A.F.R.

HIGH COURT OF ORISSA: CUTTACK

W.P.(C) No.7338 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

M/s. MSP Sponge Iron Ltd.
(formerly known as
M/s. MSP Sponge Iron Pvt. Ltd.),
At : Haldiaguna, P.O. Gobardhan,
Dist : Keonjhar, Orissa, represented
through its Director, Sri Pradip Kumar Dey. ... Petitioner

-Versus-

State of Orissa and others ... Opp. Parties

For Petitioner : Mr. R.K. Rath, Senior Advocate,
M/s. Dipak K. Dey, C.K. Dey &
A.K. Das.

For Opp. Parties : M/s. A.N. Das, N. Sarkar, E.A. Das &
B.K. Jena (for Caveator)

Government Advocate
(for State)

Mr. S.D. Das, Senior Advocate
Asst. Solicitor General of India
(for O.P. No.3)

Mr. A.K. Parija, Sr. Advocate &
M/s. S.P. Sarangi, B.C. Mohanty,
P.P. Mohanty, D.K. Das, P.K. Das &
R.K. Tripathy (for O.P. No.5)

Mr. Jayanta Das, Sr. Advocate
(for O.P. No.4)

P R E S E N T:

THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA

Date of Judgement : 28.09.2011

B.N. Mahapatra, J. In the present writ petition challenge has been made to the decision taken on 18.02.2010 (Annexure-12) by opposite party No.1-State of Orissa, represented through its Principal Secretary to Government, Department of Steel & Mines, Orissa, Bhubaneswar. Under Annexure-12, opposite party No.1 has rejected the M.L. Application No.1217 dated 07.09.2001 filed by the petitioner and recommended partly in respect of an area of 101.6864 hectares of land for Iron and Manganese Ores situated at village Pattabeda in the district of Sundargarh, Orissa in favour of opposite party No.4 and rest part of said areas in favour of opposite party No.5. Further prayer of the petitioner is to issue a writ of mandamus or any other appropriate writ directing opposite party No.1 to recommend the petitioner's M.L. Application No.1217 dated 07.09.2001 to the Central Government for grant of mining lease in its favour in respect of the same area of 101.6864 hectares situated at village Pattabeda in the district of Sundargarh for iron and manganese ores as has been similarly done in the case of M/s. OCL India Ltd., in respect of their applied area in Kundaposi vide letter dated 08.07.2008 under Annexure-14.

2. The petitioner's case in a nutshell is that pursuant to IPR, 1996, the petitioner has set up a mineral based industry for manufacturing of Sponge Iron with an installed capacity of 54,000 MT per annum. The sponge iron unit of the petitioner is located in a rural area in village Haldiaguna, P.O. Gobardhan, Dist: Keonjhar, Orissa

which is a “Zone-B” category backward area as defined under IPR, 1996. It is a small scale industrial unit and is duly registered under the District Industries Centre (for short, DIC), Keonjhar. Later in April, 2008, the petitioner took over a steel manufacturing unit belonging to one of its associated company, namely, MSP Steels Pvt. Ltd., Haldiaguna, Keonjhar by way of amalgamation.

3. The petitioner company is a mineral based metallurgical industry where iron ore is used as base raw material for manufacturing of sponge iron ore which is further converted into steel. The company’s annual requirement of lump iron ore, base raw materials for steel making for the existing 54,000 MT per annum capacity sponge iron is 1,51,200 TPA. In addition to the existing sponge iron and steel manufacturing facilities, the promoters of the industry have decided for expansion of their sponge iron & steel manufacturing facilities at Haldiaguna and have also taken various steps for acquisition of land, captive power, private railway siding and necessary statutory clearances. The petitioner has also a Ferro Plant in Manuapally village, in the district of Raigarh, Chhatisgarh with an installed capacity of 26,657 TPA and manganese ore mineral is the base raw material for producing ferro alloys products such as Ferro Manganese and Silico Manganese etc.

4. The petitioner came to know that in the close vicinity of the company’s plant in the district of Sundargarh, Tata & Iron Steel Co. Ltd. (TISCO) had surrendered/relinquished an area of 1299.607 hectares of land in various villages, namely, Malda, Kolmang, Adaghat etc. including

Pattabeda containing iron ore and manganese ore deposits after retaining 822 hectares during 3rd renewal of ML. The petitioner was also aware of the fact that the said area was available for grant of lease for mining of iron ore and re-grant for mining of manganese. The petitioner was also aware that on 12th March, 1998, the State Government had, pursuant to an application made by one MGM Minerals Ltd., recommended their application for grant of prospecting licence to the Central Government and also recommended the case for relaxation under the provisions of Rule 59(2) of the Mineral Concession Rules, 1960 (for short, "M.C. Rules, 1960"). The Central Government vide order dated 04.08.1998 granted relaxation under Rule 59(2) of the MC Rules, 1960 in respect of the said ML Application of MGM Minerals Ltd. and accordingly, thereafter mining lease for iron ore was executed in favour of MGM Minerals Pvt. Ltd. Therefore, the petitioner made three applications for grant of mining lease for iron ore and manganese ore which were registered/numbered as M.L. Application Nos.1216, 1217 and 1218 all dated 7th September, 2001 in respect of different parts or villages of the areas relinquished by TISCO in Sundargarh district. The petitioner submitted all the required documents including geological map and geological report indicating mineral deposits in the applied area along with ML Application No.1217 dated 07.09.2001. The petitioner had a legitimate expectation that its application for grant of mining lease would be favourably recommended by the State Government. The petitioner took a decision to expand its existing sponge iron

manufacturing unit facility from 54,000 TPA to 1,74,000 TPA. In view of the expansion programme, the petitioner submitted a representation dated 16th April, 2003 to the Director of Mines, Bhubaneswar before whom the petitioner's application was being processed stating therein the urgent need of captive iron ore mines for its existing sponge iron unit and further highlighting that apart from the existing unit the said captive mines could also feed the expanded capacity once the expansion is implemented.

5. The Director of Mines recommended for grant of lease in respect of mining lease application No.1217 dated 07.09.2001 and rejected petitioner's two other applications for grant of mining lease bearing M.L. Applications Nos.1216 and 1218 both dated 07.09.2001 in view of the recommendation made by it for grant of mining lease in respect of M.L. application No.1217 dated 07.09.2001. Despite, lapse of substantial time, since the State Government did not make necessary recommendation for grant of mining lease in favour of the petitioner, the petitioner made a representation to the State Government on 12.04.2005 reiterating the requirement of the petitioner for iron ore for its value added end-use project and also drawing the attention of the State Government that the petitioner was in the process of implementing the backward and expansion and also forward integration programme.

6. Since the representation did not yield any result, the petitioner approached this Court in W.P.(C) No.6371 of 2005 praying *inter alia* for a direction to the State Government to consider the grant of

mining lease in respect of its pending application for the entire area applied for within a reasonable time. This Court vide order dated 30th August, 2005 disposed of the said writ petition with a direction to opposite party No.1-authority to consider and take a final decision on the representation of the petitioner for the area already recommended by the Director of Mines in his report dated 21.12.2004. As the petitioner's ML Application No.1217 dated 07.09.2001 was in respect of 101.6864 hectares and not for 30 hectares only, the petitioner filed a review petition bearing RVWPET No.100 of 2005 before this Court seeking modification of the aforesaid order to the extent of directing the authorities to consider the grant of mining lease for the total area of 101.6864 hectares. While the aforesaid review petition was pending, the Joint Secretary, State of Orissa, Department of Steel and Mines wrote a letter bearing No.11543/SM dated 11th November, 2005 to the petitioner stating that the petitioner had not fulfilled conditions required under MOU alleged to have been signed with the petitioner on 27th November, 2004. As the petitioner had not signed any MOU with the State Government, the question of fulfilling the criteria referred to in the guidelines of the State Government in respect of MOU projects was not applicable to the petitioner. The petitioner vide letter dated 29th November, 2005 clarified the said position to the Joint Secretary, State of Orissa, Department of Steel and Mines. It was clarified that the petitioner's existing unit had been in operation since the year 2000 and it was not a unit for which any MOU was executed. The petitioner

received a notice dated 15th May, 2006 issued by the Department of Steel and Mines, State of Orissa enclosing the notice dated 9th May, 2006, issued by the Joint Secretary, Department of Steel and Mines alleging that the petitioner had not fulfilled criteria, like financial closure in respect of the steel plant despite opposite party No.1-State's letter dated 11th November, 2005. It was also alleged that the petitioner had not taken expeditious steps for establishment of its project in time and hence, the application was liable for rejection. The notice was stated to be one under Rule 26(1) of the MC Rules and calling upon the petitioner to appear before the Principal Secretary on 22nd May, 2006 for a personal hearing. Since, the State Government had issued the notice in respect of the entire area of 101.6864 hectares applied for pursuant to the mining lease application No.1217 dated 07.09.2001 and the said notice of hearing was not limited to only 30 hectares as recommended by the Director of Mines, the petitioner did not press its review petition, which was disposed of on 22nd June, 2006 by this Court as not pressed.

7. The representatives of the petitioner attended the hearing on 22nd May, 2006 and pointed out during the hearing that the notices dated 9th May and 15th May, 2006 were erroneous inasmuch as the petitioner had never signed any MOU with the State Government. The petitioner also explained the justification for grant of mining lease for the entire 101.6864 hectares, particularly, drawing attention to the existing unit of the petitioner and also the expansion programme which is under the process of implementation. The petitioner-Company had also

brought to the notice of the authority that the Orissa Industrial Infrastructure Development Corporation, (for short, 'OIIDC') had recommended vide letter dated 16th May, 2006 the acquisition of 60 acres of land for expansion project of the petitioner and that the petitioner had deposited a sum of Rs.6.0 lakhs towards administrative charges for acquisition of 60 acres of land.

8. On 03.06.2006, the petitioner received a communication letter from the State Government, wherein the State had refused to recommend the case of the petitioner for grant of mining lease over the applied area vide order dated 23.05.2006 *inter alia* on the grounds that the petitioner could not substantiate the stand for expansion of their sponge iron plant to steel making plant and the company had not signed any MOU with the State Government for such steel plant in Orissa.

9. Being aggrieved by the said order, the petitioner filed another writ petition bearing W.P.(C) No.16488 of 2006. The said writ petition was disposed of on 17th August, 2006 with a direction to the petitioner to avail the alternative remedy of revision. Pursuant to such direction, the petitioner approached the Central Government under Section 30 of the MMDR Act, 1957 read with Rule 54 of the MC Rules, 1960 by filing a revision application being Revision Case No.22(60)/2006-RC-I in accordance with the provisions of Rule 54 of the MC Rules, 1960 challenging the legality of the order dated 23.05.2006 passed by opposite party No.1 rejecting the ML application of the petitioner. The petitioner also filed an interim application along with the

said revision application praying for an interim direction to the State Government not to consider any other application for mineral concession over the applied area of the petitioner pending hearing and final disposal of the revision application of the petitioner. Since the Central Government did not take up the interim application for consideration, the petitioner approached this Court in W.P.(C) No.10488 of 2006 and this Court vide order dated 22.11.2006 disposed of the said writ petition with a direction that the iron and manganese ore involved in the case shall not be leased out to anybody unless and until the stay application of the petitioner is considered by the Central Government with a further direction to consider the interim stay application within a period of one month from the date of communication of the said order by the petitioner. Pursuant to the above order, revisional authority took up the revision application for final hearing and upon hearing the parties, i.e. the petitioner and opposite party Nos.1 and 2, the Central Government vide order dated 08.02.2008 allowed the revision application by setting aside the order dated 23.05.2006 passed by opposite party No.1 and directed the State Government to reconsider the M.L. Application No.1217 dated 07.09.2001 over an area of 101.6864 hectares for grant of mining lease in favour of the petitioner in accordance with the observation made therewith and the law applicable thereto within 90 days from the date of communication of the order. In the aforesaid order, it was held that the petitioner's case was found to be a fit case for relaxation under Rule 59(2) of the M.C. Rules, 1960, for grant of mining

lease in favour of the petitioner.

10. Since the State Government did not implement the order of the Central Government passed in exercise of power vested with it under Section 30 of the MMDR Act read with Rules 54 and 55 of the M.C. Rules, 1960 in Revision Case No.22(60)/2006-RC-I vide order dated 08.02.2008 in its letter and spirit, the petitioner filed writ petition bearing W.P.(C) No.13786 of 2008 and this Court disposed of the said writ petition vide order dated 21.10.2008 *inter alia* directing the State Government to pass a reasoned order and communicate the same to the petitioner strictly in terms of the Central Government order dated 08.02.2008 and in accordance with law within four months from the date of the said order on the basis of assurance given on behalf of the State Government to this Court in that regard.

11. While the matter stood thus, opposite party No.1 issued a notice to the petitioner vide notice dated 19.01.2009 in purported exercise of powers under Rule 26(3) of the M.C. Rules, 1960 informing the petitioner that it's ML Application is allegedly deficient in respect of the document described as "Authenticated Geological Prospecting Report of the applied area". In the said notice the petitioner was called upon to submit the aforesaid wanting documents on or before 20.02.2009 to opposite party No.1. Further, the State Government also in the said notice called upon the petitioner purportedly under the provision of Rule 26(1) of the M.C. Rules, 1960 to appear before opposite party No.1 on 02.03.2009 for a personal hearing apparently on the question of refusal

for grant of mining lease in favour of the petitioner. After receipt of the aforesaid notice dated 19.01.2009, the petitioner immediately filed a representation before opposite party No.1 bringing to its notice that the State Government is already in possession of the aforesaid Geological Survey Report prepared by the Directorate of Geology duly authenticating the existence of mineral deposits (iron & manganese ores) in the area applied by the petitioner for mining lease way back in the year 2001 and the State Government has recommended for grant of mining lease to other applicant, i.e., M/s. OCL India Ltd. basing on similar survey report authenticating mineral deposits.

12. Since, no response was made by the State Government with regard to calling upon the petitioner to produce the document, i.e., "Authenticated Geological Prospecting Report of the applied area" for consideration of its mining lease application, the petitioner approached this Court in W.P.(C) No.3240 of 2009 with a prayer to quash the impugned notice dated 19.01.2009 and consider the petitioner's M.L. Application No.1217 dated 07.09.2001. Pursuant to order dated 16.03.2009 passed in W.P.(C) No.3240 of 2009, the petitioner through its authorized representative appeared before opposite party No.1 on 30.03.2009 along with all documents justifying grant of mining lease in favour of the petitioner.

13. Opposite party No.4 filed an application seeking intervention in W.P.(C) No.3240 of 2009 claiming to have applied for prospecting licence in respect of the entire relinquished area of TISCO in Block-B,

which included the applied area of the petitioner. After hearing the parties, this Court vide order dated 11.12.2009 finally disposed of W.P. (C) No.3240 of 2009, *inter alia*, holding that the intervenor has no *locus standi* to intervene in this case and no relief can be granted to it. Accordingly, the prayer for intervention was rejected. It was further held that the geological report clearly shows existence of mineral contents, even if the area has not been earlier prospected and this Court directed opposite party No.1 to consider the geological survey report of the area as per Annexure-25 and take a decision on the application of the petitioner as early as possible.

14. The petitioner filed a review petition being Civil Review No.4 of 2010 seeking for limited clarification of the judgment dated 11.12.2009 passed in W.P.(C) No.3240 of 2009, which was dismissed by this Court vide order dated 28.01.2010.

15. Pursuant to direction of this Court, opposite party No.1 issued notice of hearing to the petitioner which was concluded on filing of written submission on 28.01.2010 by the petitioner before opposite party No.1. When the petitioner was awaiting for communication from opposite party No.1 in respect of consideration of its mining lease application, it came to know in the first week of January, 2011 that the State Government in its official website has displayed the Minutes of personal hearing for determination of inter se merit for consideration of Mineral Concession Application dated 18.02.2010. The said minutes of hearing have been displayed since 06.12.2010. In the said minutes of

hearing, the case of the petitioner, in view of the judgment dated 11.12.2009, has been separately dealt with in Annexure-A. The further case of the petitioner is that from the minutes of hearing, it appears that opposite party No.1 purportedly considered the applications for mining lease and prospecting licences of about 123 applicants on the very same day i.e. 18.02.2010 including that of the petitioner (at Serial No.47 in the minutes) to determine inter-se merit among them and concluded that the petitioner's application for mining lease is liable to be rejected. Hence, the present writ petition.

16. Mr. R.K. Rath, learned Senior Advocate appearing on behalf of the petitioner submits that the process adopted by opposite parties to arrive at a conclusion to reject the Mining Lease application is ex facie bad in law, inasmuch as the same is contrary to the provisions of MMDR Act, 1957 and M.C. Rules, 1960 as well as the directions issued by the Central Government vide order dated 08.02.2008 and this Court vide order dated 21.10.2008 passed in WP (C) No.13786 of 2008 and judgment dated 11.12.2009 in W.P.(C) No. 3240 of 2009. The order of the State Government dated 23.5.2006 rejecting the petitioner's mining lease application on the ground that the applied area comes under the provisions for "re-grant" which was granted earlier under a mining lease and admittedly the State Government has not notified the same under sub-rule (1) of Rule 59 of M.C. Rules to enable it to consider any mineral concession application unless relaxation of Rule 59 (1) is given by the Central Government in favour of the petitioner in terms of Rule

59(2) of the M.C. Rules is not correct. The petitioner has challenged legality of the said order dated 23.5.2006 passed by the State Government before the Central Government in Revision Application No.22(60)of 2006-RC-I. The Central Government after hearing the parties i.e. the petitioner and the State Government set aside the order of the State Government dated 23.5.2006. Thus, all the grounds adopted by the State Government to reject the mining lease application of the petitioner were set aside by the Central Government with a declaration that the petitioner's case is a fit case for grant of relaxation under Rule 59(2) of the M.C. Rules and directed the State Government to reconsider the petitioner's mining lease application for grant of mining lease in favour of the petitioner in accordance with the observation made therein and law applicable thereto within 90 days from the date of communication of the said order. Therefore, petitioner's case should have been considered first and the State Government could not have considered any application for grant in view of provisions of Rule 60 of the M.C. Rules, 1960. This Court by order dated 21.10.2008 passed in W.P.(C) 13786 of 2008 (Annexure-5) issued direction to the State Government to consider the matter and pass a speaking and reasoned order strictly in accordance with law in terms of order dated 8.2.2008 passed by the Central Government. The aforesaid order was passed basing upon the assurance given on behalf of the State Government to comply with the direction of the Central Government. It is trite law that the rule of simultaneous hearing of all pending applications takes effect

from the provisions of Section 11(4) of the MMDR Act, which is consistent with the Rule 59(1) read with Rule 60 of M.C. Rules. Since the State Government has not notified the concerned area regarding availability of the same for grant as required under Rule 59(1) of the M.C. Rules, the consideration of the application of the petitioner on the basis of simultaneous hearing as recorded in the Minutes of hearing (Annexure-12) is legally unsustainable and without jurisdiction.

17. Mr. Rath, vehemently argued that Opposite party no.1, while referring to the judgment and order dated 11.12.2009 and extracting portion thereof has deliberately omitted the crucial part of the said decision solely with a view to project as if this Court has not expressed any opinion on the question of interpretation of law and the said opposite party is free to express its own view thereon. While this Court held that it had no hesitation to say that the geological report clearly shows existence of mineral contents even if the area has not been prospected, opposite party no.1 omitted this part in paragraph 5, Annexure-A to the minutes of hearing. The MMDR Act, 1957 and M.C. Rules, 1960 prescribe two distinct stages involved in the grant of mining lease. The first is the recommendation of the State Government to the Central Government in case of an area previously held under a mining lease, which could be in terms of Rule 59(1) or Rule 59(2) of the Rules, 1960 and consequent upon grant of approval by the Central Government under sec. 5(1) of the MMDR Act (where mineral involved is the mineral specified in schedule-1 of the said Act). The second stage, i.e., execution

of mining lease, could be done upon fulfilling *inter alia* the conditions stipulated in Sec.5 (2) (b) of the MMDR Act and Rule 22(4) and (5) of the M.C. Rules. Opposite party no.1 is aware of the said provisions of law as large number of mining leases have been granted in the past and particularly in case of mining lease granted in favour of the OCL Limited.

18. It was argued that opposite party no.1 has proceeded with the case of the petitioner with an erroneous construction of law as if no mining lease could be granted without availability of a prospecting report over the applied area. If such an interpretation of Section 5(2) (a) of the MMDR Act is accepted, then it would render the legislature's incorporation "Or the existence of mineral contents therein has been established otherwise than by means of prospecting such area" absolutely redundant, which is impermissible in law.

19. Mr. Rath, submitted that the State Govt. recommended for grant of mining lease in favour of M/s. OCL Ltd. without there being any geological prospecting report on the basis of the Survey Report prepared by the same Directorate of Geology (Annexure-8) which is similar to the Survey Report (Annexure-7) produced by the petitioner. The said survey report was required to be examined by opposite party no.1 as to whether it meets the requirement of Sec. 5(2)(a) of the MMDR Act as directed by this Court vide judgment dated 11.12.2009. A bare perusal of both the reports at Annexures 7 & 8, clearly indicates that both the reports were prepared at the instance of opposite party no.1 for rapid survey and assessment of iron ore reserved in the concerned areas

by the Directorate of Geology, State of Orissa. Both the reports are prepared in respect of the areas held earlier under mining leases. Both the reports clearly establish iron ore reserve in the respective concerned areas specifying approximate quantity of such reserve and gradation thereof. Both the reports took into consideration the mineral resources of the adjacent areas over which mining leases are granted and under continuous operation of the respective lessees. In the report at Annex-8, on the basis of which the State Government has granted mining lease, it is recorded that the reserve estimated is tentative and comes under 334 categories as per the UNFC standard. In the report under Annexure-7 which the petitioner has produced and the original whereof is in the custody of opposite party no.1, it has been recorded that the occurrence of economic iron ore deposit in the area has been by this study and the resources can be safely put under E-3 F-3 G-3 category of UNFC classification. Thus, report at Annexure-7 suggests much better and superior assessment of iron ore reserved in the area for which the petitioner has applied than the deposits of iron ore reserved in the area over which mining lease has been granted in favour of M/s. OCL Ltd. on the basis of the report at Annexure-8. The report at Annexure-8 concludes with the suggestion that "for scientific establishment of true reserve in the applied area in future, detailed geological mapping, drilling, sampling and analysis may be taken up by the applicant for mining planning and exploration of the minerals". In the concluding part of report at Annexure-7 it was similarly suggested

that “the detailed exploration can reveal the actual potential of the deposits to a great extent”. Thus the acts of opp. party no.1 to accept the report at Annex-8 as satisfying to meet the requirement of Sec. 5(2)(a) for grant of M.L. in favour of M/s. OCL Ltd. and refusing to accept the report at Annex-7 in case of the petitioner for the same purpose amounts to absolutely arbitrary, discriminatory and violative of the equality clause guaranteed under Art. 14 of the Constitution inasmuch as such act of Opp. party no.1 in the backdrop of facts as stated above appears to be tainted with legal malice.

20. The case of the petitioner was considered purportedly in terms of the judgment dated 11.12.2009 passed by this Court in W.P.(c) No. 3240 of 2009 by opp. party no.1. This consideration was made by opp. party no.1 on 18.2.2010. However, as per the minutes of hearing prepared on the very same day i.e. on 18.2.2010 considering the case of about 123 applicants including that of the petitioner (at sl. No.47), O.P.No.1 came to a decision that the petitioner’s mining lease application is liable to be rejected. This speaks a volume to indicate pre-judging the case of the petitioner with clear predetermination to reject its M.L. application which is not permissible under law and such act of opp. party no.1 clearly amounts to be an act of legal malice. The decision of opp. party no.1 in rejecting the petitioner’s application lacks bona fide.

21. The opp. party no.1 had predetermined mind to grant lease in favour of opp. party no.4 and opp. party no.5, the portions of whose recommended areas completely overlaps the applied area under the

mining lease application of the petitioner and to reject the petitioner's mining lease application by inventing new grounds from the beginning, although the petitioner's application for mining lease dated 7.9.2001 had been pending for so many years and opp.parties 4 and 5 made applications for prospecting licence on 10.10.2008 and 29.11.2007 respectively with a view to favour them, particularly opp. party no.4.

22. The intervention petition filed by O.P.No.4 has been rejected by this Court. While his application for intervention was pending, O.P.No.4 filed a writ petition being W.P.(c) No. 17041 of 2009 challenging the legality of the Central Government order dated 8.2.2008 mainly attacking the declaration of the Central Govt. that "petitioner's case is a fit case for relaxation under the provisions of Rule 59(2) of the M.C. Rules" on different grounds. Opp. party no.4 filed a caveat petition dated 16.11.2010 before this Court which has lost its force in law by now. The aforesaid caveat petition was filed before the impugned minutes of hearing dated 18.2.2010 were displayed in the official website of opp. party no.1 in December, 2010. This speaks volumes regarding the nexus between opp. party no.4 and opp. party no.1 regarding subject-matter of this writ petition.

23. Mr. Rath, further argued that since the area in question was earlier granted for mining lease in favour of TISCO for manganese ore and since the petitioner's mining lease application is for both iron and manganese ore, the opp. party no.1 should have considered for grant of manganese ore and in that event, the State Government could not have

been prejudiced in view of the provisions under Rule 27(a) (b) of the M.C. Rules, 1960. Section 11(5) of the Act is not applicable as the area concerned is not virgin area.

24. Learned Advocate General vehemently contended that there is no infirmity or illegality in the orders passed under Annexure-12 and Annexure-14. The State Government has acted in accordance with law. Therefore, he prayed for dismissal of the writ petition.

25. Mr.J.Das, learned Senior Advocate appearing on behalf of the opposite party No.4 raised the preliminary question on maintainability of the writ petition. It was submitted that as the two conditions, i.e., violation of principles of natural justice and total lack of jurisdiction are not fulfilled to exercise power under Articles 226 and 227 of the Constitution of India, the writ petition is not maintainable. The action of the State Government cannot be said to be contrary to the statutory provisions. Pursuant to the order of this Court dated 11.02.2009 passed in W.P.(C) No.3240 of 2009, the State Government has called MSP Sponge as well as other applicants for hearing.

26. Mr. A.K.Parija, learned Senior Advocate appearing for the opposite party No.5 submitted that M/s. TISCO Limited had not carried out any prospecting operation within the leasehold relinquished area. Therefore, during the subsistence of the lease no exploratory work like drilling, test pitting and trenching had been done by M/s TISCO Ltd. in the relinquished Blocks including the Block-'B' over 741.942 hectares. It is further submitted that under the provision of Section 5(2)(a) of the

M&M(D&R) Act, 1957, no mining lease can be granted over an area to the person unless he produces the prospecting report as an evidence to show that the area had been prospected earlier and the existence for mineral over the contained therein has been established. As per Section 5(2)(b) of the Act, detailed report is required for preparation of mining plan to be approved by the Central Government before the grant of ML. Since M/s. TISCO had not carried out any exploratory work for iron ore over the relinquished area, it is not admissible under the provisions of law to consider ML application in absence of any prospecting report. Therefore, all the ML applications, notwithstanding the merit of some, are held as not fulfilling the provisions of law and have been rightly recommended for rejection.

27. On rival contentions advanced by the parties, the questions that fall for consideration by this Court are as follows:

(i) Whether on the facts and circumstances of the case, the revision provided under Section 30 of the MMDR Act is an efficacious remedy available to the petitioner against the impugned action of opposite party no.1 under Annexure-12?

(ii) Whether the order of the Central Government dated 08.02.2008 passed in Revision Case No.22(60)/2006-RC-I in case of the petitioner amounts to relaxation of the provisions of Rule 59(1) as provided under Rule 59(2) of the M.C. Rules, 1960 ?

(iii) Whether the opposite party-State is justified in considering all the 123 applications including petitioner's application

simultaneously to determine inter se merit for grant of prospecting licence/mining lease ?

(iv) Whether the opposite party-State authority is bound by the direction issued by the Central Government in the matter relating to Mineral Concession Rules, 1960 and MMDR Act, 1957 ?

(v) Whether opposite party-State is justified to hold that the reports including one enclosed as Annexure-25 of W.P.(C) No.3240 of 2009 cannot be accepted as adequate in terms of Section 5(2)(a) and (b) of the MMRD Act, 1957 and meet the requirement of a prospecting report ?

(vi) Whether opposite party-State is justified in rejecting the ML application of the petitioner on the ground that the applicant has not fulfilled the requirement of Section 5(2), so as to consider the grant of mining lease besides not having been able to substantiate the merits of financial parameter on par with few other PL/ML applicants taken up for simultaneous hearing ?

28. Question no.(i) is with regard to maintainability of writ petition on the ground of availability of efficacious alternative remedy to the petitioner by way of filing revision petition under Section 30 of the MMDR Act, 1957. It is not in dispute that one of the prayers of the petitioner is for a writ of certiorari challenging the order dated 18.2.2010 (Annexure-12). In this context, it will be useful to refer to some of the decisions of the Hon'ble Supreme Court on the point of alternative remedy.

29. In the case of ***T.C. Basappa v. T. Nagappa & Another***, AIR 1954 SC 440, the Hon'ble Supreme Court held as follows:

> "A writ of certiorari is available when there is an error in the decision of determination itself. But it must be a manifest error apparent on the face of the procedure e.g. when it is passed on clear ignorance or disregard of the provisions of law."

30. In the case of ***State of U.P. v. Md.Nooh***, AIR 1958 SC 86 the Supreme Court held as follows :-

> " If an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the Rules of natural justice and all accepted rules of procedure and which offends, the superior courts sense of fair play the superior court may, we think, quite properly exercise its power to issue a prerogative writ of certiorari to correct the error of the court or Tribunal of first instance, even if an appeal to another inferior court or Tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned."

31. In the case of ***Hindustan Steels Limited v. A.K.Roy***, AIR 1970 SC 1401 the apex Court in paragraph 17 of the judgment held as follows:-

> "If a statutory Tribunal exercises its discretion on the basis of irrelevant consideration, certiorari may properly issue to quash its order."

32. In the case of ***British India Corporation v. Industrial Tribunal***, AIR 1957 SC 354 the Supreme Court held as follows:-

> "When there are allegations of *mala fides* on the part of the Govt., it is the duty of the High Court to record hearing to the parties after issuing notice to the respondents and record its decision."

33. As it appears, in the proceeding dated 18.2.2010, all the applications for mineral concession filed by 123 applicants including the

petitioner were taken up for simultaneous consideration for determination of inter se merit. However, such simultaneous hearing of all the applications is permitted only when the matter regarding grant is either covered under the first and second proviso to Section 11(2) of the Act or the matter covered under provision of Section 11(4) of the Act. The Hon'ble Supreme Court in ***Sandur Manganese and Iron Ore Limited v. State of Karnataka and others***, JT 2010 (10) SC 157, held that Section 11(2) gives preference to a prior applicant for grant of reconnaissance permit, prospecting licence or mining lease over later applicants where the State Government has not issued any notification. The main provision in Section 11(2) applies to "virgin areas". It further makes it clear that to the extent that an area that is previously held or reserved would require a notification for it to become available. Matters covered under Section 11(4) of the Act apply to a case where Rule 59(1) of the M.C. Rules is applicable and the State Government has issued the required notification. Section 11(5) of the MMDR Act, which overrides the provision of Sec.11(2) of the Act, has no application to the area to which Rule 59(1) is applicable.

In the case at hand, the mining lease was granted to TISCO in respect of the area in question. Thus, the said area comes within the purview of Rule 59 of the M.C. Rules, but the State Government has not issued any notification as required under Rule 59(1) of the said Rules in conformity with Section 11(4) of the Act. Thus, there is no application either under the provision of Section 11(2) or the provision of Section

11(4) of the Act which provides simultaneous consideration of all applications for mineral concession in terms of matter stipulated in Section 11(3) of the Act. In the above backdrop, the petitioner's specific case is that the whole proceeding is patently illegal, without jurisdiction and contrary to the provisions of the Statute.

34. Law is well settled that alternative remedy is not a bar where the action challenged suffers from patent illegality in violation of Constitution, statute etc. and principle of natural justice.

35. In the case of ***Guruvayoor Devaswom Managing Committee and another v. C.R. Rajan and others*** (2003) 7 SCC 546, the Hon'ble Supreme Court held as under :-

> "The Court steps in by Mandamus when the State fails to perform its duty. It shall also step in when the discretion is exercised but the same has not been done legally and validly. It steps in by way of a judicial review over the orders passed. Existence of an alternative remedy albit is no bar to exercise jurisdiction under Article 226 of the Constitution of India but ordinarily, it will not do so unless it is found that an order has been passed wholly without jurisdiction or contradictory to the Constitutional or Statutory provisions or where the order has been passed without complying with the principles of natural justice."

36. In the case of ***V.C. Banaras Hindu University v. Shrikant***, (2006) 11 SCC 42, the Hon'ble Supreme Court held as under:-

> "When the statutory authority exercises its statutory powers either in ignorance of the procedure prescribed in law or while deciding the matter takes into consideration irrelevant or extraneous matters not germane therefor, he misdirects himself in law. In such an event, an order of the statutory authority

> must be held to be vitiated in law. It suffers from an error of law.
>
> Such an error of law is capable of being rectified by judicial review. Reasonableness in the order and/or fairness in the procedure indisputably can also be gone into by the writ court."

37. The opposite party no.1-State authority has insisted for submission of approved mining plan and also to produce authentic and prospecting report of the area in spite of report made by the Director of Geology of Government of Orissa which clearly establishes existence of mineral contents. Therefore, it appears that the action of opposite party no.1 is contrary to and de hors the statutory provisions of Sec. 5(2)(a) of the MMDR Act, 1957 and Rule 22(4) of the M.C. Rules, 1960. Further the decision of opposite party no.1 to reject the application of the petitioner for grant of mining lease is contrary to the interpretation of law in that regard made by this Court in the order and judgment dated 11.12.2009 passed in W.P.(C) No.3240 of 2009, which has attained finality.

38. The following facts as stated by the learned Senior Advocate Mr. Rath also clearly show that there is violation of rules of natural justice in the instant case. The application of the petitioner for grant of mining lease has been dealt with at Serial No.47. In Annexure-A under the heading "Director of Geology's view", it is recorded that the Director of Geology was present during the hearing on 27.01.2010. His views were taken on the validity of Rapid Reconnaissance Survey Report and was asked to study and submit his views. As per views expressed by him

during the personal hearing, the report cannot be considered as a detailed geological prospecting report and therefore cannot be accepted as meeting the legal obligations of Section-5(2) of the Act. But the alleged presence of the Director of Geology at the time of hearing on 27.01.2010 is not on record and the same had never been disclosed or made known to the petitioner and the so-called report of the Director of Geology is also neither available on record nor has ever been disclosed to the petitioner. Thus, the decision has been taken basing upon said materials in gross violation of the principles of natural justice, equity and fair-play and hence, the decision is liable to be quashed. The representative of the petitioner was present in the hearing on 27.01.2010, who had not noticed the presence of the Director of Geology nor was he appraised of the decision said to have been taken in the hearing to call for a report from the Director of Geology. Thus, the decision rejecting petitioner's application for grant of mining lease has been taken not only with a pre-determined mind, but also on materials, which has never been disclosed to the petitioner, which renders the whole proceedings vitiated in law. Under the heading 'B' "orders of the Revisional Tribunal dated 08.02.2008 and the directions", it is stated that the Principal Secretary to Government, Department of Steel and Mines, who is stated to have taken the said decision not to accept the April, 2006 report and to reject the petitioner's application for mining lease, had consulted and taken the opinion of the Law Department. It is stated that the Law Department vide its opinion has advised that the application of M/s MSP Sponge Iron

Limited should be considered along with all other applications in consonance with this Court's direction. However, the said advice of the Law Department has never been disclosed nor even suggested to the petitioner at any point of time. The petitioner was never communicated that the opposite party No.1 had already taken a view that petitioner's application for grant of mining lease should be considered along with other pending applications. If such a view, which the opposite party No.1 had already taken or wished to take, had been communicated to the petitioner, then the petitioner would have the opportunity to demonstrate that such a view was erroneous in law. Therefore, the said view is untenable and unsustainable in law. The decision based on such advice of Law Department without affording opportunity to meet it; is thus vitiated being contrary to the principles of natural justice.

39. From the decision in the case of ***Sandur Manganese & Iron Ore Limited*** *(supra)*, it is clear that the revision as provided under Section 30 of the Act would not be an independent and efficacious alternative Forum in terms of the guidelines laid down by the Constitution Bench of the Hon'ble Supreme Court in the case of *Union of India V. R. Gandhi, President, Madras Bar Association*, JT 2010(5) SC 553.

40. Considering the facts of the case, the above said judicial pronouncements and the nature of the prayer made in this writ petition, we are of the view that the present writ petition is maintainable despite

availability of the alternative remedy by way of revision as provided under Section 30 of the Act.

41. Question No.(ii) is as to whether the order of the Central Government dated 8.2.2008 passed in Revision Case No.22(60) of 2006-RC-I in the case of the petitioner amounts to relaxation of the provision of Rule 59(1) as provided under Rule 59(2) of the M.C. Rules, 1960. Sub-rule (2) of Rule 59 of the M.C.Rules, 1960 provides that the Central Government may, for reasons to be recorded in writing, relax the provisions of rule 59(1) in a special case. Petitioner's case is that in view of the order dated 8.2.2008 passed by the revisional authority in Revision Case No. 22(60)/2006-RC-I, no further order of the Central Government relaxing the provision of Rule 59(1) is necessary. The order of the revisional authority amounts to granting relaxation as required under Rule 59(2). Paragraph 9 of the order of the revisional authority dated 08.02.2008 which is relevant for the purpose is extracted below.

> "9. We have heard the arguments made by the petitioner as well as the State Government and have also perused the record of the case. Signing of MoU with parties interested in grant of mineral concession as a prerequisite is not in line with the provision of the MMDR Act, 1957 and the rules framed thereunder. To give preference to those applicants only who have signed MoU with State Government will lead to outright exclusion of deserving applicants. Recommendation of IPICOL & OIIDC have been brought in the notice of State Government and the petitioner has also deposited the amount of Rs.6.00 lakhs as asked for by OIIDC. The State Government has also mentioned that preference is given to local industry as per Industrial Policy Resolution, 1996. The petitioner has also a local industry that provides value

addition on the mined iron ore and manganese ore. As regards relaxation of provision of Rule 59(1) of MCR, 1960, is concerned, the power lies with the Central Government and the role of the State Government is only recommendatory. The State Government has not rejected the application of the petitioner on the ground that it is premature but on some other grounds/reasoning.

10. In observation of foregoing facts and taking into account of the act of State Government's earlier recommendation to Central Government seeking relaxation under rule 59(2) of M.C. Rules, 1960 in respect of a part of such relinquished area in Patabeda village, the Tribunal is of the opinion that the petitioner's case is a fit case for grant of relaxation under Rule 59(2) of M.C. Rules, 1960. In view of our findings above and review of the grounds of rejection in the impugned order dated 23.05.2006 passed by the State Government we are of the opinion that the said impugned order cannot survive and is hence set aside, with the direction to the State Government to reconsider the petitioner's ML application No.1217 dated 07.09.2001over an area 101.6864 hects for grant of mining lease in favour of the petitioner in accordance with the observation made above and law applicable thereto within 90 days from the date of communication of this order."

(Underlined for emphasis)

42. In the above order the revisional authority observed that so far as relaxation of provision of Rule 59(1) of the M.C.Rules, 1960 is concerned, the power lies with the Central Government and the role of the State Government is only recommendatory. The State Government has not rejected the application of the petitioner on the ground that it is premature, but on some other grounds/reasonings. Taking note of the facts of the case, the revisional authority further held that taking into account of the act of the State Government's earlier recommendation to

the Central Government seeking relaxation under Rule 59(2) of M.C. Rules, 1960 in respect of a part of such relinquished area in Pattabeda village, petitioner's case is a fit case for granting relaxation under Rule 59(2) of M.C.Rules, 1960. Thus, from the above observation of the revisional authority it cannot be said that the Central Government has relaxed the provisions of Rule 59(1) in terms of Rule 59(2) of M.C. Rules, 1960 as claimed by the petitioner.

43. Question Nos.(iii) and (iv) being inter-related are dealt with together. While dealing with these questions, we have to see as to whether the opposite party-State is justified in considering all the 123 applications including the petitioner's simultaneously to determine inter se merit for grant of prospecting licence and mineral licence and such action of the State is not contrary to the revisional order of the Central Government dated 08.02.2008 passed in Revision Case No.22(60)/2006-RC-I. According to the petitioner, in view of the order of the Central Government dated 08.02.2009 and order of this Court dated 21.10.2008 passed in W.P.(C) No.13786 of 2008, the case of the petitioner should have been considered in terms of the directions/observations made in those orders as those orders are binding on opposite party No.1. At this juncture, it is felt necessary to have an idea about those orders.

44. Petitioner in the instant case made an application for grant of mining lease to the State Government vide ML Application No.1217 dated 07.09.2001 over an area of 101.686 hectares in village Pattabeda in the district of Sundargarh. The said application was verified,

processed and forwarded by the Director of Mines, Orissa vide letter No. MVI-B-12/01-13038/DM dated 21.12.2004 to the Department of Steel and Mines. The State Government in Steel & Mines Department vide its order dated 23.05.2006 rejected such application on following grounds:-

(i) The applied area comes within the relinquished ML area of M/s TISCO Ltd. which has not been thrown open under rule 59(1) of MC Rules, 1960 and therefore petitioner's application for grant of mining lease is liable for rejection as premature one under the MC Rules, 1960.

(ii) The petitioner was noticed under Rule 26(1) of MC Rules, 1960 for personal hearing. One Manish Agrawal, Director and Mr.P.K.Dey, Director attended the personal hearing. The representatives argued for expansion of their sponge iron plant to steel plant but could not produce any document in support of their proposal. They also failed to produce any document in support of their proposal from State Pollution Control Board, Orissa regarding environmental clearance on their expansion proposal. The petitioner Company had not also signed the MoU with the State Government for such Steel Plant in Orissa.

45. For the above reasons, opposite party No.1 held that there was no adequate justification for grant of mining lease in relaxation of Rule 59(1) of MC Rules, 1960 and rejected petitioner's application.

Against the said order, the petitioner filed Revision Case No.22(60)/2006-RC-I before the Central Government under Section 30 of the MMDR Act, 1957 and Rule 55 of the MC Rules, 1960.

46. After hearing the petitioner and the State Government and taking into consideration their claims and counter claims, the Revisional Authority passed the order on 08.02.2008 with a direction to the State Government to consider the petitioner's ML application No.1217 dated 07.09.2001 over an area 101.6864 hectares for grant of mining lease in favour of the petitioner as observed in paragraph 9 of the said order which has been quoted above.

47. Since there was delay in implementing the order of the Central Government passed on 08.02.2008, the petitioner approached this Court in W.P.(C) No.13786 of 2008 and this Court disposed of the said writ petition on 21.10.2008 passing the following order:-

> "In view of the aforesaid statement made by the learned Additional Government Advocate for opposite party nos. 1 and 2, we dispose of this petition requesting the said opposite parties to reconsider the matter and pass a speaking and reasoned order strictly in accordance with law in terms of the direction issued by the learned Tribunal vide its judgment and order dated 8.2.2008 within a period of four months from today and communicate the same to the petitioner Needless to say that if the petitioner is aggrieved by the order of opposite party nos. 1 and 2, it will have a right to challenge the same before the appropriate forum."

48. Admittedly, in the present case, the petitioner made an application for grant of mining lease on 07.09.2001 when no other application for prospecting licence or mining licence was pending for consideration in respect of the area in question. Moreover, in view of the categorical findings/directions of the revisional authority in its order

dated 08.02.2008 and order of this Court dated 21.10.2008 passed in W.P.(C) No.13786 of 2008 extracted above, the opposite party-State is not justified in considering all the 123 applications including the petitioner's application simultaneously to determine inter se merit for grant of prospecting licence/mineral lease. It is more so in view of our observations in paragraph 33 above.

49. These questions can be looked at from another angle. Law is well settled that the State Government is bound by the direction issued by the Central Government in the matters relating to Mineral Concession Rules, 1960 and MMDR Act, 1957. In the present case, the State Government by its order dated 23.05.2006 (Annexure-3) rejected the application of the petitioner for grant of mining lease and came to a categorical finding that there is no adequate justification for grant of mining lease in relaxation of Rule 59(1) of the M.C. Rules, 1960. The said order was challenged before the Central Government by way of revision. Thus, in the said Revision, the lis was as to whether petitioner's case was a fit case for relaxation or not. In its order dated 08.02.2008, the Central Government opined that petitioner's case is a fit case for grant of relaxation under Rule 59(2) of the M.C. Rules, 1960. The Central Government in exercise of its revisional jurisdiction remitted the matter back to the State Government to consider the same afresh for grant of mining lease in favour of the petitioner in accordance with the observation made in the order of the Central Government and the law applicable thereto. Thus, the aforesaid order of the Central Government

is in terms of Rule 55(4) of the M.C. Rules, 1960. At this juncture, it is necessary to refer to some of the decisions of the Hon'ble Supreme Court in the present context.

50. In case of ***Dharam Chand Jain Vs. State of Bihar***, AIR 1976 SC 1433, the Hon'ble Supreme Court held as under:-

> "2. xx xx We might mention here that under Rule 54 of the Mineral Concession Rules, 1960, the Central Government acts as a revisional tribunal against any order passed by the State Government and has obviously, therefore, the same powers as the State Government……."
>
> "5. xx xx The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government as indicated above…… In fact to take the view that the State Government could decline to carry out the order of the Central Government on some ground which it thinks proper would be subversive of judicial discipline."

In the case of ***Union of India and others v. Kamlakshi Finance Corporation Ltd., AIR 1992 SC 711,*** the Hon'ble Supreme Court in paragraph 6 of the judgment observed as follows:

> "6. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the

> jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department — in itself an objectionable phrase — and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws".

51. In view of the law laid down by the Hon'ble Supreme Court, the State Government is bound to carry out the directions of the Central Government issued in exercise of its revisional jurisdiction under Section 30 of the MMDR Act. If the State Government declined to carry out the order of the Central Government on some ground which it thinks proper it would be subversive of judicial discipline.

Thus, the State Government's action should not be contrary to the direction of the Central Government issued in exercise of revisional jurisdiction.

52. Question nos. (v) & (vi) are inter related; therefore, they are dealt with together. Now, it is to be examined as to whether opposite party-State is justified to hold that the reports including one annexed as Annexure-25 to W.P.(C) No.3240 of 2009 cannot be accepted as adequate in terms of Sec. 5(2)(a)(b) of the MMDR Act, 1957. To deal with such question, it is necessary to know what is contemplated in Sec. 5(2)(1)(b) of the Act. Sub-section (2) of Sec.5 of the Act is quoted below :

> "(2) No mining lease shall be granted by the State Government unless it is satisfied that :
> (a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and
> (b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned. "
>
> (Underlined for emphasis)

53. According to the petitioner, it is a matter of record of the Department of Steel and Mines that along with petitioner's ML Application No.1217 dated 07.09.2001 for grant of mining lease in Pattabeda for iron and manganese ore, the petitioner had submitted a Reconnaissance Geological Survey Report prepared by a recognized and empanelled Geologist pursuant to the survey conducted by him indicating existence of iron ore and manganese ore deposits in the applied area in Pattabeda. The said geological survey report had been duly considered by the Director of Mines in his report vide letter dated 21.12.2004 and submitted to the Department of Steel and Mines of the State Government for consideration. The Director of Mines, Orissa in his aforesaid report dated 21.12.2004 addressed to the Joint Secretary to Government of Orissa in the Department of Steel and Mines, clearly indicated that the aforesaid ML Application was accompanied with all required documents including geological map and prospecting report and was only deficient in respect of approved mining plan which is

required to be submitted only after the State Government takes a decision to grant precise area as per Rule 22(4) of the MC Rules, 1960. In the said report, the Director of Mines also recorded reasons regarding the existence of iron and manganese ore deposit in the applied area.

Moreover, pursuant to the direction of the Principal Secretary, Department of Steel & Mines, Government of Orissa vide D.O. No.13573/SM dated 20.12.2005, a geological survey was conducted to explore mineral deposits in the TISCO relinquished area in and around Pattabeda (in which petitioner's applied area situates) Ganua and Kakarpani etc. villages under Bonai Sub-Division in Sundargarh district. The survey was conducted at behest of the State Government by Mr.M.K.Sahu, Sr. Manager, OMC, Mr.M.K.Senapati, Geologist, Directorate of Geology, Mr.S.Mishra, Deputy Manager, Geology, OMC, Mr.S.Mishra, Geologist, Directorate of Geology and a detailed geological report was submitted to opposite party No.1 in April, 2006, which is in the custody of Department of Steel & Mines of the State Government.

54. Opposite party no.1 issued notice No.357 dated 19.1.2009 in exercise of its power under Rule 26(3) of the M.C. Rules informing the petitioner that its mining lease application is deficient in respect of the document, namely, authenticated geological prospecting report of the said area. On receipt of the said notice, the petitioner made a representation on 11.02.2009 to opposite party no.1 *inter alia* bringing to its notice that the State Government is already in possession of the aforesaid geological survey report prepared by the Directorate of Geology

duly authenticated existence of mineral deposits (iron ore and manganese ore) in the area applied by the petitioner for mining lease way back in the year 2001 and the State Government has recommended for grant of mining lease to other applicant, i.e., M/s. OCL India Ltd. basing on the similar survey report authenticating mineral deposit.

Since no response was made by the State Government, the petitioner approached this Court in W.P.(C) No.3240 of 2009, inter alia, with the prayer for quashing the notice dated 19.01.2009 (Annexure-24) issued by opposite party No.1 and for a direction to consider petitioner's mining lease application No.1217 dated 07.09.2001 in respect of area of 101.6864 hectares situated at village Pattabeda in the district of Sundargarh on the basis of the geological survey report prepared by the Directorate of Geology which is already available with the State Government and make recommendation to the Central Government for grant of mining lease to the petitioner, similar to such recommendation made in favour of the M/s OCL India Ltd. This Court vide judgment dated 11.12.2009 passed in W.P.(C) No.3240 of 2009 gave following directions/ observations. :-

> "17. To sum up :-
>
> a) The petitioner cannot be forced to produce the mining plan as per the impugned notice dated 19.1.2009 issued under Rule 26(3) of the M.C. rules, vide Annexure-24, as we have already observed that the authenticated geological survey report would come at a stage as enumerated in rule 22(4) of the M.C. Rules. So the said notice in Annexure-24 directing the petitioner to produce the mining plan is accordingly set aside. The State Government is directed to give a

> further notice of hearing to the petitioner without insisting upon production of mining plan.
>
> b) As we have indicated in the foregoing paragraphs that the question whether geological survey report in Annexure-25 is sufficient to meet the requirement of Section 5(2)(a) of the M.M.R.D. Act, the same shall be decided by the State Government.
>
> 18. Accordingly, without expressing any opinion regarding merit of the case, we dispose of the writ petition with a direction to the State Government to consider the geological survey report of the area as per Annexure-25 and take a decision on the application of the petitioner as early as possible."

55. Pursuant to the direction of this Court, opposite party No.1 issued notice of hearing to the petitioner. The said hearing was concluded. While dealing with the case of the petitioner, the Principal Secretary to Government, Steel and Mines Department came to the following conclusion.:-

> "C. Conclusion:
>
> (i) the reports including the one enclosed as Annexure-25 to his W.P.(C) No.3240/09 cannot be accepted as adequate in terms of sec.5(2)(a) & (b) of MMDR Act, 1957 and meet the requirement of a prospecting report.
>
> (ii) The merit of the applicant's mineral concession application shall be decided as part of determination of inter-se merit based on simultaneous hearing of all the applications."

56. The revisional authority in its order dated 8.2.2008 observed that the State Government earlier recommended to the Central Government seeking relaxation under Rule 59(2) of the M.C. Rules, 1960 in respect of a part of such relinquished area in Pattabeda village. As

per the provision of Sec. 5(2)(a) the existence of minerals content in the applied area can be established by two ways, i.e., by prospecting the area in question or otherwise than by means of prospecting such area. The phraseology "otherwise than by means of prospecting such area" has been introduced in Sec. 2(a) by Sec. 7 of the Act 38 of 1999 with effect from 18.12.1999. Previously, such an alternative means for establishing the existence of minerals content in the applied area was not there. In the instant case, as it is not disputed that the State Government has recommended for grant of mining lease in respect of a part of the relinquished area of the TISCO to other applicant i.e. M/s OCL India Ltd, basing on the similar survey report authenticating the mineral deposit. Therefore, there is no reason as to why the case of the petitioner has not been considered in the same manner the State Government has considered the case of OCL Ltd., particularly when the amended Sec. 5(2)(a) provides for establishing the existence of minerals content otherwise than by means of prospecting the area in question.

57. In view of our observations/findings made in the preceding paragraphs, the conclusion reached by the Principal Secretary to Government, Department of Steel & Mines in Annexure-12 quoted in paragraph 55 above with regard to petitioner's ML Application No.1217 dated 07.09.2001 for grant of mining lease in respect of the area in question is not sustainable in law and is hereby quashed. As a result, the consequences flowing from the said decision are also not sustainable in law.

58. The opposite party-State is directed to recommend the case of the petitioner to the Central Government for relaxation of the provisions of Rule 59(1) under Rule 59(2) of the MC Rules, 1960. If such relaxation is granted by the Central Government then petitioner's case be considered for grant of mining lease in respect of the area applied for, keeping in mind the observations made in the preceding paragraphs of this judgment.

59. With the aforesaid observations/directions, the writ petition is disposed of.

.....
B.N. Mahapatra, J

V. Gopala Gowda, C.J. *I agree.*

.....
Chief Justice

Orissa High Court, Cuttack
The 28th September, 2011/skj/ss/ssd