PETITIONER:
INDUSTRIAL DEVELOPMENT CORPORATION OF ORISSA LTD.

Vs.

RESPONDENT:
UNION OF INDIA & OTHERS

DATE OF JUDGMENT: 23/07/1996

BENCH:
CJI, B.L. HANSARIA

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Ahmadi, CJI

Special leave granted.

These appeals seek to challenge: (1) the common judgment and order of the Orissa High Court dated April 4, 1995, arising out of OJC No.7729 of 1993 and allied matters and (2) the decision of the Central Government dated August 17, 1995 made pursuant to the said judgment of the High Court.

The appellants in these appeals are the Tata Iron and Steel Company, Limited, (hereinafter called "TISCO") and the Industrial Development Corporation of Orissa Limited (hereinafter called "IDCOL"). The principal respondents are the Union of India, the State of Orissa, M/s. Indian Charge Chrome Limited, (hereinafter called "ICCL"), Indian Metal & Ferro Alloys Limited (hereinafter called "IMFA"), M/s. Jindal Strips Limited, (hereinafter called "JSL"), Ferro Alloys Corporation Limited (hereinafter called "FACOR") and Ispat Alloys Limited.

The factual matrix of the case is as follows:

The appellant, TISCO, is a limited company, one of whose primary objects has been to carry on business as a mining industry. It claims that it was the first to discover Chrome ore in the Sukinda Valley, Orissa, in the year 1949. It applied to the Raja of Sukinda for a prospecting licence and was granted the same in 1952. On October 22, 1952, it was granted a mining lease over an area of 1813 hectares for chromite for a period of 20 years. Subsequently, under the provisions of the Orissa Estates Abolition Act, 1952, on the rights of the Raja having vested in the State Government, the latter recognised the lease of TISCO for a period of 20 years with effect from January 12, 1953.

TISCO claims that over the years, it has spent more than Rs.180 crores for the development of the mine, including Rs.27 crores spent in setting up a beneficiation plant. It utilises the Chrome ore mined by it for the manufacture of Charge Chrome/Ferro Chrome refractories. It also supplies ore to forty Chrome ore based industries situated in different parts of the country.

In the year 1957, Parliament enected the Mines &

Minerals (Regulation & Development) Act, 1957, (hereinafter called "the Act"). Section 8 of the Act deals with the renewal of mining leases which are to be granted by the Central Government, Applications under this Section are to be made through the State Government which is to furnish all relevant information and material to the Central Government. On October 10, 1980, the Central Government issued a circular which laid down guidelines in this behalf. Under the provisions of the Mineral Conservation & Development Rules, 1988, framed under Section 18 of the Act, the Indian Bureau of Mines is also required to furnish relevant information to the Central Government.

Since the lease was to expire on January 12, 1973 TISCO sought its renewal which was duly granted under Section 8(2) in respect of 1261.476 hectares for a period of 20 years i.e. till January 11, 1993, subject to the condition that lt would set up a beneficiation plant.

On October 3, 1991, more than a year prior to the date of expiry of the lease, TISCO applied for a second renewal under Section 8 (3) of the Act for a further period of 20 years, On November 28, 1992, the State Government, acting on the basis of a favourable report dated March 31. 1992 submitted by the Director of Mines & Geology, Orissa Recommended to the Central government that the entire lease of TISCO be renewed for a period of 10 years under Section 8(3) of the Act. On April 27, 1993, the Indian Bureau of Mines, after analysing the mining plan submitted by TISCO, recommended to the Central Government that TISCO'S lease be renewed in its entirety.

On June 3, 1993, the Central Government authorised the renewal of the lease over the entire area of 1261.476 hectares. However, before the formal lease could be executed, the Union Minister of State for Steel & Mines, acting on a complaint filed by Shri G.C. Munda, Member of Parliament, directed that the matter be kept in abeyance. On September 27, 1993, the said Union Minister wrote a letter to the Chief Minister of Orissa stating that the lease area of TISCO should be reduced by half and the balance should be distributed in an equitable manner taking into consideration the need of genuine consumers for captive consumption.

On October 5, 1993, the Central Government superseded its earlier approval dated June 3, 1993, and renewed TISCO's lease over a reduced area of 651 hectares. On October 19, 1993, TISCO filed a writ petition in the High Court, being OJC No.7729/93, under Article 226 of the Constitution challenging the order dated October 5, 1993, inter alia on the ground that the scheme of equitable distribution on mining leases on the basis of need of an industry is extrancous to the concept of mineral development, which alone is relevant under Section 8(3). of the Act. Meanwhile, FACOR, Ispat Alloys, JSL and Jindal Ferro Alloys Ltd. applied for mining leases of the area held by TISCO, but the State Government refused to entertain them as being premature under Rules 59 and 60 of the Mineral Concession Rules framed under the Act (hereinafter called "the Rules").

While TISCO's writ petition was pending, ICCL and JSL filed writ petitions, being OJC No.5422/94 and OJC No.7054/94, challenging the renewal of TISCO's lease by 'the Central Government, both the order dated June 3, 1993 (which had authorised the renewal of the entire lease area of 1261 hectares) and the order dated October 5, 1993 (which subsequently reduced the authorisation to 651 hectares) were challenged.

By its impugned order dated April 4, 1995 the High Court of Orissa struck down the renewal of TISCO's lease

granted by the Central Government through its decisions dated June 3, 1993 and October 5, 1993. Thereafter, it directed the Central Government to reconsider TISCO's application for renewal of the lease in accordance with law; the Central Government was also directed to give a personal hearing to, and consider the applications of, the other parties before the Court.

The High Court of Orissa after hearing lengthy arguments of counsel appearing for different interests including the Central and the State Governments concluded in paragraph 57 of its judgment that two courses were open to it, namely, (i) to accept the submission of the counsel for the State Government that all the writ petitions should be dismissed and the parties may be asked to exhaust the alternative remedy of permitting the State Government to take a decision as authorised by the Central Government and if any party is aggrieved it may move the Central Government under the Act and the Rules, or (ii) the Court may dispose of the writ petitions giving certain specific directions in the shape of guidelines to the Governments as well as other authorities under the Act to consider in the light thereof if there is any necessity to renew the lease for the whole or part of the area covered under the lease. The High Court took the second course, in that, it accepted the submission of counsel for the State Government that the Central Government should hear the matter de novo on TISCO's application for renewal of the lease after hearing all parties including ICCL and JSL. It set aside the orders dated June 3, 1993 and October 5, 1993, inter alia on the ground that the Central Government had not kept in view the recommendation made by the Rao Committee which was accepted by this Court in the case of Indian Metals & Ferro Alloys Ltd. v. Union of India [AIR 1991 SC 818, = 1992 Supp.(1) SCC 91], and directed the Central Government to hear the application for renewal of the lease, keeping in view the report submitted by the Rao Committee and the decision of this Court in the aforesaid case.

After the judgment of the High Court was delivered on April 4, 1995, a Committee was constituted by the Ministry of Mines, Government- of India, under the Chairmanship of one Shri S.D. Sharma for rehearing and reconsidering the issue in regard to the renewal of mining lease to TISCO. The Committee submitted a report dated August 16, 1995, recommending renewal of the lease for a reduced area to TISCO. Acting on that report, on the very next day, August 17, 1995, the Central Government authorised the renewal of TISCO's lease over the reduced area of 406 hectares which, according to the Central Government, would meet TISCO's captive requirements and requested the State Government to issue orders for the same. At the same time, in exercise of powers conferred" by Rule 59(2) of the Rules, the Central Government relaxed the provisions of sub-rule (1) with the objective of expediting the process of granting chromite ore and requested the State Government to grant mining leases to four other parties, namely, ICCL, JSL, IMFA and FACOR for the balance area of 855.476 hectares.

SLP Nos.10838/95, 11391/95 and 11392/95 seek to challenge the order dated April 4, 1995 of the Orissa High Court and SLP Nos.22710/95, 23131/95 and 23132/95 seek to challenge the Central Government's decision dated August 17, 1995, made pursuant to the High Court's order dated April 4, 1995. While the first four special leave petitions have been filed by TISCO, the last two have been filed by IDCOL.

Before we proceed to deal with the arguments of counsel appearing for the different parties, we must deal with the

impugned judgment of the Orissa High Court and the report of the Committee that was set up pursuant to its directions, in some detail.

In its impugned judgment, the High Court has taken the view that Section 8(3) of the Act is applicable to the dispute in the present case; it further held that this provision mandatorily requires the Central Government to give reasons as to why it was in the interest of mineral development to renew TISCO's lease The High Court took note of the decision of this Court in Indian Metals case where, faced with a dispute involving the grant of rights for the mining of chromite ore in the State of Orissa, this Court had appointed a Committee headed by the Secretary to the Government of India in the Ministry of Mines, Mr. B.K. Rao thereinafter called the Rao Committee") to consider the claims of the various parties. The Rao Committee submitted its report wherein it studied the issue of mining of chromite ore in the State of Orissa at great length and gave its specific findings. This Court, in rendering its final decision in the Indian Metals case, relied on the Rao Committee report and also opined that the report was bound to be of use. to the Central Government as well as the State Government of Orissa in regard to their future policy in the matter of grant of chromite leases.

The. High Court of Orissa was, therefore, of the view that in deciding to renew TISCO's lease, the Central Government should have considered the Rao Committee report as well as the decision of this Court in Indian Metals case and for its failure to do so, the High Court struck down the orders of the. Central gvernment renewing TISCO's lease. The High Court directed the Committee that was to be set up, to consider the issue keeping in mind the Rao Committee report, this Court's decision in Indian Metals case, the National Mineral Policy and all other factors relevant under the Act. Before the High Court, the learned counsel for TISCO put forth a preliminary objection; he argued that since the matter concerned the issue of renewal of TISCO's lease, the other parties before the High Court had no locus standi in view of the express bar in Rules 59 and 60 of the Rules . After considering these submissions, the High Court while directing the constitution of Committee to look into the matter, made following observations:

> "As we are of the view that the Central Government should consider afresh and as Mr. B.M. Patnaik has submitted that the Central Government has no objection to consider afresh, there is no bar and/or impediment if the Central Government considers the proposal of subsequent renewal of lease of TISCO by giving it opportunity of hearing which. may be effected in presence of the other petitioners who have come to this Court. Nevertheless, it is submitted that the Central Government has no obligation to invite other intending parties besides the writ petitioners in the case at the time of disposal of the application for a subsequent renewal of the lease at the instance of TISCO, this Court finds that by the ultimate result other writ petitioners are

consequently to be affected by renewal, part renewal or refusal of the lease in favour of TISCO They may be heard by way of fair play and in compliance with the principles of natural justice, and to enable them to place on record such necessary facts for essential consideration by the Central Government. It is made very much clear that only in the event of availability of the area occupied by TISCO, State Government will consider their prospective applications in accordance with law."

The Committee which was appointed by the Central Government pursuant to the directions of the High Court of Orissa, consisted of senior officers from the Ministry of Mines, the Indian Bureau of Mines and the Geological Survey of India. The Chairman of the Committee on Sukinda Valley Chromite Lease of Tata Iron & Steel Corporation Ltd. (hereinafter called "The Committee") was Shri S.D. Sharma, Joint Secretary, Ministry of Mines. The Committee was required to submit its report within two weeks. In view of the express directions of the High Court, the Committee gave a personal hearing to the advocates appearing for TISCO, FACOR, ICCI, IMFA, JSL and Ispat Alloys and thereafter, submitted its report which extends to four hundred and fifty-one pages.

In its voluminous report, complete with elaborate annexures, the Committee has, dealt with many of the legal issues that have been canvassed before us and also with other technical considerations lnvolved in the mining of chrome ore in the Sukinda Valley. It would, therefore, be appropriate for us to examine the recommendations of the Committee and their basis for putting them forth.

In its analysis of the submissions of the various parties before it, the Committee first dealt with the issue of the relevance of the Rao Committee and the decision of this Court in Indian Metals case to the present dispute.

The learned counsel appearing for TISCO before the Committee attacked the Rao Report on several. grounds. He pointed out that the High Court had required the Central Government only to consider the Rao Report and not necessarily to adopt its recommendations; he submitted that it would be open to the Committee to examine the correctness of the legal and factual premises of the Rao Report. He contended that since TISCO was not a party before the Rao Committee, its report wag not binding for the purposes of considering TISCO’s lease. He further urged that the Rao Report does not, in essence, uphold a principle of policy and was superseded in many respects by this Court in the Indian Metals case. He contended that the Rao Committee did not endorse the policy of distributing leases on the basis of the captive mining requirement of industries and, in the alternative, argued that even if the Rao Report were to do 80, such a policy was unsustainable under the scheme of the Act and the Rules and, at no point of time had the said principle been applied in determining the question of renewal of lease or in deciding on whom the right should be conferred.

The Committee was of the firm opinion that the Central Government was required to take note of the Rao Report as it contains important findings, guidelines and directions

regarding the grant of chromite leases and supply of chromite ore to needy applicants in an equitable manner. The Committee took note of the fact that, in reaching its final decision, this Court, in the Indian Metals case relied upon the findings of the Rao Report. It also noted that the High Court of Orissa had studied the Rao Report and had required it to rely upon the findings therein. Finally, the Committee took note of the observations of this Court in para 42 of the judgement in the Indian Metal case:

> "...the [Rao] report and its annexures are bound to be of immense help and value to the S.G. and C.G. in arriving at their decisions not only on the various applications but also in regard to their future policy in the matter of grant of chromite leases and of the supply of chromite to the needy applicants in an equitable manner."

The committee rejected the contention of TISCO that the Rao Report had provided incorrect information about TISCO's mining lease. The Committee relied upon the report of the Gopalachari Committee, which was constituted subsequent to the Rao Report to look into the issue of mining leases in the entire country, to refute TISCO's contentions in this regard. This being so, the Committee rejected the arguments put forth by TISCO to dilute the significance of the Rao Report for the consideration of the present dispute.

Thereafter, the Committee analysed the National Mineral Policy, 1993 and the Industrial Policy of Orissa, 1992 to obtain an understanding of the concept of mineral development as envisaged by Section 8(3) of the Act. Learned counsel for TISCO submitted that the concept of captive mining was not really part of the National Mineral Policy and, though propagated by the Rao Report, this concept does not find support from the National Mineral Policy. The Committee came to the conclusion that the National Mineral Policy, having been factor in the decision making process of the Government and, both in the National Mineral Policy as well as the Industrial Policy of the State of Orissa, captive mining has been recognised as a fundamental guideline in determining the criteria for granting mining leases.

On the issue of equitable distribution of resources, in view of the fact that TISCO held 55% of the total chromite resource of the country, the Committee was of the opinion that Article 39(b) and Article 14 of the Constitution must be taken into consideration for deciding the issue under Section 8(3) of the Act.

Thereafter the Committee examined the requirements of Section 8(3) of the Act. The provision as it originally stood was amended in 1986 and again in 1994. The application for renewal of lease was filed by TISCO in the year 1991. On behalf of TISCO, a series of alternative arguments was put forth to support TISCO's claim that it was entitled to a second renewal of its lease. There was also an argument that the law as it stood after the 1994 amendment should apply to TISCO's case. However, the Committee took the view that the law applicable would be the law as it stood between 1986 and 1994. Interpreting Section 8(3) of the Act, the Committee was of the view that TISCO could not claim to have any legal right over the renewal of its lease for the second time and, if the Central Government was to renew it, it would have to record reasons

why such a measure would be in the interest of mineral development.

Moving on to the issue of whether it was necessary to renew the mining lease of TISCO in the interest of mineral development, the Committee took note of the various arguments put forth by the learned counsel appearing for TISCO. The learned counsel submitted that TISCO had played a pioneering role in the development of chromite and other minerals in the area; had been doing scientific mining in a manner that ensured optimum recovery; had taken steps for environmental management; had complied with the provisions of all the relevant rules and regulations ; had made massive investment in the leasehold area including research and development efforts etc. and, are therefore entitled to the renewal of the entire area in the interest of mineral development. The learned counsel submitted technical reports to show that the technique of mining adopted by TISCO was in consonance with prescribed practices. He stressed on the fact that the Indian Bureau of Mines had sanctioned the mining plan of TISCO and its operations had also met with the requirements of the Gopalachari Committee, set up by the Government of India to review mining practices across the country. To appreciate the technical arguments put forth by TISCO and the other parties before it, the Committee undertook a vast examination of the technical details of the mining of chromite ore including discussions on mineable reserve, recoverable reserve and conditional reserves in the Sukinda Valley; the status of geo-technical and geo-hydrological studies; the existing status of mining in the valley; infrastructural facilities; research and development expenditure relating to mining in the valley; the relative merits and underground mining; the prices of chromite ore, etc.

After considering all these issues, the Committee made its recommendations. It prefaced the recommendations by stating that it was of the firm pinion that it would be necessary in the interest of mineral development to authorise the renewal of chromite lease to TISCO's under Section 8(3) of the Act strictly in terms of TISCO's requirement and keeping in view the requirements of needy manufacturing industries. The Committee was of the view that if renewai was granted to TISCO for the entire area when they would, in effect, be needing and using only a small fraction of the entire area, it could not be said that such a grant would be said serving the interest of mineral development or that of the national interest, particularly when there were other needy manufacturers who had been facing serious problems for want of adequate raw-material. The Committee felt that it could not ignore the fact that the other parties had made huge capital investments in establishing their industries and did not have adequate raw materials. The Committee approved the principle of allotting leases to different industries by taking into consideration their requirements for captive mining and for doing so, it relied upon the Rao Report, the Orissa Industrial Policy and the National Mineral Policy. It was, therefore, of the opinion that the best way of benefitting an established chrome-based industry with a large ore consumption was to provide a mine-owner status to the different industrial units. Thereupon, the Committee undertook an analysis of the competing interests of the other needy manufacturers. It took note of the observations of the High Court of Orissa that it was not the forum for distributing mining leases in favour of the other parties; however, in order to properly appreciate the iesue, the Committee examined the need of the

other parties as well as. their problems of obtaining raw materials. While forming an estimate of TISCO's requirement, the Committee reIied upon the documents submitted by TISCO as well as other relevant material. It noted the fact that in view of the scarcity of chromite ore, repeated recommendations have been made that underground mining must be planned and taken up for harnessing the available chromite ore. However, over the last four decades during which TISCO had held the lease, it had not relied upon the method of underground mining to the required level. The committee came to the conclusion that open cast mining, which was being primarily employed by TISCO, has an adverse effect upon the environment and the most effective way of tapping the ore was the method of underground mining. It was, therefore, of the view that TISCO should make- efforts to initiate underground mining on a large scale which would allow it to better exploit the ore within its lease-hold area. The learned counsel for TISCO had put forth a number of arguments expressing the difficulty of dividing or splitting its lease-hold area. The Committee took into account these submissions while assessing what it deemed should be the extent of TISCO's lease. In its view, which was formed after taking into account a host of technical factors, the appropriate area catering to TISCO's requirement would total 461 hectares. The Committee also, formed an estimate of requirements of the other parties appearing before it. In addition, it recommended the imposition of special conditions which could be kept in mind while granting renewals or fresh leases in future.

We may now set out the issues that we consider are central to the adjudication of the dispute before us:

1. Whether the High Court of Orissa was justified in striking down the decisions of the Central Government dated June 3, 1993 and October 5, 1993 on the ground that the requirement of Section 8(3) of the Act had not been met;
ii. Whether the report of the Rao Committee and the decision of this Court in Indian Metals case are relevant for the consideration of renewal of leases under Section 8(3) of the Act;
iii. Whether the High Court and the Committee were justified in hearing prospective applicants while considering the issue of renewal of TISCO's lease;
iv. Whether the Committee was justified in interpreting the concept of "mineral development" under Section 8(3) of the Act as requiring the assessment of the captive mining requirement of different industries and the application of the principle of equitable distribution of mining leases;
v. Whether the Central Government in its order dated August 17, 1995, had correctly analysed the needs and requirements of TISCO in recommending that it's lease be renewed over land measuring 406.00

hectares;

We will deal with them seriatum.

l. Validity of the Orders of the Central Government dated June 3, 1993

The learned counsel for TISCO has contended before us that the High Court of Orissa had erred in holding the order dated June 3, 1993 as well as the order dated October 5, 1993 which renewed TISCO's lease, as unsustainable in law. According to the learned counsel, both these orders have complied with the requirements of Section 8 of the Act. Before we analyse the provision, it must be noted that this provision has undergone several amendments. Changes were wrought into the original provision as it stood in 1957 through amendments in 1986 and 1994. Since TISCO's application for renewal was filed in 1991, both the High Court and the Committee considered the provision as it stood prior to the 1994 amendment, which is extracted as under :

"8. Periods for which mining leases may be granted or renewed -

(1) The period for which a mining lease may he granted shall not exceed twenty years.

(2) A mining lease may be renewed for two periods each not exceeding ten years :

Provided that no mining lease granted in respect of a mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

(3) Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted."

Applying the provision to the facts of the present case, it becomes clear that sub-section (1) would be applicable to the first application for lease. Since TISCO already had a lease in existence when the Act came, the first clause stood exhausted. When TISCO applied for the renewal of its lease for the first time in 1973, sub-section (2); as it stood prior to its amendment in 1986, envisaged the grant of a first renewal for a single period of 20 years, which is why TISCO was granted a renewal till-1993. When, in 1991, TISCO applied for the second renewal, the period of time envisaged by sub-section (2) - which has always been of a total of twenty years- had lapsed, and, clearly, that application would have had to be treated as one to which sub-section (3) applied. TISCO's second renewal was granted by the Central Government's order dated June 3, 1993 which was limited by its subsequent order dated October 5, 1993. These orders conveying the acceptance of TISCO's lease have been analysed in the impugned judgment. The High Court was f the opinion that they were unsustainable since they did not meet with the requirement of Section 8(3), which required reasons to be stated for reaching the decision that it would be in the interest of

mineral development to renew TISCO's lease. The High Court noted that the Central Government had not taken into account the National Mineral Policy and the report of the Rao Committee in reaching its final decision. While interpreting the language of Section 8(3), it took note of the speech delivered by the concerned Minister in Parliament who had, in defence of a motion to drop Clause 8(3), stated as under :

> "...we should and must envisage conditions, though very rare, in which because of diverse circumstances some renewals may have to be made beyond those specified in Clause 8."

From this, the High Court inferred that the subsequent renewal of lease as envisaged and contemplated under Section 8(3) refers to 'very rare' circumstances which may require renewals to be made. The Court, therefore, held that the conditions which make for the rare cases and diverse circumstances have to be clearly and pointedly articulated, for which the recording of proper and detailed reasons was necessary.

It has been argued before us that the High Court had erred in referring to the speech of the Minister as it was made in a context other than that which is permitted to be accepted as a tool of statutory interpretation. We are of the view, however, that the issue can be decided without locking horns with the controversy over the situations in which utterances in the legislature are relevant for statutory interpretation. To us, the language of Section 8(3) is quite clear in its import. Ordinarily, a lease is not to be granted beyond the time and the number of periods mentioned in cIauses (1) and (2). If, however, the Central Government is of the view that to allow a lessee's lease to be renewed further would be in the interest of mineral development, then, it is empowered to do so, provided there exist on record sound reasons for such an action and those reasons are recorded. Since such a measure has been incorporated in the legislative scheme as a safeguard against arbitrariness, the letter and spirit of the law must be adhered to in a strict manner.

We have studied the orders of the Central Government dated June 3, 1993 and October 5, 1993. The order dated June 3, 1993 is a statement which declares the grant of a second renewal to TISCO. It does not profess to give any reasons for such a decision and, for that reason, falls foul of the requirement of Section 8(3), as has rightly been pointed out by the High Court. The order dated October 5, 1993 is more generous in terms of the reasons it offers; however, the High Court was of the view that, since it did not take into account the findings of the Rao Report, the decision of this court in the Indian Metals case and the National Mineral Policy, it could not have justified its decision as having been made after a proper analysis of the interest of mineral development. This brings us to consideration of the second issue before us.

2. ReIevance of the Rao Report and the decision of to this Court in the Indian Metals case to the renewal of TISCO's lease.

The submissions made before us by the learned counsel for TISCO on this issue are a replication of those put forth before the Committee, and need not be repeated. We may, therefore, proceed to analyse the decision in the Indian Metals case. In that case, this Court was faced with a situation where, through a series of Writ Petitions, the

grant of rights for the mining of chromite ore in the State of Orissa was challenged. The central issue that arose for adjudication was whether, and to what extent, the parties before the Court were entitled to obtain leases for the mining of chromite ore in the State of Orissa. Though the learned counsel for TISCO sought to indicate that case is distinguishable from the one on hand on account of the fact that, while the former dealt with the grant of fresh licences, the present deals with renewal of lease, which involves a fundamentally different assessment. We must, however, point out that, in essence, both cases deal with the larger issue of mining of chromite ore in the State of Orissa and, in view of this relation, it becomes necessary for us to consider the views expressed therein.

In view of the nature of the issues before it, this Court appointed the Rao Committee to examine the matter. The court then held that the findings of the Rao Committee would, for the purposes of the Act, be treated as a decision of the Central Government. In paragraph 42 of its decision, the Court expressed its appreciation for the detailed and excellent report submitted by Dr. Rao; it further stated that he had brought together all the relevant data and analysed the various claims put forth before it while also having had a note on chrome deposits in the State of Orissa prepared by the Chief Mining Geologist of the Indian Bureau of Mines. We have already extracted the portion of the decision where the Court had stated that the Rao Report was bound to be of use to the State Government as well as the Cenlral Government in deciding grant of mining leases for chromite.

It is clear from a study of the Indian Metals case that in the opinion of this Court, the Rao Report had made such a comprehensive study of the issue that it merited treatment as a decision of the Central Government. In our view, once this has been clearly stated by the Court, the central Government, though not bound to follow the recommendations of the Rao Report, was at the very least under an obligation to record reasons why it sought to depart from the recommendations of the Report, especially in matters- such as these where leases of considerable commercial value are granted for long periods of time.

We are, therefore, of the view that the High Court and the Committee were justified in taking note of the findings of the Rao Report as well as the observations of this Court in the Indian Metals case in considering he issue of renewal of TISCO's lease.

Since the Order dated October 5, 1993 did not make any reference to the Rao Report or the decision of this Court, we feel that the High Court was justified in striking it down for not having taken into account all the factors relating to a proper appreciation of the concept of mineral development.

3. Locus standi of prospactive applicants in proceedings considering the renewal of TISCO's lease.

Before the High Court, the learned counsel for TISCO raised a preliminary objection as to the locus standi of the other petitioners, basing his claim on Rules 59 and 60 of the Rules, the relevant portions of which are extracted as under :

> "59. Availability of area for re-grant to be notified -- (1) No area
> (a) which was previously held or which is being held under a prospecting licence or a mining

lease; or
(b) ....
....
(c) ....
....
(d) ....
....
(e) Shall be available for grant unless --
(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and
(ii) the availability of the area for grant is notified in the official Gazette and specifying a date (being a date not earlier than 30 days from the date of the publication of such notification in the official Gazette) from which such area shall be available for grant :
Provided that ... ...
...
Provided further ... ...
...
(2, The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case.
60. Premature applications. Applications for the grant of prospecting licence or mining lease in respect of area. Whose availability for grant is required so be notified under rule 59 shall, if,
(a) no notification has been issued under that rule; or
(b) where any such notification has been issued, the period specified in the notification has not expired;
be deemed to be premature and shall not be entertained, and the application fee thereon, if any paid, shall be refunded."

The learned counsel for TISCO submitted that since, in respect of the land that fell within TISCO's leasehold area, the State Government had neither made an entry in the concerned register that the area was available for grant, nor had it notified its availability in the official Gazette, the applications of the other parties before this Court should be treated as premature applications under Rule 60 and not be entertained. He, therefore, submitted that none of the other parties could be regarded as aggrieved parties and therefore, could not be said to have any interest in these proceedings.

The learned counsel for JSL countered by stating that any decision on the second renewal of TISCO's lease as bound to affect the rights of the other parties. He argued that if the entire lease was renewed in TISCO's favour, no part of it would be available for grant to them. He also pointed out that TISCO's lease had expired on January 11, 1993 whereas the first order renewing TISCO's lease was issued only on

June 3, 1993. Will we contended that the State Government, which was dutybound to make the relevant entry in the register and notify the area as being available for grant, had neglected to do so. He then stated that, had the State Government been mindful of its obligation, the applications of the petitioners would not have been deemed to be premature under Rule 60 of the Rules and could not have been rejected.

In its impugned judgment, the High Court adopted the view that the other parties before it did have an interest in the proceedings regarding renewal of TISCO's lease. Describing their interest as being of a contingent nature, the High Court stated that if the Central Government did not think it fit to renew TISCO's lease, it would have to declare the area as available for grant and would have to invite prospective applicants. In that situation, the other parties would have a claim. The Court pointed out that, though none of the other parties could, as a matter of right, claim to be heard while the Central Government was considering the issue of renewal of TISCO,s lease, since its two Orders in this regard had, in fact, adversely effected their rights, the other parties would be entitled to challenge them. In other words, according to the High Court, they were proper parties even if not necessary parties.

While issuing directions to the Committee that was to be constituted to examine the issue at length, the High Court directed that the views of the other parties also be taken into consideration. The other details regarding this direction are mentioned in the portion of the impugned judgment that we have already extracted. The Committee, in compliance with this direction of the High Court, heard TISCO as well as the other parties at length on a host of legal and technical issues.

It must also be noted that in its order dated August 17, 1995, the Central Government had, in exercise of powers conferred on it by Rule 59(2) relaxed the requirement of Rule 59(1) to enable the other parties to be granted leases.

We are of the view that the High Court had taken the correct step in allowing the prospective applicants to put forth their points of view with regard to the renewal of TISCO's lease. As we have already pointed out, these issues involve considerably high stakes, both in terms of commercial value and the effect that such a decision will have on the concept of mineral development and the consequent national lnterest. To that extent, those likely to be affected and indeed, those who can legitimately have a stake in the proper formulation of such a vital policy, can be heard. No exception can be taken to the High Court treating them as proper parties and directing the Committee to hear them.

We, therefore, hold that both the High Court and the Committee were justified in hearing the prospective applicants while considering the issue of renewal of TISCO's lease.

4. Relevance the criterion of captive requirement of mining industries and the principle of equitable distribution of mining leases to the concept of mineral development under Section of the Act.

The Committee undertook a comprehensive analysis of the submissions made by the counsel appearing for the various parties before it and also studied the relevant material in order to gain an understanding of the concept of mineral development under Section 8(3) of the Act.

To this end, it analysed the entire scheme of the Act and studied various Sections, viz., Section 3(c), Section 6,

Section 8 and also the Rules with the benefit of the submissions of the learned counsel appearing for the various parties. It also analysed the Rao Report, the National Mineral Policy, 1993 and the Industrial Policy of the State of Orissa, 1992 to reach its conclusions on this issue.

The Committee noted the following observation of the Rao Committee :

> "The two laudable aspects of the State Government's policy in this regard of reservation of the chromite areas for exploitation in the public sector and provision of certain captive mining capacities to the chromite based industries need to be reconciled."

It then noticed the observations of the Rao Report wherein, while- analysing the Industrial Policy Resolution, 1956, it had stated that the Policy envisages a predominant role for the public sector in (establishing chrome ore industries, though the option of private enterprise being involved in establishing new units was not closed. The Rao Report had, in fact, observed that once an industry is established with the cooperation of the private sector, it would only be I fair and reasonable to make available to it a certain captive resource of chrome ore. To this end, the Rao Report had specifically recommended that the captive mining requirement be provided for in the grant of the lease in question.

The Committee further noted the observations of the Rao Committee that the cost of production of the chromite ore in the case of captive mines is much lower than the cost of procurement from other suppliers and, therefore, dependence on others for chromite ore has an adverse impact on the end user industry and this can be eliminated if captive mining is promoted.

Thereafter, the Committee took note of paragraph 7.11 of the National Mineral Policy, 1993 where, while dealing with the strategy to be employed for mineral development, it was clearly stated as follows :

> "In case of ores whose known reserves are not abundant, preference will be given to those who propose to take up their mining for captive use."

The Committee also recorded paragraph 15.2 of the Industrial Policy of Orissa, 1992 where the following is stated.

> "15.2 Persons who have firm proposals for setting up industries in the State for processing and value addition of minerals will be given priority in the grant of prospecting licences and mining leases."

The Committee also recorded the submissions of the counsel for JSL that preference for captive mines is a valid national policy, having been incorporated in, certain legislations such as the Coal Mines Nationalisation Act, 1973, and is an important factor to be considered in the interest of mineral development.

Thereafter, the Committee came to the conclusion that the National Mineral Policy, 1993, which was tabled in both Houses of Parliament, had resulted in amendments being carried out in the Act and the Rules and, being a policy pronouncement, was a guiding factor in the decision-making

process of the Government. It further stated that both the National Mineral Policy and the Industrial Policy of the State of Orissa had recognised the fact that the captive mining requirement merited preferential treatment.

While dealing with applicabilty of the principle of equitable distribution, the Committee took note of the observations, in paragraphs 88 and 89 of the impugned judgment, made while analysing the Rao Committee Report. The High Court had noted that it had been the policy of the State of Orissa to provide raw materials to those chromite based industries which were owned by the private sector and also to cater to the requirement of manufacturing industry within the State. The Rao Report had further recommended that in doing so, the State Government should act justly and equitably.

After making a technical evaluation based on satisfied information, the Committee observed that leasehold area of TISCO which was sought to be renewed has chromite deposits of the order of atleast 102.44 million tonnes. Of this, the reserves upto a depth of 100 metres were estimated at 39.49 million tonnes and the reserves below the depth of 100 metres were estimated at 62.95 million tonnes. The total reported chromite reserves in the country were estimated at 186 million tonnes. Thus, the Committee came to the conclusion that the area in question (1261.476 hectares) held by TISCO possessed about 55% of the chromite reserves of the entire country. The Committee therefore, posed the question whether it would be in national interest to permit a single party to perpetuate its hold on such large reserves of this strategic mineral?

Thereupon, the Committee analysed the provisions of Article 14 and Article 39(b) of the Constitution which, in its view, were relevant for the purpose of appreciating the issue under Section 8(3) of the Act. It then came to the conclusion that, to grant the renewal of mining lease over an area as large as that held by TISCO, in favour of a single applicant whose own needs are limited, while several needy manufacturers were deprived of adequate sources of raw material, would be to promote monopolistice tendencies which cannot be allowed.

For the foregoing reason, the Committee was the view that the concept of 'mineral development" under Section 8(3) of the Act requires the assessment of the captive mining requirement of different industries as also the application of the principle of equitable distribution of mining leases.

The learned counsel for TISCO sought to assail this approach of the Committee. He began by pointing out that before the Rao Committee, the State of Orissa had canvassed the view that the concept of an industry linked to captive mining is not envisaged by the scheme of the Act, nor has it been accepted as a matter of policy. This was for the reason that there are more industries than mines and, if every industry was entitled to a mine, more industries would be starved rather than served and such a policy would not be feasible. He further submitted that even the Rao Report had not given its enthusiastic approval to the concept of captive mining and assuming that it had, its effect would be negatived by the fact that this Court had in the Indian Metals case expressly rejected the theory of captive mining. Learned counsel further submitted that the concept of captive mining has been wrongly applied since no mining activity can be carried out only for Captive consumption. Different industries require varied grades of more for their activities and a single mining area cannot produce a particular type of ore required by one industry alone.

Consequently, he submitted that such a condition would lead to ineffective exploitation of the ore. TISCO's counsel further submitted that none of the other parties who were before this Court to stake. their claim for mining leases, had any industry of their own where the chromite ore could be used for manufacturing purposes and, therefore, they were not in a position to use it for captive consumption. Hence, he submitted, the argument of captive consumption was wholly misplaced. He further Contended that the Committee had erred in applying the principle of equitable distribution of mining leases; according to him the correct principle is that of equitable distribution of minerals and not of mining leases.

We have studied the Committee's report on this issue and we find that most, if not all, of these contentions have been dealt with in the report. We find it difficult to accept the contention that the Rao Committee had not endorsed the concept of captive mining because, as we have already mentioned, it does in fact do so. Having studied the decision in the Indian Metals case, we find that on the issue of the requirement of captive mining, this Court had expressly refrained from giving an opinion on the issue as it did not arise for its consideration; however, it did recommend that chromite ore be supplied to needy applicants in an equitable manner. It must be pointed out that nowhere in the Rao Report nor in the report of the Committee, has the requirement of captive mining been interpreted to mean that every industry within the State would, by reason of its existence, be entitled to a mining lease. The captive requirement of an industry is a factor that has to be kept in mind while granting leases but, it is to be done on a comparative scale. While the Central Government exercises its discretion in granting or renewing a lease, it is clear that the capacity of an industry to effectively exploit the ore, will be a predominant considerations The submission of the learned counsel that none of the other parties before this Court required the mineral ore for captive consumption cannot be accepted. This aspect has been specifically examined by the Committee at pages 260-263 of its report. In order to properly appreciate the issue of captive consumption, the Committee examined the needs of the other parties before it. It stated that each of these parties had manufacturing industries which produce value-added products and earn considerable foreign exchange for the country, and it was therefore of the view that an analysis of their total requirement was necessary in the interests of mineral development as also that of the nation. Based on the information supplied to it, the Committee thereafter made an assessment, for a total period of 50 years, of the captive and net requirements of ICCL, IMFA, FACOR and JSL. At page 349 of its report, the Committee has also taken note of the projected captive and net requirements of Ispat Alloys. This being a finding of fact that has been recorded by the Committee, we have to accept that the argument of captive consumption does have a basis in the facts of the present case. On the issue of the application of the principle of equitable distribution, we are of the view that the Committee had, after having taken note of the prevailing situation and the problems faced by needy manufacturers, taken the correct view in recommending its implementation.

We are, therefore, of the view that the Committee had correctly interpreted the relevant material available for appreciating the concept of "mineral development" and adopting the stance that it encompassed the concept of captive mining as well as the principle of equitable

distribution.

5. Validity of the Central Government's order dated August 17, 1995 which declared that renewing TISCO's lease over an area of 406 hectares would satisfy its needs and requirements.

The Committee made an estimate of the captive mining requirement of each of the parties appearing before it after coming to the conclusion that this was a fundamental guideline to be kept in mind while renewing TISCO's lease. To complete this exercise, it relied upon the' submissions of counsel, technical evidence submitted a them and the relevant technical information available. In the case of TISCO, after taking into account all the technical grounds and objections put forth by the learned counsel for TISCO, the Committee came to the conclusion that its lease should be granted renewal for a period of 20 years over a contiguous area of 461 hectares.

By its order dated August 17, 1995, the Central Government while endorsing the finding of the Committee recommended to the State Government that TISCO's lease be renewed for 20 years over a reduced area of 406 hectares. The reasons for the reduction were also provided.

The decision of the Committee and the consequent order of the Central Government have been assailed by the learned counsel for TISCO on a number or technical grounds. Many of these have already been dealt with by the Committee.

At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal issues are intertwined with those involving determination of policy and plethora of technical issues. In such a situation, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy making, unless the policy is inconsistent with the constitution and the laws. In the present matter, in its impugned judgment, the High Court had directed the Central to set up a committee to analyses the entire gamut of issues thrown up by the present controversy. The Central Government had consequently constituted a committee comprising high level functionaries drawn from various Governmental/ institutional agencies who were equipped to deal with the entire range of technical and long-term consideration involved. This Committee, in reaching its decision, consulted a number of policy documents and approached the issue from a holistic perspective. We have sought to give our opinion on the legal issues that arises for out consideration. From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to and followed the recommendations of, the Committee which is more qualified to address these issues.

We are, therefore, of the view that the Central Government was justified in issuing its order dated August 17, 1995.

For the foregoing reasons, we are of the view that the High Court and the Committee were justified in the view they took. Consequently the appeals filed by TISCO stand dismissed. IDCOL has filed the appeals on much the same grounds as TISCO while additionally claiming that the Committee should have heard its claim too while hearing the other parties. Since we have heard them at length, the

grievance does not survive. Hence IDCOL's appeals must also fail. Cost, cost in the cause.