous and makes it

clear that the relative merits of all the applications received should be considered and those applications which are not satisfactory should be refused after giving an opportunity to the applicants as required under Rule 26 (1) of the Rules even before the proposals are submitted recommending the application of a particular applicant. Since no such procedure was followed, the mere issuance of stereotype show-cause notices dated 31-5-2007 long after a decision had been taken in favour of the 9th respondent cannot be held to be in compliance with the principle of *audi alteram partem* enshrined under Rule 26 (1) of the Rules. Consequently, not only the refusal of the petitioner's application dated 15-1-2005 but the entire selection process is vitiated and liable to be declared as illegal.

It is a well-settled principle that if the statute requires a particular thing to be done in a particular manner, then it shall be done either in that manner or not at all. [vide STATE OF MAHARASHTRA v. JALGAON MUNICIPAL COUNCIL[12]]

In the cases on hand, a specific procedure was prescribed under Section 11 (4) read with Section 11 (3) of the MM(D&R) Act with the sole object of granting a mining lease to an applicant who can exploit it most efficiently. What factors are required to be taken into consideration while disposing of the applications simultaneously have been enumerated under sub-section (3) of Section 11 of the MM(D&R) Act. Rule 26 (1) of the Rules mandates an opportunity of being heard to be provided to the applicant before refusing his application, obviously for the purpose of enabling the rival applicants to establish their merits and capacity for performance of the mining lease and to carry on mining operations in the best way. It is for the purpose of guaranteeing a fair consideration of the applications received for grant of mining lease. Hence, the procedure prescribed under Section 11 (4) read with Rule 26 (1) of the Rules is required to be followed scrupulously and any deviation would vitiate the entire proceedings.

Though the petitioners cannot claim any vested or statutory right for grant of a mining lease, since the mandatory procedure prescribed under Section 11 (4) read with Section 11 (3) of the MM(D&R) Act and Rule 26 (1) of the Rules guarantees a fair consideration of their applications, non-compliance with such procedure undoubtedly results in unfair and arbitrary treatment warranting interference by this Court under Article 226 of the Constitution of India.

For the reasons expressed above, this Court is convinced that the merits of the application of the petitioner in W.P.No.9723 of 2007 and W.P.No.14818 of 2007 which was made on 15-1-2005 were not considered as required under Section 11 (4) read with Section 11 (3) of the Act before the provisional order dated 10-11-2005 was passed in favour of the 9th respondent much less the final order dated 18-6-2007. Such non-consideration is fatal and therefore the provisional order dated 10-11-2005 as well as the consequential order in G.O.Ms.No.151 dated 18-6-2007 granting mining lease in favour of the 9th respondent are arbitrary and illegal being in contravention of the provisions of the MM(D&R) Act and the Rules made thereunder.

So far as the respondent No.10 – the A.P. Mineral Development Corporation is concerned, since the prior approval of the Government of India under Section 5 (1) of the MM(D&R) Act has not yet been granted, there is no cause of action as on today against the respondent No.10.

Coming to the validity of the Notification dated 12.7.2004, since the same was published under Rule 59 (1) (ii) of the Rules, it was rightly specified that the area was available for grant after 30 days from the date of application. However, the notification was silent about the last date upto which the applications can be made. In other words, the end point was not specified in the notification. The notification dated 12.7.2004 may be extracted hereunder:

Notification

Under Rule 59 (i) (a) & (ii) of M.C. Rules 1960 and also as per the powers delegated by the Governor of Andhra Pradesh vide G.O.Ms.No.226, Inds. & Coms. (M.I) Department, dated 21-03-00 on behalf of the Governor of Andhra Pradesh hereby declare that, the areas detailed in the Annexure will be available for re-grant under Mining Lease after expiry of 30 (thirty) days from the date of publication of notification in the Gazette.

Annexure - *--- Omitted ---*

Sub-section (4) of Section 11 of the MM(D&R) Act provides that all the applications received ***during the period as specified in such notification*** which shall not be less than 30 days shall be considered simultaneously as if all such applications have been received on the same day.

A combined reading of Section 11 (4) of the MM(D&R) Act and Rule 59 (1) (ii) of the Rules makes it clear that it is not only mandatory to provide a gestation period of minimum 30 days but it is also necessary to prescribe an end date within which the applications are required to be made by the prospecting applicants. In the absence of such end date the notification itself is ambiguous and defective since the compliance with the requirement of Section 11 (4) of the MM(D&R) Act for consideration of all the applications received ***during the period as specified in the notification*** simultaneously would be impossible.

Though the learned Government Pleader as well as the learned Counsel for the 9th respondent submitted that, in the absence of any specific provision under Rule 59, no end date was prescribed in the notification dated 12.7.2004 and as per the practice in vogue all the applications received till the proposals submitted by the State Government were considered in accordance with the provisions of Rule 63-A and Rule 22 (4) of the Rules, I am unable to agree. Rule 63-A and Rule 22 (4) of the Rules have nothing to do with the period required to be specified in the notification under Rule 59 (1) (i)

of the Rules.

It is also relevant to note that unless the availability of the land for grant of lease is made known to the public precisely specifying the date upto which the applications can be made it is unreasonable to insist upon any limitation of time for consideration of the applications received. In the absence of such cut-off date, any application received cannot be termed as belated and eschewed from consideration on that ground.

Hence, in my considered opinion, the notification dated 12.7.2004 itself is defective being not in conformity with the provisions of sub-section (4) of Section 11 of the MM(D&R) Act.

POINT No.3 :

As expressed above, since the notification dated 12.7.2004 is silent about the period within which the applications are to be submitted and particularly keeping in view the language of sub-section (4) of Section 11 of the MM(D&R) Act the 1st respondent was not justified in granting the mining lease in favour of the 9th respondent while keeping the application of the petitioner in W.P.No.14116 of 2007 pending.

POINT No.4 :

It is contended that since the petitioner's grandfather died whilst he was possessed of the leased area and the petitioner being his legal heir has been continuing in actual physical possession and enjoyment as a tenant holding over and conducting the mining operations, the State Government has no authority to interfere with the possessory rights of the petitioner without following due process of law. It is contended that as per the proceedings of the then Collector, the father and grandfather and through them the petitioner is entitled to do mining operations as and when there is a market for the mineral. Thereafter, no order has been passed at any point of time

intimating the petitioner that his lease is determined or had lapsed by efflux of time or calling upon the petitioner to deliver the land to the Government nor were any steps taken to take over possession from the petitioner following due process of law. In the absence of such steps, the notification dated 12.7.2004 suffers from material imperfection.

I do not find any substance in the above contention. Even assuming that the previous lessee Tapal Thimmappa during his lifetime made an application for renewal of mining lease, since it was not disposed of within 12 months as prescribed under Rule 24 (1) it shall be deemed to have been refused under Rule 24 (3). Hence, the claim of the petitioner in W.P.No.14116 of 2007 for mining lease shall have to be adjudicated only upon his application made in response to the notification dated 12.7.2004.

As held by the Supreme Court in SALIGRAM KHIRWAL v. UNION OF INDIA[13] there is no vested right in case of the expired lease much less any hereditary right. Hence, the fact that the petitioner is the legal heir of previous lessee is of no consequence for the purpose of grant of a mining lease.

However, it is made clear that this Court is not expressing any opinion as to the entitlement of the petitioner to continue in possession and enjoyment of leased area as tenant holding over or as to his right to lift the extracted mineral lying on the leased area since the same is the subject-matter of O.S.No.17 of 2007 pending before the Court of the Additional District Judge, Ananthapur, and also W.P.No.24459 of 2006 pending on the file of this Court.

CONCLUSIONS :

For the aforesaid reasons, the conclusions reached are summed up as under :

(1) The procedure followed by the respondents 1 to 4 in processing the applications received pursuant to the

notification dated 12.7.2004 and in selecting and granting lease in favour of the 9th respondent was not in accordance with the provisions of sub-section (4) of Section 11 of the MM(D&R) Act read with Rule 26 (1) of the Rules since the relative merits of all the applications received were not considered simultaneously.

(2) The entire issue was prejudged in favour of the 9th respondent even before issuing the show-cause notices to the other applicants under Rule 26 (1) of the Rules.

(3) The order refusing the application of the petitioner in W.P.No.14818 of 2007 was in violation of the principles of natural justice apart from being in contravention of the provisions of Rule 26 (1) of the Rules.

(4) The notification dated 12.7.2004, on the basis of which the impugned orders were passed is defective and not in conformity with the provisions of sub-section (4) of Section 11 of the MM(D&R) Act.

In view of the above conclusions, the rest of the contentions raised by the petitioners including the *mala fides* alleged against the Director of the Department of Mines & Geology, need no consideration in these writ petitions and it is open to the petitioners to institute appropriate proceedings for redressal of their grievance, if any.

Accordingly, the notification dated 12-7-2004 as well as the orders of the 1st respondent dated 10-11-2005 and 18-6-2007 granting mining lease in favour of the 9th respondent and also the order dated 18-6-2007 refusing the application of the petitioner in W.P.Nos.9723 & 14818 of 2007 are hereby set aside declaring the same as arbitrary, illegal and contrary to the provisions of the MM(D&R) Act and the Rules made thereunder.

All the Writ Petitions are accordingly allowed. No costs.

G. ROHINI, J.

Dt.31–08-2007
gbs

Note:-

1. CC in 3 days.
2. LR copy to be marked.

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[1] AIR 1995 SC 333
[2] AIR 1985 SC 330
[3] (2007) 2 SCC 112
[4] 1998 (5) ALD 549
[5] (1998) 8 SCC 1
[6] (2003) 2 SCC 107
[7] (2005) 8 SCC 264
[8] (2004) 3 SCC 553
[9] AIR 1961 SC 1506
[10] (1996) 6 SCC 442
[11] AIR 1991 SC 818
[12] (2003) 9 SCC 731
[13] (2003) 7 SCC 689