

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 26th DAY OF AUGUST, 2009

PRESENT

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

AND

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

WRIT APPEAL NOs.1095/2008 C/W. 1096/2008, 494/2008,
295/2008, 509/2008 (GM MM S) c/w. W.P.NO.s.22564/2005
AND 1097/2006 (GM MM S)

W.A. No.1095/2008

BETWEEN:

- 1 REDDY VEERANNA
S/O SANJEEVAPPA
AGED ABOUT 52 YEARS
No.9/1 CLASSIC COURT
II FLOOR, RICHMOND ROAD
BANGALORE 560 025

... APPELLANT

(By Sri PHANINDRA, ADV., FOR M/s. HEGDE AND RAO, ADVOCATES)

AND:

- 1 UNION OF INDIA
REP., BY ITS SECRETARY
TO GOVERNMENT OF INDIA,
MINISTRY OF COAL AND MINES,
DEPARTMENT OF MINES
SHASTRI BHAVAN
NEW DELHI - 110 001.
- 2 STATE OF KARNATAKA
REP. BY ITS SECRETARY
DEPARTMENT OF
COMMERCE AND INDUSTRIES



VIKASA SOUDHA,
I FLOOR, Dr. AMBEDKAR ROAD,
BANGALORE-560 001.

- 3 COMMISSIONER FOR MINES AND
GEOLOGY,
DEPARTMENT OF MINES AND
GEOLOGY,
GOVERNMENT OF KARNATAKA,
KHANIJA BHAVAN,
5TH FLOOR, RACE COURSE ROAD,
BANGALORE- 560 001.

- 4 M/s. VIBHUTHIGUDDA
MINES PRIVATE LTD
BY ITS MANAGING DIRECTOR,
No.4, KAPPAGAL ROAD,
BELLARY 583 103

... RESPONDENTS

(By Sri : BASAVARAJ KARREDDY, GA FOR R2 & 3
SRI Y. HARIPRASAD, CGSC., FOR R1
SRI M.M. SWAMY, ADV., FOR R4)

WRIT APPEAL No.1096/2008

BETWEEN:

- 1 REDDY VEERANNA
S/O SANJEEVAPPA
AGED ABOUT 52 YEARS
No.9/1, CLASSIC COURT
II FLOOR, RICHMOND ROAD
BANGALORE 560 025

... APPELLANT

(By Sri PHANINDRA, ADVOCATE FOR M/s. HEGDE & RAO,
ADVOCATE)

AND:

- 1 UNION OF INDIA
REP BY SECRETARY
TO GOVERNMENT OF INDIA,
DEPARTMENT OF MINES
SHASTRI BHAVAN
NEW DELHI - 110 001.

- 2 THE STATE OF KARNATAKA
REP. BY ITS SECRETARY
DEPARTMENT OF COMMERCE AND INDUSTRIES
VIKASA SOUDHA,
FIRST FLOOR,
Dr. AMBEDKAR ROAD,
BANGALORE 560 001
- 3 THE COMMISSIONER FOR
MINES AND GEOLOGY
DEPARTMENT OF MINES AND GEOLOGY,
GOVERNMENT OF KARNATAKA,
KHANIJA BHAVAN,
5TH FLOOR, BANGALORE
- 4 M/S VIBHUTHI GUDDA MINES PRIVATE LTD
REP. BY ITS MANAGING
DIRECTOR, No.4, KAPPAGAL ROAD,
BELLARY - 583 103

... RESPONDENTS

(By Sri BASAVARAJ KARREDDY, GOV. ADV. FOR R2 & 3,
SRI Y. HARIPRASAD, CGSC for R1,
SRI M.M. SWAMY, ADV., FOR R4)

WRIT APPEAL No.494/2008

BETWEEN:

SALGAOCAR MINING
INDUSTRIES PRIVATE LIMITED
A CO., INCORPORATED
UNDER THE PROVISIONS
OF THE COMPANIES ACT 1956
HAVING ITS REGISTERED
OFFICE AT SALAGAO CAR CHAMBERS
P O BOX, No.114 MARGAO,
GOA-403601

THROUGH ITS AUTHORIZED SIGNATORY
Mr V RAGHOTTAM

... APPELLANT

(By Sri BASAVA PRABHU S PATIL, ADVOCATE)



AND:

- 1 STATE OF KARNATAKA
BY ITS SECRETARY
DEPT. OF INDUSTRIES & COMMERCE
M.S.BUILDINGS
BANGALORE 560 001
 - 2 THE DIRECTOR OF MINES & GEOLOGY
DEPARTMENT OF MINES & GEOLOGY
5TH FLOOR, KHANIJA BHAVAN,
RACE COURSE ROAD
BANGALORE 560 001
 - 3 UNION OF INDIA
BY ITS SECRETARY
MINISTRY OF COAL & MINES
SHASTRI BHAVAN
NEW DELHI 110001
 - 4 M/S SESA GOA LTD
P O BOX 125 SESAGHOR
20, EDC COMPLEX, PATTO
PANJIM, GOA-403001
REP BY ITS SECRETARY
& G M (CORPORATRE AFFAIRS)
SRI C D CHITNIS, S/O DURGASHANKAR CHITNIS
AGED ABOUT 48 YEARS, R/O GOA
- ... RESPONDENTS

(By Sri BASAVARAJ KAREDDY, GA FOR R1 AND R2)

WRIT APPEAL No.295/2008

BETWEEN

SALGAOCAR MINING INDUSTRIES
PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES
ACT, 1956, HAVING ITS
REGISTERED OFFICE AT SALGAOCAR
CHAMBERS, PO BOX No.114, MARGAO



GOA 403601, THROUGH ITS AUTHORISED
SIGNATORY, Mr V RAGHOTTAM

...APPELLANT.

(By SRI BASAVA PRABHU S PATIL, ADVOCATE)

AND

- 1 STATE OF KARNATAKA
BY ITS SECRETARY
DEPT OF INDUSTRIES
AND COMMERCE
M S BUILDINGS,
BANGALORE - 560 001
- 2 DIRECTOR OF MINES AND GEOLOGY
DEPARTMENT OF MINES AND GEOLOGY
5th FLOOR, KHANIJA BHAVAN
RACE COURSE ROAD
BANGALORE 560 001
- 3 UNION OF INDIA
BY ITS SECRETARY
MINISTRY OF COAL AND MINES
SHASTRI BHAVAN
NEW DELHI 110 001
- 4 M/s. MUKUNDA LTD
REGISTERED OFFICE
AT BAJAJ BHAVAN
JAMUNALAL BAJAJ MARG,
No.226, NARIMAN POINT, UMBAI 400002
REPRESENTED BY ITS MANAGING
DIRECTOR

... RESPONDENTS

(By Sri BASAVARAJ KAREDDY, GA., FOR R1 AND R2, SRI K.N.
PHANINDRA, ADV., FOR R4, SRI.Y.HARIPRASAD, CGSC, FOR R3.)

WRIT APPEAL No.509/2008

BETWEEN:

SALGAOCAR MINING INDUSTRIES PVT. LTD
A COMPANY INCORPORATED UNDER
THE PROVISIONS OF THE COMPANIES



ACT, 1956, HAVING ITS REGISTERED
OFFICE AT SALAGAOCAR CHAMBERS,
P.O. BOX No.114, MARGAO, GOA 403 601
THROUGH ITS AUTHORIZED
SIGNATORY, MR V RAGHOTTAM

... APPELLANT

(By Sri BASAVA PRABHU S PATIL, ADVOCATE)

AND:

- 1 STATE OF KARNATAKA BY ITS SECRETARY
DEPT., OF INDUSTRIES AND COMMERCE
M S BUILDINGS,
BANGALORE 560 001
- 2 DIRECTOR OF MINES AND GEOLOGY
DEPARTEMENT OF MINES AND GEOLOGY
5TH FLOOR, KHANIJA BHAVAN
RACE COURSE ROAD, BANGALORE 560 001
- 3 UNION OF IDNIA
BY ITS SECRETARY
MINISTRY OF COAL AND MINES
SHASTRI BHAVAN, NEW DELHI 110 001
- 4 MR PRAVEEN KUMAR NIKKAM
S/O G N NIKKAM
AGED ABOUT 39 YEARS
3RD WARD, SANDOOR 583119
BELLARY DISTRICT.

... RESPONDENTS

(BY SRI.BASAVARAJ KAREDDY FOR R1 AND R2
SRI.K.N.PHANINDRA ADVOCATE FOR R4
SRI.Y. HARIPRASAD, CGSC FOR R3)

W.P. No.22564/2005

BETWEEN

REDDY VEERANNA
S/O SANJEEVAPPA
AGED 49 YRS



NO.9/1 CLASSIC COURT
II FLOOR RICHMOND ROAD
BANGALORE 25

... PETITIONER

(By SRI L M CHIDANANDAYYA, ADV)

AND:

- 1 UNION OF INDIA
REP BY ITS SECRETARY
DEPARTMENT OF MINES
NIRMAN BHAVAN
NEW DELHI
- 2 THE STATE OF KARNATAKA
REP. BY ITS SECRETARY
COMMERCE AND INDUSTRIES DEPT.
SSI AND TEXTILES
ROOM NO. 137 1ST FLOOR
VIKASA SOUDHA BANGALORE 1
- 3 THE COMMISSIONER CUM DIRECTOR
MINES AND GEOLOGY DEPARTMENT
KHANIJA BHAVAN, BANGALORE
- 4 M/S VIBHUTHI GUDDA MINES PRIVATE LTD
A COMPANY REGISTERED UNDER THE
COMPANIES ACT REP. BY ITS MANAGING
DIRECTOR HAVING ITS OFFICE AT NO.4 KAPPD
BELLARY - 103

... RESPONDENTS

(By SRI.Y.HARIPRASAD, CGSC FOR R1,
SRI. BASAVAAJ KAREDDY GA FOR R2 AND R3,
SRI. M.M.SWAMY FOR R4)

WRIT PETITION No.1097/2006

BETWEEN:

REDDY VEERANNA
S/O SANJEEVAPPA
AGED ABOUT 49 YEARS.
NO 9/1, CLASSIC COURT



II FLOOR, RICHMOND ROAD
BANGALORE-25

... PETITIONER

(By Sri K.N.PHANINDRA AND L M CHIDANANDAYYA, ADVOCATE)

AND

- 1 UNION OF INDIA
REPTD BY ITS SECRETARY
DEPARTMENT OF MINES, NIRMAN BHAVAN
NEW DELHI
- 2 THE STATE OF KARNATAKA
REPRESENTED BY ITS SECRETARY
COMMERCE AND INDUSTRIES DEPARTMENT
(SSI AND TEXTILES)
ROOM NO 137, IST FLOOR, VIKASA SOUDHA
BANGALORE-560 001
- 3 THE COMMISSIONER-CUM-DIRECTOR
MINES AND GEOLOGY DEPARTMENT
KHANIJA BHAVAN, BANGALORE
- 4 M/s. VIBHUTHI GUDDA MINES PRIVATE LIMITED
A COMPANY REGISTERED UNDER THE
COMPANIES ACT, REPRESENTED BY ITS
MANAGING DIRECTOR, HAVING ITS OFFICE AT
NO 4, KAPPAGAL ROAD
BELLARY-583 103

... RESPONDENTS

(By Sri : M M SWAMY, ADV., FOR C/R4, SRI.Y.HARIPRASAD,
CGSC FOR R1, SRI.BASAVARAJ KAREDDY GA FOR R2 AND R3)

WRIT APPEAL No.1095/2008 IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION No.22564/2005 DATED
16/6/2008.

WRIT APPEAL No.1096/2008 IS FILED U/S 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE
ORDER PASSED IN THE WRIT PETITION NO.1097/2006 DATED
16/6/2008.



WRIT APPEAL No.494/2008 IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION NO.27353/2004 DATED 28/03/2007.

WRIT APPEAL No.295/2008 IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN THE WRIT PETITION No.27364/05 DATED 08/01/2008.

WRIT APPEAL No.509/2008 IS FILED UNDER SECTION 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE ORDER PASSED IN WRIT PETITION No.12343/2004 DATED 31.05.2007 AND ORDER DATED 13.09.2007 IN I.A. DATED 14.06.2007.

WRIT PETITION No.22564/2005 IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER AT ANN-A DT. 13.2.04 BY R2.

W.P. No.1097/2006 IS FILED PRAYING TO DIRECT THE RESPONDENTS TO CONSIDER THE APPLICATION OF THE PETITIONER AND ALL OTHER APPLICANTS IN ACCORDANCE WITH LAW, BY FOLLOWING THE PROCEDURE PRESCRIBED UNDER SUB-RULE (1 OF RULE 26 OF THE MINERAL CONCESSION RULES).

THESE WRIT APPEALS AND WRIT PETITIONS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

J U D G M E N T

The reference made in W.P.No.22564/2005 and W.P.No.1097/2006 and all these appeals are disposed of by this common order since they are inter-connected and to avoid repetition.



2. The learned Single Judge of this court by order dated 16.6.2008 in W.P.No.22564/2005 and W.P.No.1097/2006 has formulated the following questions and referred the same to the Division Bench:

"Whether the State Government is bereft of power to authorize an authority, or officer subordinate to it to perform the function contemplated under Rule 26(1) of the Mineral Concession Rules, 1960 - notwithstanding the language of sub-Section (3) of Section 26 of the Mines and Minerals (Development & Regulation) Act, 1957 ?

Whether the 'hearing' contemplated under Rule 26(1) of the above Rules, require the State Government alone to hear and decide- without the assistance of any other authority or sub-ordinate officer and if there is a division of such responsibility, the proceedings stand vitiated? "

3.1. The learned Single Judge after referring the above said questions for determination by the larger Bench, proceeded to dispose of the writ petitions as devoid of merit. That being aggrieved by the order of the learned Single Judge dismissing



Writ Petition No.22564/2005 dated 16.6.2008, Writ Appeal No.1095/2008 is filed by the petitioner.

3.2. Being aggrieved by the dismissal of W.P.No.1097/2006 by order dated 16.6.2008 by the learned Single Judge, the writ petitioner has preferred Writ Appeal No.1096/2008.

3.3. W.A.No.494/2008 is filed by respondent No.4 in W.P.No.27353/2004 against the order of the learned Single Judge dated 28.3.2007 setting aside the grant of mining lease in favour of the appellant on the ground that the delegation of power to afford opportunity of hearing under Rule 26(1) of the Mineral Concession Rules, 1960 (for short 'MC Rules') by the Commissioner and Director of Mines and Geology is void and illegal and the recommendation made in favour of the fourth respondent for grant of mining lease, is liable to be set aside.

3.4. Similarly, W.A.No.295/2008 is filed by the fourth respondent in W.P.No.27364/2005 aggrieved by the order dated 8.1.2008 passed by the learned Single Judge, following the decision rendered in W.P.No.27353/2004, out of which W.A.No.494/2008 arises, wherein the learned Single Judge holding that delegation of power of the Commissioner and



Director of Mines and Geology is void has set aside the recommendation made in favour of fourth respondent in the writ petition-the appellant herein for grant of mining lease.

3.5. W.A.No.509/2008 is filed by the fourth respondent in W.P.No.12243/2004 whereunder the said writ petition was disposed of by the learned Single Judge, vide order dated 13.4.2007 following the earlier judgment of this Court rendered in W.P.No.27353/2004 held that the delegation of power of giving opportunity of hearing to the applicant under Rule 26(1) of the MC Rules is invalid and void; and has set aside the recommendation made in favour of the fourth respondent in the writ petition-appellant herein for grant of mining lease.

4. For the purpose of convenience and in order to consider the circumstances under which the order of reference has been made to the Larger Bench, it would be convenient to refer the facts in W.P.Nos.22564/2005 and 1097/2006.

5. W.P.No.22564/2005 was filed on 27.9.2005 under Articles 226 and 227 of the Constitution of India being aggrieved by the recommendation dated 22.5.2005 made by the State of Karnataka for grant of mining lease in favour of the fourth respondent in the writ petition in respect of 224 hectares in



Sy.No.283 of Vonnahalli, Bellary Taluk and District and also the order of approval of the Central Government on the said recommendation dated 22.5.2005 given by the first respondent-Union of India approving the recommendation of the second respondent-State and seeking for quashing of the said orders passed by the first and second respondents in the writ petition.

6. The petitioner in Writ Petition No.22564/2005 contends:

(i) **that** he is a Civil Contractor having wide experience in civil works;

(ii) **that** he found that land bearing Sy.No.283 situated at Vonnahalli, Bellary Taluk and District is suitable for mining operations and there is sufficient quantity of iron ore available which will assist the petitioner in conducting the mining operation and utilise the ore for the best purposes by exporting the same outside and thereby fetching precious foreign exchange to the country;

(iii) **that** pursuant to the notification dated 15.03.2003 issued under Rule 59 of the MC Rules, the writ petitioner made an application for grant of 25.25 hectares of land in Sy.No.283;



(iv) **that** the said application was filed on 17.4.2003 after thirty days of the gazetting of the notification and the application, in compliance of Rule 22 of the MC Rules, which is numbered as No.1025 AML 2003;

(v) **that** the petitioner has enclosed his financial capacity to show that he can invest sufficient funds in conducting the mining operations;

(vi) **that** the petitioner has also invested a sum of Rs. 29,60,62,000/- to purchase movable and immovable assets for carrying out the mining activities;

(vii) **that** several other applications were filed seeking for grant of mining lease in respect of said Sy.No.283 including the fourth respondent;

(viii) **that** the petitioner received notice from the third respondent-Director of Mines and Geology, under Rule 26(1) of the MC Rules, calling upon the petitioner to appear before him on 22.12.2003 and produce documents in support of the application for



grant of mining lease and make a presentation for sanction of mining lease in favour of the petitioner;

(ix) **that** the Petitioner appeared before the third respondent and submitted his representation and produced various documents on 22.12.2003, along with the letter and that petitioner being the most competent person amongst all other applicants, believed that his case will be considered for grant of mining lease; but the third respondent has recommended the name of the fourth respondent for grant of mining lease in respect of the schedule land;

(x) **that** he did not hear anything after the representation was submitted to the third respondent, till he learnt that recommendation had been made on 13.2.2004 by the State Government for grant of mining lease in favour of the fourth respondent to an extent of 224 hectares in Vonnahalli village, Bellary Taluk and District for a period of twenty years;

(xi) **that** since the grant of mining lease is for iron ore mentioned in Schedule-1 to the MMDR Act



for which approval of the Central Government was required under Section 5(1) of the MMDR Act, recommendation was made by the State Government on 13.2.2004 to the Central Government for its approval for grant of mining lease in favour of the fourth respondent;

(xii) **that** the Central Government on 12.7.2005 has approved the recommendation dated 13.2.2004 made by the State Government; and hence, the writ petition is filed challenging the order passed by the first and second respondents granting mining lease in favour of the fourth respondent over an area of 25.25 hectares of land in Vonnahalli village of Bellary Taluk and District in Sy.No.283;

(xiii) **that** the function that is required to be discharged under Rule 26(1) of the MC Rules is quasi-judicial in nature as the same enables the State Government to consider the application for grant of mining lease and to grant or refuse to grant the mining lease over the whole or part of the area applied for and for the reasons to be recorded; and



the said function could not be delegated to the third respondent;

(xiv) **that** the third respondent did not pass orders for recommendation and therefore the Authority, which gave an opportunity of hearing to the third respondent, has no power to recommend; and therefore, the recommendation made by the State Government, is wholly illegal, as no delegation could be permitted in respect of the functions to be performed by the State under Rule 26(1) of the MC Rules referred to above;

(xv) **that,** if hearing is done by one person and decision is taken by another person, the same tantamounts to violation of principles of natural justice; and

(xvi) **that** having regard to the provisions of Section 11(3) of the MMDR Act, the petitioner was the most competent person for consideration of grant of mining lease on the basis of the application filed by him pursuant to the notification and the fourth respondent has not complied with all the

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provisions of the MMDR Act and MC Rules and therefore, recommendation for grant of mining lease in favour of the fourth respondent and approval of the same is liable to be set aside.

7. The petition was resisted by the fourth respondent by filing statement of objections contending:

- (i) **that** the petition is not maintainable as Section 30 of the MMDR Act read with Rule 54 of the MC Rules provides for revision for grant of mining lease;
- (ii) **that** Section 26(2) of the MMDR Act enables the State Government to delegate power of hearing under Rule 26(1) of the MC Rules and State Government has to take an institutional decision and it may not be possible for the Minister alone to hear all the applications and make recommendation and institutional decision taken by the delegate would not be vitiated;
- (iii) **that** the State Government having realised that the power to hear under Rule 26(1) of the MC Rules could not be delegated to the third respondent requested the Central Government- the first respondent to return the recommendation made;



- (iv) **that** the Central Government which was bound to return the recommendation made by the State Government has proceeded to approve the recommendation and has passed the order dated 12.7.2005; and
- (v) **that** in view of the specific provision under Section 26(2) of the MMDR Act enabling delegation of powers of the State, notification has been issued on 18.11.2003 authorising the third respondent to give opportunity to the applicants under Rule 26(1) and institutional decision has been taken and the Central Government has rightly approved the recommendation made by the State Government, and once recommendation is made by the State Government, the same cannot be withdrawn and therefore, the writ petition is liable to be dismissed.

8. Writ Petition No.1097/2006 is filed by the petitioner in W.P.No.22564/2005, seeking for quashing the Notification dated 21.12.2005 [wrongly typed as 21.12.2004] notifying the grant of mining lease in favour of fourth respondent in view of the further proceedings that have taken place after the recommendation made by the State Government to the Central Government recommending for grant of mining lease in favour of the fourth



respondent. The said writ petition is also contested by the fourth respondent.

9. The learned Single Judge, after considering the contention of the learned counsel appearing for the parties, by order dated 16.6.2008 held that the decision of this Court rendered in W.P.No.27353/2004 on 28.3.2007 in the case of **SESA GOA LIMITED v. STATE OF KARNATAKA** (subject matter in W.A.No.494/2008) holding that delegation of power under Section 26(2) of the MMDR Act by the State Government in favour of the third respondent-Director of Mines and Geology, is illegal and void and not in accordance with law and therefore would require reconsideration, referred the questions (i) and (ii) referred to above, to the Larger Bench.

10. We have heard the learned counsel appearing for the appellants and the writ petitioners and also the learned counsel appearing for the contesting respondent in the writ petition and the writ appeals and the learned Government Advocate appearing for the State Government and also the learned counsel appearing for the Central Government.



11. The Learned counsel appearing for the writ petitioner in W.P.No.22564/2005 and W.P.No.1097/2006 and also the appellants in W.A.Nos.1095/2008 and 1096/2008 submitted:

(i) **that** the decision of the learned Single Judge in W.P.No.27353/2004 which is pending consideration before this court in W.A.No.494/2008 and connected writ appeals wherein the order passed by the learned Single Judge in W.P.No.27353/2004 is followed holding that the delegation of giving opportunity to the applicant before passing the order on the application for grant of mining lease under Rule 26(1) of the Rules is illegal and void as Rule 26(1) of the Rules requires the State Government to afford opportunity to the applicant before granting or refusing application and the same could not be delegated to the third respondent;

(ii) **that** in view of the settled position of law that person who hears must himself decide and the State Government which has not heard the petitioners could not have decided the merits



of the applications and made recommendation for grant of mining lease in favour of the fourth respondent and therefore, the learned Single Judge ought to have allowed the writ petition and set aside the grant of mining lease in favour of the fourth respondent;

- (iii) **that** the State Government having realised that the power of affording opportunity under Rule 26(1) of the Rules could not be delegated to the third respondent, has requested the Central Government to return the recommendations;
- (iv) **that** the Central Government instead of returning papers has proceeded to approve the recommendation made in favour of the fourth respondent and the said act of the Central Government is clearly illegal and cannot be sustained in the eye of law; and
- (v) **that** in any view of the matter, even on merits, the petitioner is better suited than the fourth respondent for recommendation of his



case for grant of mining lease and therefore, the questions referred to, may be answered in favour of the petitioner by holding that the power of conferring opportunity under Rule 26(1) of the Rules could not be delegated to the third respondent and the recommendation made in favour of the fourth respondent on the basis of the hearing made by the third respondent who is not competent to hear may be set aside and writ petitions and writ appeals be allowed.

12. The learned Government Advocate appearing for the State submits:

- (i) **that** in view of the notification issued by the State in exercise of the power under Section 26(2) of the MMDR Act delegating the power conferred upon the State Government, the opportunity given to the applicant of being heard as contemplated under Rule 26(1) of the MC Rules by the officer in whose favour power of State is delegated for refusal for grant and renewal of mining lease, is legal and valid by virtue of the notification issued under Section 26(2) of the Act;



- (ii) **that** the delegation of power is justified having regard to the number of applications that are received in response to notification dated 15.3.2003 calling for application in respect of grant of mining lease in respect of land situated in several villages;
- (iii) **that** the learned Single Judge has erred in holding that the decision in W.P.No.27353/2004 holding that the delegation of power in respect of third respondent is void and illegal; and
- (iv) **that** the delegation of power of affording opportunity to the applicant can be made under Rule 26(2) of the Rules is justified and therefore, the decision of the learned Single Judge of this court in W.P.No.27353/2005 which has been referred in the other writ petitions which are subject matter of appeal in W.A.No.494/2008, W.A.No.295/2008 and W.A.No.509/2008 is liable to be overruled and that the order passed by the learned Single



Judge in W.P.No.22564/2005 and W.P.No.1097/2006 dismissing the writ petitions is erroneous and the same is liable to be set aside.

13. The learned counsel appearing for the respondents in W.A.Nos.494/2008, 295/2008 and 509/2008 submitted that the decision taken by the learned Single Judge of this court in M/s. SESA GOA LIMITED vs. STATE OF KARNATAKA in W.P.No.27353/2004 which has been followed in other writ petitions is justified as the power to the State Government to afford opportunity to the applicant under Rule 26(1) of the MC Rules could not be delegated to the third respondent and third respondent is not a part to the Government and therefore, recommendation made in favour of the fourth respondent is liable to be set aside.

14. We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinised the material on record.

15. The questions that are referred to the Larger Bench for consideration, by the learned Single Judge of this court, in



W.P.Nos.22564/2005 and 1097/2006 by order dated 16.6.2008 are as follows:

"i)Whether the State Government is bereft of power to authorize an authority, or officer subordinate to it to perform the function contemplated under Rule 26(1) of the Mineral Concession Rules, 1960 - notwithstanding the language of sub-Section (3) of Section 26 of the Mines and Minerals (Development & Regulation) Act, 1957"

ii)Whether the 'hearing' contemplated under Rule 26(1) of the above Rules, require the State Government alone to hear and decide- without the assistance of any other authority or sub-ordinate officer and if there is a division of such responsibility, the proceedings stand vitiated".

16.1. It is necessary to cull out the provisions of the MMDR Act and the MC Rules before considering the contention of the parties to answer the questions referred to the Larger Bench. The MMDR Act requires that the application for grant of mining lease should be made to the State Government.

16.2. Section 10 of the Act reads as follows:

"10. Application for prospecting licences or mining leases: 1) An application for a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals



vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

2) Where an application is received under subsection (1), there shall be sent to the applicant an acknowledgement of its receipt within the prescribed time and in the prescribed form.

3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the permit, licence or lease.

16.3. Section 13 of the Act confers power on the Central Government to make rules in respect of minerals and in exercise of the said power, Central Government has framed Mineral Concession Rules, 1960.

16.4. Section 26 of the MMDR Act which deals with delegation of power reads as follows:

"26. Delegation of powers: 1) The Central Government may, by notification in the official gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by:

a) such officer or authority subordinate to the Central Government or



b) such State Government or such Officer or authority subordinate to a State Government as may be specified in the notification.

2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such Officer or authority subordinate to the State Government as may be specified in the notification.

3) Any rules made by the Central Government under this Act may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any Officer or Authority subordinate thereto".

16.5 . Rule 26 of the MC Rules reads as follows:

"26. REFUSAL OF APPLICATION FOR GRANT AND RENEWAL OF MINING LEASE:

- 1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.
- 2) An application for grant or renewal of a mining lease made under Rule 22 or Rule 24A, as the case may be, shall not be refused by the State



Government only on the ground that Form I or form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of clause (i) of sub-Rule 22.

- 3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant."

17. It is also necessary to cull-out the contents of the notification issued by the State Government dated 18.11.2003 which reads as follows:

"In exercise of the powers conferred by sub section (2) of Section 26 of Mines and Minerals (Development and Regulation) Act, wherein the State Government hereby direct that the powers exercisable by it in relation to the matters detailed below shall also be exercisable by the Director of Mines and Geology, Government of Karnataka.

To give an opportunity of being heard as provided under Rule 26(1) of MCR 1960 before sending the recommendation to Government to



refuse or to grant of mining lease limited only in respect of applicants who have applied for grant of mining lease in response to Government notification No.CI 22 MMM 94 dated 15.3.2003 and Notification No.C1 151 MMM 2003 dated 15.3.2003."

18.1. It is clear from the above said provisions that under the Act, the power of considering the application for grant of mining lease has been conferred upon the State and the State is required to consider the application received for grant of mining lease in accordance with the provisions of the Act and the Rules. Section 26 of the Act enables the delegation of power of the State in favour of Officers subordinate to it.

18.2. The rules framed in exercise of Section 13 of the MMDR Act by the Central Government, prescribes the procedure to be followed by the State while granting mining lease and therefore, on a plain reading of the above said provision of the Act, it is clear that the MMDR Act itself has made provision for delegation of power in favour of Officer or Authority subordinate to the State.

18.3. Section 26(1) of the Act deals with the powers of delegation of the Central Government. Sub-section (2) of Section 26 deals with the power of the State Government for delegation of powers and sub-Section (3) of Section 26 enables delegation



of duties under the Rules, that is, by subordinate legislation. The manner in which State would exercise power vested in it under the Act and the Rules is well settled.

18.4. It is also well settled that a statutory rule while always subordinate to the parent statute is otherwise to be treated as a part of statute as effective. Rules made under statute must be treated for all purpose of the construction or obligation exactly as if they were in the Act and be of the same effect as if contained in the Act and has to be judicially noticed for all purposes of construction or obligation (STATE OF UP vs. BABU RAM UPADHYAY (AIR 1961 SC 751) and STATE OF TAMILNADU vs. HIND STONE (AIR 1981 SC 711)).

18.5. The manner in which the State would exercise its power conferred under the statute has been dealt by the constitutional Bench of the Supreme Court in A.SANJEEVI NAIDU vs. STATE OF MADRAS (AIR 1970 SC 1102) wherein it is observed as follows:

"Under our constitution, the Governor is essentially a constitutional head, the administration of State is run by the council of Ministers. But in the very nature of things, it is impossible for the Council of Ministers to



deal with each and every matter that comes before the Government. In order to obviate that difficulty the Constitution has authorised the Governor under sub-article (3) of Article 166 to make rules for the more convenient transaction of business of the Government of the State and for the allocation amongst its ministers the business of the Government. All matters excepting those in which Governor is required to act in his discretion have to be allocated to one or other of the Ministers on the advice of the Chief Minister. Apart from allocating business among the Ministers, the Governor can also make rules on the advice of his council of Ministers for more convenient transaction of business. He can, not only allocate the various subjects amongst the Ministers but may go further and designate a particular official to discharge any particular function. But this again can be done only on the advice of the Council of Ministers.

12. The Cabinet is responsible to the legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. **The political responsibility of the Council of Ministers does not mean that each and every decision must be taken by the cabinet. The political responsibility of the council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions.** Similarly an



individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. **Even the most hardworking minister cannot attend to every business in his department.** If he attempts to do it, he is bound to make a mess of his department. **In every well-planned administration, most of the decisions are taken by the civil servants** who are likely to be experts and not subject to political pressure. **The minister is not expected to burden himself with the day to day administration.** His primary function is to lay down the policies and programmes of his ministry **while the council of Ministers settles the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as delegate of his Minister. He does it on behalf of the Government.** It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the Officers designated by the 'Rules' or the standing orders, can take decisions on behalf of the Government. **These officers are the limbs of the Government and not its delegates".**

{emphasis supplied}



18.6. In the said decision, viz. **A.SANJEEVI NAIDU** (supra) the Hon'ble Supreme Court has also referred to the decision in **EMPEROR VS. SIBNATH BANERJI** (72 Ind App 241), **KALYAN SINGH vs. STATE OF UP** (AIR 1962 SC 1183) and **ISHWARLAL GIRDHARLAL JOSHI vs. STATE OF GUJRATH** (AIR 1968 SC 870) and has observed in para-18 of the judgment as follows:

"As mentioned earlier in the very nature of things, neither the Council of Ministers nor an individual Minister can attend to the numerous matters that come up before the Government. Those matters have to be attended to and decisions taken by various officials at various levels. When those officials discharge the functions allotted to them, they are doing so as limbs of the Government and not as persons to whom the power of the Government had been delegated. In Halsbury Laws of England Vol I 3rd Edn. At p.170 it is observed:

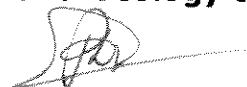
Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister".

19.1. It is clear from the provisions of Section 26(2) of the Act that the said provision enables the State Government by



notification in the official gazette delegate power to exercise right under the MMDR Act, which of course, would also include the Rules framed under the Act in relation to such matters and subject to such condition, if any, that may be specified under the notification be exercisable 'also' by such Officials or Authority subordinate to the State Government as may be prescribed in the notification. In the notification also, the delegation of power of affording opportunity to the applicant under Rule 26(1) of the Rules has been delegated to the Director of Mines and Geology also and therefore, providing opportunity under Rule 26(1) of the Rules shall also be exercisable by the Director of Mines and Geology.

19.2. A harmonious construction of Section 26(2) of the MMDR Act and Rule 26(1) of the MC Rules, makes it clear that the power conferred on the State for refusal of application for grant and renew of mining lease, which is coupled with an obligation to give an opportunity of being heard and for reasons to be recorded in writing and communicate it to the applicant as contemplated under Rule 26(1) of the MC Rules, has to be read into with Section 26(2) of the MMDR Act, which empowers the State Government to delegate any power exercisable under the Act by the officer or the authority subordinate to the State Government, as may be specified in the notification issued under Section 26(2) of the Act. Therefore, there is no illegality or irregularity in delegating such power to the Director of Mines and Geology to process the



application relating to such powers and matters exercisable by the State Government for two reasons, viz.:

(i) in view of the settled position of law that provisions of the Rules are subject to the provisions of the Act; and

(ii) Rules would sub-serve the Act and exercise of such power and discharge of such an obligation by the Officer in whose favour the same are delegated, are deemed to be exercised and discharged by the State Government.

19.3. It is, therefore, clear that the State has not denuded itself of the power to afford opportunity to the applicants and to take decision as to whether the mining lease should be granted or rejected. Even otherwise, it is well settled that the mere fact that power has been delegated would not by itself mean that the State Government which has delegated power to the subordinate Officer would denude itself of the power exercisable and cannot exercise that power, it cannot be said that State Government cannot exercise that power which has been delegated to an Officer subordinate to it.

19.4. In *ISHWAR SINGH vs. STATE OF RAJASTHAN* (2005) 2 SCC 334) the Hon'ble Supreme Court has considered the said question and has dealt with the concept of delegation and the effect of delegation and has held that the delegation of power by the State Government upon an Officer subordinate to it would not preclude the State Government to exercise the power which has been delegated. In the said Judgment, it is observed as follows in the said judgment:

"8. It is an accepted position in law that to "delegate" to another is not to denude yourself. As was observed by *Wills, J. in Huth v. Clarke*²:



"In my opinion the word, in its general sense and as generally used, does not imply, or point to, a giving up of authority, but rather the conferring of authority upon someone else."

As observed by Lord Coleridge, C.J. in 25 QBD 304, the word "**delegation**" implies that powers are committed to another person or body which are as a implies that powers are committed to another person or body which are as a rule, always subject to resumption by the power delegating. The person delegating does not denude himself. (Per Wharton's Law Lexicon, 1976 Reprint Edn. at P.316) **Delegation implies also the power to withdraw delegation.** As indicated in Wharton's Law Lexicon, delegation is a sending away; a putting into commission; the assignment of a debt to another; the entrusting another with a general power to act for the good of those who depute him. The word "delegate" means little more than an agent. **An agent exercises no power of his own but only the powers of his principal.** The observation in *Huth case* was referred to in *Roop Chand case*. In general, a delegation of power does not imply parting with authority. **The delegating body will retain not only power to revoke the grant, but also power to act concurrently on matters within the area of delegated authority except insofar as it may already have become bound by an act of its delegate.** (See *Battelley v. Finsbury Borough Council.*)

{emphasis supplied}

9. In *Corpus Juris Secundum*, Vol.26, "delegate" has been described as follows:

"As a noun, a person sent and empowered to act for another, one deputed to represent another in a more popular but less accurate sense, a regularly selected member of a regular party convention.

As a verb, in its general sense and as generally used, the term does not imply, or point to, a giving up of authority, but rather the conferring authority upon someone else.

At common law, it is the transfer of authority by one person to another, the act of making or commissioning a delegate.

Expression 'delegation of authority of power' is a term which like the word 'delegate' does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself."

10. In *Collins English Dictionary* the word "**delegate**" has been stated to be a person who is chosen to vote or make decisions on behalf of a group of other people. **If you delegate duties, responsibilities or power to someone, you give them those duties, those responsibilities, or that power so that they can act on your behalf. If you are delegated to do something you are given the duty of acting on someone else's behalf by making decisions, voting, or doing some particular work.**

11. In *Black's Law Dictionary*, 6th Edn., the word "**delegate**" has been stated to mean a person who is appointed, authorised, delegated or commissioned to act in the stead of another. **Transfer of authority from one to another. A person to whom affairs are committed by another. "Delegation" according to the said dictionary means, instructing another with a general power to act for the good of those who depute him; transfer of authority by one person to another.**

12. According to *Venkataramaiya's Law Lexicon*, "delegation" as the word generally used does not imply a parting with powers of



the person who grants the delegation, but points rather to a conferring of an authority to do things which otherwise the person would have to do himself."

{emphasis supplied}

19.5.1. That apart, in the case of *CARLTONA LTD. v COMMISSIONERS OF WORKS* [(1943) 2 All.ER 560] it is said:

"It cannot be supposed that this regulation meant that, in each case the Minister in person should direct his mind to the matter. The duties imposed upon Ministers and the powers given to the Ministers are normally exercised under the authority of Ministers by responsible officials of the department. Public business could not be carried on if that were not the case. Constitutionally, the decision of such an official is, of course, the decision of the Minister. The Minister is responsible. It is he who must answer before Parliament for anything that his officials have done under his authority....."

19.5.2. It is also apt to quote the text from Wade's Administrative Law, which reads thus:

*"Consequently, many ministerial powers exercised by officials who recite, 'I am directed by the Minister', 'the Minister is of the opinion', and so forth, when in reality they are acting on their own initiative. If the proper official is acting in his capacity as such, the assumption of ministerial authority is lawful. This doctrine is assumed to extend equally to legislative powers, since it is common practice for officials to issue statutory regulations under powers vested in this ministers (vide *Lewisham BC v Robers* [(1949)2 KB 608]"*

19.6. Having regard to the principle laid down by the Hon'ble Supreme Court in *ISHWAR SINGH vs. STATE OF*

RAJASTHAN, the wordings of Section 26(2) of the Act and the notification issued by the State Government delegating power of affording opportunity to the applicant under Rule 26(1) of the Rules upon the Commissioner and Director of Mines and Geology, **we have no hesitation in holding that the State Government has not denuded itself of the power to consider the application and to afford an opportunity to the applicant under Rule 26(1) of the Rules as the Commissioner and Director of Mines and Geology has also been authorised to afford opportunity under Rule 26(1) of the Rules.**

20. The material and the original records produced by the learned Government Advocate would clearly show that after the evaluation report was submitted by the Commissioner and Director of Mines and Geology the same has been considered by the Under Secretary to Government, Mines and the same has been approved by the Additional Secretary, Mines and Secretary to Government, Commerce and Industries Department and thereafter the matter was placed before the Hon'ble Minister for his consideration for grant of mining lease over an area of 224 Hectares in Vonnahalli, Bellary Taluk and District for iron and manganese ore.



21. The Hon'ble Minister after considering the evaluation report and the material on record has recommended for grant of mining lease in favour of the fourth respondent and therefore, it is clear the mere fact that the Commissioner and Director of Mines and Geology has been authorised to afford an opportunity to the applicant under Rule 26(1) of the Rules and to prepare an evaluation report the Government, by itself would not preclude the Hon'ble Minister to exercise his power, after receipt of the evaluation report, which was also looked into and approved by the Secretary to Government, Commerce and Industries Department and thereafter placed for consideration of the Hon'ble Minister; and hence, there is no violation of the provisions of the Act and the Rules and the notification delegating power of giving opportunity to the applicant under Rule 26(1) of the Rules is also justified. In view of the above said reasoning given by us in holding that the State Government was justified in delegating the power vested in it under Rule 26(1) of the Rules by the Commissioner and Director of Mines and Geology is justified as Rules are to be treated as part of the Act and sub-Section (2) of Section 26 clearly enables the State Government to delegate the power exercisable by an Officer subordinate to it and by the said notification and the provisions



of Section 26(2) of the Act, the State Government is not precluded from exercising power exercisable under Rule 26(1) of the Rules, and therefore the reasoning of the learned Single Judge that State Government could not have delegated the power exercisable by it under the Rules is clearly erroneous and cannot be sustained.

22. Similarly, the reasoning given by the learned Single Judge in W.P.No.27353/2004 by holding that the notification delegating power of the State in favour of the Commissioner and Director of Mines and Geology dated 18.11.2003 only enables the said person to afford opportunity to the applicant and the decision is to be taken by the Government and this would lead to the dichotomy as person who hears would not be deciding and this would be contrary to the well settled principle of interpretation that person who hears must decide and if one person hears and other decides, in our considered opinion, is violative of basic principle of Judicial jurisprudence. The learned Single Judge failed to note that in the present case, since number of applications pursuant to notification dated 15.3.2003 calling for applications in respect of land situated in various areas have been received, the Minister could not have himself afforded an opportunity under Rule 26(1) of the Rules to the



applicant and the power of affording opportunity to the applicant and preparing an evaluation report has been delegated to the Commissioner and Director of Mines and Geology which is permissible as held by us and that would not lead to hearing of application by one person and decision to be taken by another. The material on record would clearly show that after the evaluation report was submitted by the Director of Mines and Geology, the Secretary of Industries and Commerce, Government of Karnataka has considered the said evaluation report and thereafter placed the matter for consideration before the Hon'ble Minister and the Hon'ble Minister himself has verified the material on record and thereafter made recommendation and further, it is well settled that the principle that one person who hears must decide would not be applicable to cases wherein the decision is to be taken by the State Government and not by any individual and institutional decisions have to be taken.

23. The learned Single Judge is also not justified in holding that in view of the principle laid down by the Hon'ble Supreme Court in GULLAPALLI NAGESHWARA RAO vs. APSRTC (AIR 1959 SC 308) if one person affords personal hearing and another decides, the same would be opposed to basic principle of judicial jurisprudence. In the said case, what was required to be given



was a personal hearing and under Rule 26(1) of the Rules what is required to be afforded to the applicant is an opportunity of being heard and it is not the case of the petitioner or the fourth respondent that an opportunity of personal hearing was given before the Commissioner and Director of Mines and Geology and even as per the notification issued under Rule 26(1) of the Rules by the Commissioner and Director of Mines and Geology since there are number of applicants, applicants were directed to make their presentation and the Commissioner and Director of Mines and Geology has only prepared an evaluation report and placed the same before the Government for consideration for grant or refusal of the application for mining and the Officers of the State and the Hon'ble Minister have considered the material on record and made recommendation and therefore, having regard to the facts of the case, it is clear that the reasoning of the learned Single Judge in W.P.No.27353/2004 that since the matter was heard by the Director of Mines and Geology and decision is taken by the Minister without reference to the above such proceedings of the Government is erroneous and unsustainable in law.

24. Similarly, the other reasoning assigned by the learned Single Judge in passing the order in W.P.No.27353/2004 that the



Government itself had obtained opinion from the Law Department and has made recommendation for withdrawal of the recommendation would itself reiterate that it had no power to delegate the power of affording opportunity under Rule 26(1) of the MC Rules to the applicant under Section 26(2) of the MMDR Act in favour of the Director of Mines and Geology. The said reasoning is also erroneous as it is clear from the perusal of the material on record that even though the State Government had addressed a letter to the Central Government to send back the papers in view of the opinion given by the Law Department, the Central Government has obtained opinion from the Law Department and according to the opinion, the delegation of power to afford opportunity under Rule 26(1) of the Rules by the State Government is justified and the same would not be violation of principles of natural justice or basic principle of judicial jurisprudence that a person who hears must decide and accordingly, the central Government has approved the recommendation made by the State Government and thereafter, the State Government granted mining lease in favour of the fourth respondent. Therefore, the mere fact that the Law Department of the State Government had opined that the delegation of power under Section 26(2) of the MMDR Act in



favour of the Director of Mines and Geology may not be proper, would not assume any importance in the facts of the present case as referred to above and accordingly, we hold that the finding given by the learned Single Judge while deciding W.P.No.27353/2004 on 28.3.2007 which is pending in Writ Appeal No.494/2008 is erroneous and cannot be sustained and does not laid down the correct law and accordingly, we answer question No.1 referred to the Larger Bench, by the learned single Judge, as follows:

The State Government is not bereft of power to authorize an authority, or officer subordinate to it to perform the function contemplated under Rule 26(1) of the Mineral Concession Rules, 1950 notwithstanding the language of sub-Section (3) of Section 26 of the Mines and Minerals (Regulation & Development) Act, 1957.

25. In view of our answer to question No.1 by holding that the State Government is not precluded from exercising power of affording opportunity under Rule 26(1) of the Rules by mere fact that the said power has also been delegated in favour of the Commissioner and Director of Mines and Geology and having



regard to the wordings of the notification and the facts of the case, it is clear that there is no division of responsibility of hearing and deciding by two persons and therefore, the proceeding of the State Government would not stand vitiated. Consequently, we agree with the opinion expressed by the learned Single Judge while making reference in W.P.No.22564/2005 and W.P.No.1097/2006 by order dated 16.6.2008 in holding that the State Government has power to delegate its power under Section 26(2) of the MMDR Act in favour of the Director of Mines and Geology and that the finding to the contrary given by the learned Single Judge in the order passed in W.P.No.27353/2004 dated 27.4.2007 does not lay down the correct law.

26. After answering the questions referred to the Bench, we have to further consider as to whether the recommendation made in favour of the fourth respondent for grant of mining lease and acceptance of the said recommendation by the Central Government and issuance of the order granting mining lease in favour of the fourth respondent is vitiated having regard to the facts of the case as contended in the W.P.No.22564/2005 and W.P.No.1097/2006 as the learned Single Judge by order dated 16.6.2008 has proceeded to dismiss both the writ petitions and



being aggrieved by the same, the petitioner's in W.P.No.22564/2005 and W.P.No.1097/2006 have preferred W.A.Nos.1095/2008 and 1096/2008.

27.1. In both the appeals, appellant is the same and is being aggrieved by the recommendation made by the Central Government which arises out of W.P.No.22564/2005 and W.P.No.1097/2006.

27.2. Learned counsel appearing for the appellant in both the appeals submitted that the application filed by the writ petitioner-appellant has been excluded from consideration on an irrelevant ground that the said application was received after the expiry of thirty days of publication of the notification and only the application which was received on the first day after expiry of thirty days of the publication of the notification dated 15.3.2003 i.e. applications received on 16.3.2003 were alone to be considered and therefore, there is non-consideration of the application filed by the petitioner on 17.4.2003.

28. On the other hand, learned counsel appearing for the contesting respondent-fourth respondent submitted that the evaluation of all the applications have been made by the Commissioner and Director of Mines and Geology and on the



basis of the same, the Hon'ble Minister has also considered the material on record and made recommendation in favour of the fourth respondent and fourth respondent is better suited for grant of mining lease as compared to the petitioner.

29. The learned Government Advocate has made available the original records pertaining to evaluation of the applications received pursuant to the notification dated 15.3.2003.

30.1. Consideration of the merit of the case in W.A.Nos.1095/2008 and 1096/2008:

We have given careful consideration to the contentions of the learned counsel appearing for the parties and scrutinised the material on record.

30.2. It is clear from the scrutiny of the material on record that pursuant to the notification dated 15.3.2003, twenty-three applications were received for grant of mining lease in respect of 224 hectares of land in Sy.No.283 of Vonnahalli, Bellary Taluk and District. Nineteen applications were received on 16.4.2003 i.e. the first day after the expiry of thirty days of publication of notification dated 15.3.2003 and the application filed by the



petitioner and three other applications were received on 17.4.2003.

30.3. The evaluation report of the Commissioner and Director of Mines and Geology would clearly show that he has excluded the four applications received on 17.4.2003 on the ground that they were not received on the first day after expiry of thirty days from the date of publication of the notification dated 15.4.2003 and only those applications at Sl.No.1 to 19 which were received on 15.4.2003 i.e. on the first day after expiry of thirty days from the date of publication of the notification dated 15.3.2003 are to be considered and accordingly excluded the application of the petitioner which was received on 17.4.2003 from consideration on the ground that it was not received on the first day after expiry of thirty days from the date of application of the notification dated 15.3.2003. The said reasoning is clearly erroneous and contrary to the provisions of Section 11(2) of the Act.

30.4. The Director of Mines and Geology has misconstrued the provisions of Section 11(2) of the Act to reason that only the application received on the first day after expiry of thirty days from the date of publication of the notification has to be



considered on priority and application received after the first day after expiry of thirty days of the publication of the notification cannot be given priority and has grossly erred in excluding the application filed by the petitioner on the ground that it was not received on 16.4.2003, i.e., the first day after the expiry of date of publication of the notification dated 15.3.2003. Section 11(2) of the Act reads as follows:

"11(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 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 purpose of assigning priority under this sub-Section."

30.5. It is clear from the above, that in accordance with proviso to sub-Section (2) of Section 11 of MMDR Act, the Government invited applications by notification in the Official Gazette for grant of permit licence or lease to all the applications received during the period specified in such notification and the applications which have 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 purpose of assigning priority under the sub-Section and therefore, all the applications received after the expiry of thirty days from the date of publication of notification dated 15.3.2003 i.e. on 16.4.2003 onwards are deemed to have been received on the same day for the purpose of assigning priority under the sub-Section. Therefore, the action of the Director of Mines and Geology in excluding the application filed by the petitioner on the ground that it is not received on the first day after the expiry of thirty days from the date of publication of the notification and that it is received on the second day after the expiry of thirty days from the date of publication of the



notification is clearly erroneous and unsustainable in the eye of law and contrary to proviso to Section 11(2) of the MMDR Act and therefore, there is non-consideration of the application filed by the petitioner which was entitled to be considered along with other applications received for grant of mining lease in respect of 224 hectares of land in Sy.No.28 of Vonnahalli, Bellary Taluk and District and thus, the petitioner's application has been excluded erroneously from consideration in the evaluation report submitted by the Director of Mines and Geology.

30.6. In view of the above fact, it is clear, the recommendation for grant of mining lease in favour of the fourth respondent has been made without considering the application filed by the petitioner, which was excluded from consideration along with other applications on an erroneous ground that it is not entitled to be considered on priority along with the other applications received on 15.4.2003 as referred to above.

30.7. That apart, the recommendation made by the State Government for grant of mining lease in favour of the fourth respondent which has been accepted by the central Government and also the grant of mining lease in favour of the fourth



respondent subsequent to approval by the Central Government cannot be sustained and the same is liable to be set aside.

30.8. The order of the learned Single Judge dated 16.6.2008 dismissing the W.P.No.22564/2005 and W.P.No.1097/2006, therefore, is liable to be set aside and writ petitions are entitled to be allowed and the matter is liable to be remitted for fresh consideration of the application of the petitioner along with the application of the fourth respondent and other applications strictly in accordance with the provisions of MMRD Act and MC Rules. Accordingly, W.A.Nos.1095/2008 and 1096/2008 are entitled to be allowed.

31.1. Consideration of merits of the case in W.A.Nos.494/2008, 295/2008 and 509/2008:

In view of our answer to questions referred to the Bench, the finding of the learned Single Judge, which is impugned in these writ appeals, that the notification dated 18.11.2003 delegating power of the State to afford an opportunity of hearing under Rule 26(1) of the Rules to be exercised also by the Director of Mines and Geology is destructive of the provisions of Section 26(2) of the Act and unsustainable, is liable to be set aside. However, the learned Single Judge has assigned other



reasons for allowing the writ petitions in W.P.Nos.22353/2004 and 12343/2004 and has set aside the recommendation made in favour of the fourth respondent in the writ petition-appellants in W.A.Nos.494 and 509/2008.

31.2. In W.P.No.27364/2005 recommendation made in favour of the fourth respondent in the Writ petition (appellant in WA.No.295/2008) has been set aside only on the ground that the notification delegating power of the State in favour of Director of Mines and Geology is unsustainable and following the decision passed in W.P.No.27353/2004 and matter has been remitted for reconsideration of the applications filed by the writ petitioner and the fourth respondent in accordance with law.

32.1. In all the writ petitions out of which these writ appeals arise, the writ petitioners are aggrieved by the recommendation made in favour of the appellant in these writ appeals, who was arrayed as respondent No.4 in the writ petitions, in respect of item No.6 in the notification dated 15.3.2003 for grant of mining lease for an area of 426.50 hectares of Ramanamale Block, RMB Block, Sandur Taluk of Bellary District.



32.2. It is clear from the perusal of the evaluation report and consideration of the applications for grant of mining lease prepared by the Director of Mines and Geology that notice had been issued to the writ petitioner in W.P.No.27353/2004 (M/s.Sesa Goa Limited) under Rule 26(1) of the MC Rules on the basis of the application filed by it in Application No.172 AML:94 dated 11.10.2004 and the writ petitioner had appeared before the Director of Mines and Geology pursuant to the said notice dated 20.11.2003. However, the same has not been considered while evaluating the applications received.

32.3. The fact that the petitioner in W.P.No.27353/2004 had filed five applications for grant of different areas in Ramadurga Range on 11.10.1994 as per Applications Nos.170 to 174 AML 1994, the said applications which were pending consideration before the issuance of notification dated 18.11.2003 ought to have been considered, as it is not disputed that the said applications were pending consideration and the very fact that the notice was issued by the Director of Mines and Geology under Rule 26(1) of the Rules would clearly show that the application of the writ petitioner which had been filed earlier to the date of notification was being considered.



32.4. The learned single Judge has rightly held in his order dated 28.3.2007 that under proviso to Section 11(2) of the Act all the applications received during the period prescribed in the notification and all the applications filed prior to the notification which are pending are to be considered together.

32.5. This Court, after detail consideration of the provisions of the MMDR Act and the MC Rules, in W.A.No.5026/2009 and connected matters dated 5.6.2009, has laid down the law that all the applications which have been filed prior to the date of notification and has not been disposed of and were pending consideration, has to be considered along with the applications received pursuant to the notification.

32.6. Therefore, following the reasons in the said Judgment in W.A. No.5026/2009 and connected matters, disposed of on 5.6.2009, we hold that the finding of the learned Single Judge that the recommendation made in favour of the fourth respondent in the writ petition-appellant in W.A.No.494/2008 is liable to be set aside and direction issued by the learned single Judge that respondents 1 and 2 shall consider the mining lease applications filed by the writ petitioner in 1994 and application filed pursuant to the notification over an area of



700 and 830 hectares along with the other applications in accordance with law, is justified, and to that extent the order passed by the learned Single Judge allowing the writ petition is entitled to be confirmed and accordingly, we hold that there is no merit in W.A.No.494/2008.

33.1. It is clear from the averments made in the writ petition as also the order passed by the learned Single Judge and the evaluation report which has been produced for perusal of this court by the learned Government Advocate that the writ petitioners in W.P.No.27364/2005-M/s.Mukund Limited made an application for grant of lease on 15.4.2003 and was shown as SI.No.9 in the evaluation list prepared by the Director of Mines and Geology and the application by the writ petitioner in W.P.No.12343/2004 was filed on 16.4.2003 and his name was shown at SI.No.17-Mr.Praveen Kumar Nikkam in the evaluation list.

33.2. The scrutiny of the material on record would clearly show that writ petitioner in W.P.No.27364/2005 out of which W.A.No.295/2008 arises had appeared before the Director of Mines and Geology and made a representation contending that the applicants are manufacturers of Alloy and Special Steel



Blooms, Billets and Rounds through Energy Optimising Furnace route with a total capacity of 3,00,000 MT per annum and the unit is set up at Ginigera, Koppal Taluk and District and they have commissioned their plan during 1998 and increased their production levels gradually over the years. Similarly, during the year 2002-03 they have achieved full capacity utilisation of their plant and they have undertaken various expansion programmes after which the annual production of the plant will be increased to 4,00,000 MT per annum and details of the said averments are produced along with the representation. Further, it is clear from the evaluation report that the application of the writ petitioner in W.P.No.27364/2005-M/s.Mukund Limited which was shown at Sl.No.9 has been rejected on the ground that they have not indicated any proposal for evaluation of the product mined and therefore, the said reasoning assigned in the evaluation report and accepted by the State while recommending the fourth respondent for grant of mining lease in preference to the writ petitioner in W.P.No.27364/2005, is clearly erroneous and suffers from error apparent on the face of the order.

34.1. So far as petitioner in W.P.No.12343/2004-Mr.Praveen Kumar Nikkam is concerned, shown at Sl.No.17, his application has been rejected on the ground that the applicant



does not generate adequate funds and they have not given any supporting documents when they were given opportunity as per Rule 26(1) of the MC Rules. The scrutiny of the material on record would clearly show that the writ petitioner in W.P.No.12343/2004 had appeared before the Director of Mines and Geology in response to the notice issued under Rule 26(1) of the MC Rules and made a presentation. Perusal of the evaluation report prepared by the Director of Mines and Geology would clearly show that the application of the petitioner in W.P.No.12343/2004-Mr.Praveen Kumar Nikkam has not been considered properly on the ground that they have not produced supporting documents to show their financial capabilities.

34.2. The evaluation report prepared by the Director of Mines and Geology on the basis of which recommendation has been made for grant of mining lease in favour of the fourth respondent in the writ petition-appellant in WA.No.509/2008 and WA.No.295/2008 would clearly show that the Director of Mines and Geology has gone on eliminating the applications on the ground which are not justifiable as already referred to above in respect of the petitioner in WP.No.27364/2005 wherein though the applicant-M/s.Mukund Steel Ltd., shown at Sl.No.17 has started an industry, the Director of Mines and Geology has



proceeded on the basis that they have not indicated any proposal for value addition to the product mined. The material on record would clearly show that 74 applications were received pursuant to the notification. Out of them 60 applications were received on 16.4.2003 and the Director of Mines and Geology proceeded on the basis that only application received on 16.4.2003-the first day after the expiry of thirty days from the date of publication of the notification has priority and 14 applications received thereafter cannot be considered and accordingly, excludes 14 applications received after 16.4.2003 and thereafter, out of 60 applications, the applications at Sl.Nos.10, 17, 19, 33, 39, 48, 50, 53 and 55 are excluded on the ground that they have not produced any document to show their financial capabilities with supporting documents and in respect of application Nos.1 to 7, 9, 11, 12, 13, 14, 16, 18, 20 to 23, 26, 28 to 31, 34 to 38, 40 to 47, 49, 51, 52, 54, 56, 57, 59 and 60 have been rejected on the ground that they do not possess any experience in regard to mining activity and they have not indicated any proposal of value addition to the product mined.

34.3. After eliminating the said applications, only seven applications were taken up for consideration and three applications were rejected on the ground that they do not have



any experience and they have not produced documents to show that they have experience in the field of mining and they do not deserve to be considered and thereafter, among the four applications, the application of fourth respondent has been recommended for grant of mining lease. Therefore, it is clear that the recommendation made for grant of mining lease in favour of the fourth respondent-appellant in these appeals is not preceded by proper consideration of the applications received pursuant to the notification, i.e., applications filed by writ petitioners in W.P.No. 27364/2005 (M/s.Mukund Limited), W.P.No.12343/2004 (Mr.Praveen Kumar Nikkam) and the application of the writ petitioner in W.P.No.27353/2004 which are filed prior to the date of notification dated 15.3.2003.

34.4. The order passed by the learned Single Judge quashing the recommendation made in favour of the fourth respondent is confirmed and the direction issued by the learned Single Judge to the respondents to reconsider the applications of the writ petitioners and the fourth respondent, in accordance with law, keeping in view the observations made in W.P.No.27353/2004 is also confirmed.



34.5. The finding of the learned Single Judge that notification dated 18.11.2003 delegating the power of the State under Section 26(2) of the MMDR Act in favour of Commissioner and Director of Mines and Geology is illegal and unsustainable is liable to be set aside. However, the finding of the learned Single Judge in all the writ petitions out of which these appeals arise that the recommendation for grant of lease made in favour of the fourth respondent in the writ petition-appellant herein is liable to be set aside is justified for other reasons and the reasons assigned in this order and to that extent, the order allowing the writ petitions and issuing consequential directions for reconsideration of the applications are entitled to be confirmed.

36. The questions referred to the Bench are answered as follows:

"1. The State Government is not bereft of power to authorize an authority, or officer sub-ordinate to it to perform the function contemplated under Rule 26(1) of the Mineral Concession Rules, 1950- notwithstanding the language of sub-



Section (3) of Section 26 of the Mines and Minerals (Regulation & Development) Act, 1957.

2. The 'hearing' as contemplated under Rule 26(1) of the above Rules, does not require the State Government alone to hear and decide without assistance of any other authority or subordinate Officer, there is no division of responsibility of hearing and deciding while delegating the power of the State Government."

37. In view of our answer to the above questions, we hold that delegation of power of State under Section 26(2) of the MMDR Act to the Director of Mines and Geology by notification dated 18.11.2003 is valid in law and accordingly, we pass the following:



ORDER

- (i) Writ Appeal Nos.1095/2008 and 1096/2008 are allowed;
- (ii) Dismissal of the W.P.Nos.22564/2004 and 1097/2006 by the learned Single Judge by order dated 16.6.2008 is set aside and the said writ petitions are allowed.
- (iii) Recommendation made for grant of mining lease in favour of the fourth respondent in the writ petitions, approval of the same by the Central Government and grant of mining lease by the State Government in W.P.Nos.22564/2005 and 1097/2006 are quashed ;
- (iv) Respondents are directed to consider the application of the fourth respondent and the writ petitioners along with other applications which are entitled to be considered as per the direction issued in other writ appeals in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the Mineral Concession Rules, 1960;



- (v) Writ Petitions Nos.22564/2005 and 1097/2006 are allowed accordingly; and
- (vi) Writ Appeal Nos.494/2008, 295/2008 and 509/2008 are dismissed.
- (vii) However, no order as to costs.

Sd/-
Chief Justice
Sd/-
JUDGE

Index: Yes/No

Web Host: Yes/No.

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