

CASE NO.:

Appeal (civil) 8501 of 2002

Appeal (civil) 8502 of 2002

Special Leave Petition (civil) 10404 of 2001

Special Leave Petition (civil) 11857 of 2001

Transfer Case (civil) 9 of 2002

PETITIONER:

M/s. Indian Charge Chrome Ltd. & Anr.

RESPONDENT:

Union of India & Ors.

DATE OF JUDGMENT: 17/12/2002

BENCH:

S.B. Sinha

JUDGMENT:

J U D G M E N T

S.B. SINHA, J:

Leave granted.

I regret to be unable to persuade myself to concur with the opinion of My Lord, the Chief Justice of India, for whose learning and knowledge I have the highest regard.

This case depicts a sordid state of affairs prevailing in the Ministry of Mines, Government of India as also the Government of Orissa in relation to grant of mining lease of a major mineral Chromite in terms of the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (The Act) and the Mineral Concession Rules, 1960 (The Rules).

As the fact of the matter has been noted in the accompanying judgment as also the judgments of this court in Ferro Alloys Corpn. Ltd.(FACOR) and Another vs Union of India and others reported in [(1999) 4 SCC 149], Tata Iron and Steel Co. Ltd. vs. Union of India [1996(9) SCC 709], it may not be necessary to state the factual matrix of the matter in great details.

Chromite is an important major mineral. The said mineral is available in Sukinda Valley situated in the State of Orissa. Ninety-three per cent of the total reserve in India of said mineral is said to be available only in the said mining area. It is not in dispute that only four parties, namely, Indian Charge Chrome Limited (for short "ICCL")/Indian Metals Ferro Alloys Limited (for short "IMFA"), Jindals, ISPAT and FACOR applied for grant of mining lease for the said mineral before the State of Orissa. The said applications were referred to an expert committee known as Sharma Committee for its recommendations. The area in question is 855.476 hectares. Out of the said area pursuant to the recommendations of the said Sharma Committee the State Government vide order dated 24.6.97 recommended that mining lease of only 419.181 hectares be granted to them and the balance area being 436.295 hectares be retained for considering the needs of other applicants including the said four parties. The applications pending before the State Government in respect of the remaining 436.295 hectares were referred to the Dash Committee on 16.11.97. The application of Navbharat (Private Respondent) was also referred to the Dash Committee. The said application is said to be at S.No. 38 of the list whereas the appellant's applications which were made in the years 1993, 1994 and 1995 were at S.Nos. 1 to 6, 14 to 17, 22-23 and 28-29 thereof. Despite the fact that the aforementioned Committee was constituted by the State Government purported to be in terms of policy adopted in this behalf, it recommended to Central Government for grant of a mining lease over an area of 84.881 hectares on 19-9-96 in favour of the Private Respondent. It is not in dispute that FACOR had filed a Writ

Petition in the Orissa High Court questioning grant of mining lease in respect of a reduced area. At all material times the matter was subjudice either before the Orissa High Court or this Court.

It is really a matter of surprise that despite the fact that the application for grant of mining lease filed by Navbharat was also pending consideration before the Dash Committee and FACOR's appeal before this Court was pending and despite the fact that several parties, some of whom are also parties herein, had filed intervention applications before the Orissa High Court; Navbharat for one reason or the other failed and/or neglected to do so. It is also a matter of great surprise that despite the fact that the State of Orissa made the recommendation for grant of mining lease in favour of Navbharat; it also failed and/or neglected to bring the said fact to the notice of this court or the Orissa High Court.

This court in its judgment in FACOR (supra) inter alia directed:

"38. A mere look at the aforesaid observations leaves no room for doubt that once the assessment of the rival needs of parties seeking mining lease from the very same area in Sukinda Valley was done by the Expert Committee and was approved not only by the Central Government but also by this Court, the dispute inter se was sought to be put to an end on the principle of equitable distribution of such a rare and costly mineral. This package evolved by this Court must be held to be binding on all the contesting parties, leaving aside the question of res judicata or constructive res judicata. Once this was the intention of this Court, it must be held that a clear signal was given by this Court to the authorities concerned that the assessment of the relative needs of the rival claimants for the costly mineral should be accepted as a binding yardstick and in that light appropriate areas out of the very same Sukinda Valley should be carved out for these claimants including FACOR. This intention as reflected by the judgment of this Court would disentitle the appellant to go beyond the sweep of this judgment on any technical ground. This conclusion is, therefore, an additional, ground on which the appellant would not be entitled to get any relief from us under Article 136 of the Constitution of India. Otherwise, it would amount to upsetting the entire appellate and would result in denuding the judgment of this Court of its real content, direction and efficacy. After the Court's judgment in TISCO's appeal, the only thing left for the respondent-authorities was to proceed further in the light of the decision of this Court and also in the light of the confirmed order of the Central Government dated 17-8-1995. We have already noted earlier that none of the contesting parties before us, namely, FACOR on the one hand and Respondents 3 to 7 on the other has challenged before us the subsequent order of the State Government by which the relative assessment of the needs of these claimants was sliced down by 50 per cent. Hence none of them can get rid of the same. Of course, as per the said order of the State Government, it will be bound to consider along with the claims of others, the remaining claims of the appellant and the other contesting Respondents 3 to 7 for being granted additional land for mining leases from the very same Sukinda Valley for meeting the balance of 50 per cent of their assessed needs as per the Central Government's order dated 17-8-1995. In fact, in the light of the aforesaid order dated 29-6-1997, the State of Orissa has already appointed a committee under the Chairmanship of Shri Jagdish Prasad Dash, IAS, Additional Secretary to Government, Steel and Mines Department, by its order dated 16-11-1998 for doing the

needful.

39. Learned counsel for the State of Orissa made it clear that the said Committee will also consider the question of granting of further mining leases of chromite in Sukinda Valley to FACOR and the remaining three claimants namely, IMFA, ICCL, ISPAT AND M/s Jindal Strips, as mentioned in the order of 27-6-1997. When we turn to the said order, we find that after slicing down the assessed need of all the aforesaid four claimants by 50 per cent, the total area which will be earmarked for them out of the available 855.476 hectares of land will be 419.18 hectares. Meaning thereby, on a conjoint reading of the order of the State Government of Orissa and its notification dated 16-11-1998 appointing Shri Jagdish Prasad Dash as Chairman of the Committee to assess the requirement of chrome ore of needy applicants, the following picture emerges. From 855.476 hectares of land being available in Sukinda Valley for grant of mining lease to other claimants after taking out 406 hectares to be regranted to TISCO, 419.181 hectares will have to be kept reserved for the aforesaid four claimants, namely, FACOR and Respondents 3 to 7 as per the order dated 29-6-1997. Therefore, the balance of the available area in Sukinda Valley for grant of mining leases to other applicants including the aforesaid four applicants would be 436.295 hectares. This area will have to be taken into consideration by Shri Jagdish Prasad Dash as well as by the State of Orissa for granting of mining lease to other claimants whose applications are pending scrutiny before it and while doing so, the said Committee and the Orissa Government will also have to take into consideration the remaining 50 per cent assessed needs for further grant of mining leases to FACOR as well as Respondents 3 to 7 as made clear by the Orissa Government order and reiterated before us by its learned counsel. This is the maximum relief which can be made available to the appellant FACOR in the light of the earlier decision of this Court in TISCO case and which was invited by FACOR itself by keeping mum before this Court while it was called upon to confirm the Central Government order dated 17-8-1995 in its entirety.

50. As a consequence of our decision on Points 3,4 and 5, the inevitable result is that this appeal fails and will stand dismissed. However, it is clarified that the State of Orissa will carry out the remaining exercise pursuant to its order dated 29-6-1997 at the earliest and will see to it that the Jagdish Prasad Dash Committee constituted by it on 6-11-1998 also completes its exercise in connection with the remaining area of 436.295 hectares out of 1261.476 hectares, after in the first instance granting leases as per its order dated 29-6-1997 in the reserved area of 419.18 hectares out of 1261.476 hectares for mining of chromite in favour of the four parties, i.e., the appellant and Respondents 3 to 7 in Sukinda Valley of Jaipur District."

(Emphasis supplied)

Only thereafter Navbharat and State of Orissa filed applications for clarification in I.A. No. 1 of 1999 and in I.A. No. 2 of 1999. This Court on the said application declined to modify the said order stating :

"Having heard all of them, all that we can say is that our observations in paragraph 50 of the judgment in Ferro Alloys Corporation Ltd. reported in 1999 (4) SCC 149 (at

page 180) regarding the availability of 436.295 hectares out of 1261.476 hectares will not in any way be construed to be preempting any decision of the High Court of Orissa in the pending writ petition OJC 1830 of 1999. Our observations as above, are without prejudice to the rights and contentions of the parties before the High Court in the aforesaid pending writ petition."

In the meantime, the appellant herein had filed a Writ Petition questioning the said recommendations of the State Government dated 19.9.1996 before the Orissa High Court which was marked as OJC 1830 of 1999.

We may, however, notice that the Central Government by its letter dated 27-6-2001 upon consideration of the said purported recommendation dated 28.1.1999 pointed out the following deficiencies therein, namely:

"The recommendations of the State Government have been examined in detail by the Central Government and it is discerned that the proposal of the State Government suffers from the following two legal deficiencies:

(i) The recommended area is not free for grant and, therefore, before considering this area for grant of a mineral concession, relaxation from the provisions of rule 59(1) of Mineral Concession Rules, 1960 (hereinafter referred to as the "Rules") is required under rule 59(2) of the Rules. The State Government was required to recommend to the Central Government that while considering the proposal dated 28.1.99 the provisions of Rule 59(1) may be relaxed by the Central Government in the interest of mineral development.

(ii) Admittedly the applicant NBFAL is not the sole or the first applicant for the area under consideration and hence if the State Government wants to assign priority to this applicant, the powers under section 11(5) of the MMDR Act, 1957 (hereinafter referred to as the "Act") are required to be invoked. It may be noted that prior to 20.12.1999, the provision relating to granting priority to a later applicant was covered under section 11(4) of the Act which after December, 1999 amendment has been rechristened with modification as section 11(5) of the Act."

It was requested:

"The State Government may, therefore, clarify/ take action on the following issues:

a) Whether the State Government recommends that provisions of rule 59(1) of the Rules be relaxed by the Central Government under rule 59(2) of the Rules in the instant case. If yes, the reasons therefor may be clearly specified by the State Government;

b) whether the State Government recommends that the provisions under section 11(5) of the Act (prior to December 1999 section 11(4) of the Act) be invoked in the instant case and if yes, the reasons therefor in the interest of mineral development may be specified and;

c) if the answers to the first two queries are in the affirmative when the State Government may quickly get the chrome ore requirement of NBFAL assessed by the "New Committee" and the views of the Committee with the recommendations of the State Government thereon

may be sent for consideration by the Central Government by 16th July, 2001, so that a decision on the recommendation may be taken by the Central Government in the time period prescribed by the High Court of Orissa."

State of Orissa on 30-6-2001 purported to have replied thereto which is as under:-

1) The State Government recommends for relaxation of Rule 59(1) under Rule 59(2) of the M.C. Rules, 1960, since M/s Nava Bharat Ferro Alloys Ltd. are a deserving party for captive use of the mineral chrome ore in their plants situated at the following places.

Sl.
No.
Location of the
Unit
No. of furnace
installed
Annual
capacity (in
tones)

1.
Paloncha,
Dist-
Khammam
Andhra
Pradesh

3 (three) are
Furnace of 16.5
MVA each
75,000

2.
Raipur,
Madhya
Pradesh

2 (two) are
Furnace of 3.6
MVA & 6.5
MVA

15,000

3.
Meramundali
Dist-
Dhenkanal
(Orissa)

2 (two) are
Furnace of 16.5
MVA
50,000

The total captive requirement of chromite for production of 1,40,000 MT of High Carbon Ferro Chrome annually is estimated on the basis of guidelines contained in the 'Sharma Committee Report'. Therefore, after adopting the same assumptions of the said report, it has been estimated that the total requirement of Chrome of M/s. Nava Bharat Ferro Alloys Ltd. for their units is 31.6367 million tones as indicated below:-

a) The annual requirement of chromite comes to

0.378 MT

b) The total requirement of chrome ore for the first 20 years comes to 10.1306 MT

c) Requirement of chrome ore for the next 30 years
21.507 MT

Total requirement: 31.6367 M.Ts

2. The applicant M/s Nava Bharat Ferro Alloys Ltd. is a subsequent applicant for mining lease. But since they have got three Ferro Alloys Plants in Orissa, Andhra Pradesh and Madhya Pradesh and are without any mining lease, the State Govt. recommends that the provisions under Section 11(5) of Mines and Minerals (Development and Regulation) Act, 1957 be invoked for the interest of mineral and industrial development for granting the above lease in favour of Nava Bharat Ferro Alloys Ltd. It is also pertinent to mention that their plant in Orissa has been closed down for want of ore at a viable cost. Therefore, it is essential that they should have the mining lease to meet 50% of their requirement."

It was requested:

"In view of the above facts, it is requested that the approval for grant of mining lease for chrome ore in favour of Nava Bharat Ferro Alloys Ltd. may kindly be considered by Government of India in light of the decisions of the Hon'ble High Court of Orissa."

(Emphasis supplied)

It is, therefore, evident that only by reason of the said letter the State Govt. asked the Central Government to exercise its power under Rule 59(2) of the Rules and consider grant of approval upon invoking the provision of Section 11(4) of the Act. It also, thereby, purported to have assigned reasons as to why Navbharat should be granted mining lease despite preferential rights held by the Appellant and others.

Admittedly the said letter has since been disowned by the State of Orissa as would appear from its letter addressed to the Central Government, the relevant portion whereof is to the following effect:

"It is now observed by the State Government that the above clarification sent from the Steel and Mines Department on 30.6.2001 was not a valid recommendation since due approval of the competent authority specified in the Rules of Business of the State Government framed under Article 116 (Sic for Article 166) of the Constitution of India was not obtained".

The effect of the said letter as also the judgment of this Court in FACOR's case (supra) require serious consideration in these matters.

Admittedly prior to issuance of the aforementioned letter dated 30th June, 2001 the matter was not placed before the Chief Minister of the State who was the Competent Authority to make recommendations on behalf of the State in terms of the Rules of the Executive Business framed under Article 166 of the Constitution of India. I am not oblivious of the legal position that strict compliance of Article 166 of the Constitution of India is not imperative in certain situation. But in the instant case the State itself was required to apply its mind which would mean that such application of mind must be on the part of the authority competent therefor. In any event in this case, the State itself had taken the said stand. Furthermore, in the instant case, the records were required to be placed before the competent authority as

the Central Government asked the State Government to take action in terms of Section 11(4) of the Act and Rule 59(2) of the Rules and, thus, it was the State Government alone which could take a decision in the matter. The terminologies used in the letters of the Central Government and that of the State Government are significant. In answer to the query of the Central Government by reason of the said letter (which has as noticed herein before since disowned by the State of Orissa having been written by a Secretary without any authority), it was stated that the State Government "recommends" and thus present tense having been used therein, it must be held to have made the recommendations at that point of time. It did not contend that requisite recommendations already having been made, the letter of the Central Government was redundant or need not be acted upon.

In my opinion withdrawal of the said recommendations would mean that there had been no recommendation by the State of Orissa at all so as to enable the Central Government to act in terms of the provisions of the said Act and the rules framed thereunder [See Punjab Beverages Pvt. Ltd vs. Suresh Chand 1978(II) L.L.J Page 1 (paragraph 15)].

The Central Government and the State Government are statutory authorities. They must, thus, act within the four corners of the statute. When an order is meant to be passed by the State Government or the Central Government the same must be passed by an authority competent therefor. An order which has been passed by an officer without an authority would be non-est. The Central Government, therefore, could not have acted thereupon particularly when the State itself took such a stand. It failed to take into consideration that the recommendation dated 30th June, 2001 being withdrawn, was no longer operative.

It is the positive case of the State of Orissa that the Secretary of the Department of Mines had no authority to issue the letter dated 30.6.2001. The private respondent has not brought any material on records to show that he had the requisite authority.

At this juncture it may also be noticed that a Cabinet note was prepared on 25-8-2001 proposing withdrawal of the recommendations dated 28.1.1999 in favour of Navbharat and granting the entire balance area to Orissa Mining Corporation and the same was also approved by the Cabinet on 28.8.2001. In the aforementioned premise, the Central Government's order became non-est in the eyes of law.

It is also relevant to note the stand of the Central Government before the High Court in the aforementioned OJC 1830 of 1999 which is as under:

"In the light of the Supreme Court of India's final order dated 22.3.99 in Civil Appeal No. 1626 of 1999 arising out of the SLP No. 17987 of 1998, the recommendations dated 28.1.1999 of Government of Orissa for grant of mining lease for chromite over an area of 84.881 hectares in Sukhinda in favour of M/s. Navbharat Ferro for a period of 30 years are premature and no action is called for on the part of the Central Government at this stage till the Central Government receives fresh recommendations for the balance area of 436.295 hectares from the Government of Orissa based on J P Dash Committee report."

The Central Government for reasons not disclosed before the High Court or before us, took absolutely a contradictory and inconsistent position by purporting to approve the proposal of the State of Orissa in terms of its order dated 9-7-2001.

It is beyond any cavil of doubt that the Central Government as also the State of Orissa were bound by the decision of this Court in TISCO (supra) and FACOR (supra) particularly when this Court held that their decision could not be faulted with. The Central Government and the State Government, therefore, could not resile from its earlier stand/ policy decision.

The State of Orissa having regard to the terms of the Orissa Estates Abolition

Act, 1951 became the owner of all mines and minerals but in the matter of grant of mining lease, it, in relation to a major mineral, was bound by the provisions of the said Act and the rules framed thereunder.

It is the admitted case as would appear from the decision of this Court in FACOR's case (supra) that the State of Orissa had been appointing committees in terms of a purported industrial policy decision so as to enable it to consider the applications filed by the contesting parties for the purpose of grant of mining lease. It, therefore, could not have deviated or departed from said policy decision by hand picking the case of private respondent in isolation and proceed to recommend for grant of mining lease in its favour without taking into consideration the cases of others particularly in view of the fact that it itself had proclaimed that the cases of all applicants which were pending before it shall be taken into consideration along with the four applicants. Admittedly Dash Committee was constituted on 16.11.1998 whereas the State Government made recommendation to the Central Government on 28.1.1999 referring the respondent's application therein as having been made on 19.9.1996.

The directions of this Court in FACOR's case (supra) must be viewed from this angle. In that case, this Court, as noticed hereinbefore, in no certain terms directed the State Government to consider to exercise its jurisdiction pursuant to the recommendations of the Dash Committee in respect of remaining area of 436.295. It will bear repetition to state that if a policy decision had been taken, any deviation or departure therefrom would attract the wrath of Article 14 of the Constitution of India.

It is true that on the Clarificatory applications filed by Navbharat and State of Orissa this Court did not pass any positive order but made certain observations as quoted supra.

By reason of the said observations this Court never meant that its directions having regard to the factual backdrop, need not be taken into consideration by the High Court at all or that the High Court was at liberty to proceed in the matter despite the said directions. While disposing of an application for clarification this Court could not have reviewed its judgment. This Court, furthermore, was not in a position to express its views on the subject matter of a pending Writ Petition. The observations of this Court must, therefore, be understood in the aforementioned context. The direction of this Court was binding on the State Government as also the Central Government. As a matter of fact, as noticed herein before, the Central Government itself took the stand before the High Court that the recommendations of the State Government was premature as it did not receive the report from the Dash Committee. This Court's directions in FACOR's case (supra) had the binding effect on the parties to the lis. Thereby the State was denuded of its power to grant a mining lease in favour of any party, as the judgment was to be given effect to in relation to the entire area in question. This Court in a given situation may also exercise its jurisdiction under Article 142 of the Constitution to do complete justice between the parties.

A judgment cannot be read as a statute. It has to be understood and applied having in mind the factual matrix involved therein. The High Court unfortunately did not address itself on the said question at all.

I am, therefore, clearly of the opinion that the State of Orissa or the Central Government could not have taken any decision in violation thereof.

A binding judgment, in my considered opinion, cannot be refused to be considered only because this Court refused to express its opinion one way or the other on a clarificatory application. The Central Government also could not have changed its own stand taken in its counter affidavit and act on the basis of purported recommendations which for all intent and purport was non-est in the eye of law. Even otherwise, there does not appear to be any reason as to why the State Government acted arbitrarily in so far as it failed to await the report of the Dash Committee.

Furthermore, for the purpose of grant of a mining lease and that too in

relation to a mineral like Chromite which is an important and scarce one; it was obligatory on the part of the State Government as also the Central Government to act strictly in terms of the said Act and the rules framed thereunder. The Act has been enacted to provide for the development and regulation of mines and minerals. By reason of Section 2 and 18 thereof the Parliament has taken over the control over the major minerals. In the aforementioned situation, it was expected of the Central Government to take a firm stand. It failed to do so.

It is pertinent to notice the stand of the State Government as contained in its letter dated 29-6-97, i.e., when the private respondents application was no where under consideration. It while referring to the report of the Sharma Committee stated in the following terms:

"Chromite is a First Schedule Mineral. The area has not yet been thrown open as Government of India has already relaxed the rule 59(2) of M.C. Rules, 1960 in their letter under reference. It is, therefore, requested that the approval of Govt. of India to grant Mining Lease for Chromite in favour of the four parties over the area noted against each above in village Vimtangar etc. in Sukinda area of Jajpur district for a period of 30 years may kindly be obtained under Section 5(1) of the M.M. (R&D) Act, 1957 and communicate the same to State Government at an early date.

Proforma recommending Mining Lease along with location map of the area in triplicate is enclosed."

Navbharat's application found mention for the first time in the State Government's letter dated 28-1-1999 wherein again without superseding its earlier letter it was stated:

"Kindly refer to State Government's letter No. 5496/SM, dated 24.6.1997 in which State Government had recommended grant of mining lease for Chromite for 419.181 hecets. (i.e. 50% of the area of 855.476 hecets. remaining after grant of 2nd renewal of mining lease to TISCO over an area of 406.00 hecets.) in favour of four parties i.e. M/s. IMFA/ICCS., M/s. Ispat Alloys Ltd., M/s Jindal Strips and M/s. FACOR. It was indicated in the letter that State Government had decided to keep the balance 50% of the available area 855.476 hecets. for consideration of other parties including the Captive Consumers who have set up industries inside the State.

M/s. NAVA Bharat Ferro Alloys Ltd. had applied on 19.9.1996 for mining lease for Chromite over 1261.476 hecets. in village Kalarangiatta, Kaliapani etc. in Sukinda Tahasil of Jajpur district. It is reported that the applicant company has set up three High Ferro Chrome Plants in the country. The details of the location and production capacity of these three plants act up by M/s. NAVA Bharat Ferro Alloys Ltd. is as follows:

Sl.
No.

Location of the
Unit
No. of furnace
installed
Annual
capacity

(in tones)

1.

Paloncha,
Khammam Dist.
Andhra Pradesh
3 (three) are
Furnace of 16.5
MVA each
75,000

2.

Raipur, Madhya
Pradesh
2 (two) are
Furnace of 3.6
MVA & 6.5 MVA
15,000

3.

Meramundali
Dist- Dhenkanal
(Orissa)
2 (two) are
Furnace of 16.5
MVA
50,000

Total

1,40,000

The total captive requirement of chromite for production of 1,40,000 MT of High Carbon Ferro Chrome annually is estimated on the basis of guidelines contained in the 'Sharma Committee Report'. Therefore, after adopting the same assumptions of the said report, it has been estimated that the total requirement of Chrome of M/s. NAVA Bharat Ferro Alloys Ltd. for their units is 31.6367 Million tones as indicated below:-

- a) The annual requirement of chromite comes to 0.378 million tones
- b) The total requirement of chrome ore for the first 20 years comes to 10.1306 million tonnes
- c) Requirement of chrome ore for the next 30 years 21.507 million tonnes

Total requirement: 31.6367
Million tones

The State Govt. have decided to consider allotment of an area containing 15.810 M.T. i.e. 50% of their requirement. Accordingly, an area over 84.881 hec. with chromite reserve of 15.818 million tonnes located on the eastern part of the balance area is proposed for grant of mining lease in favour of M/s. NAVA Bharat Alloys Ltd.

Chromite is a mineral included in the 1st Schedule of the M.M. (R&D) Act, 1957. The area has not yet been thrown open as Government of India have already relaxed the Rule 59(1) of the M.C. Rules, 1960 in their letter No. 5(22)/95-MIV dated 17.8.95. It is, therefore, requested that approval of the Government of India under Section 5(1) of the M.M. (R&D) Act, 1957 may kindly be

obtained to the grant of mining lease for Chromite over 84.881 hecets. in villages Kalarangiatta, Kaliapani etc. in Sukinda Tahasil of Jajpur district for a period of 30 years in favour of M/s NAVA Bharat Ferro Alloys Ltd. and communicated the same to the State Government at an early date.

Proforma recommending grant of the above mining lease with location map of the area in triplicate is enclosed."

In the said letter, it was nowhere mentioned that the State of Orissa has complied with the requirement of Section 11(4) of the Act.

In the aforementioned premise, the provisions of Section 5, Section 11(4) (now section 11(5)) of the Act and Rule 59 of the Rules are required to be interpreted. It is not necessary to delve deep into the matter but suffice it to state that the role of the Central Government and State Government in relation to their functions Section 5 and Section 11 are different. Recommendations for grant of a mining lease can only be made if the requirement of Section 11(4) stands complied with. Section 11(4) of the Act confers preferential rights upon the prior applicants. Such a right can be taken away only upon strict compliance of the statutory requirements and not otherwise. While considering the question of preferential rights of the parties, the State Government is required to assign special reasons. Such reasons, therefore, must relate to the respective cases of applicants for grant of mining lease. Considerations of the State Government in terms of Section 11(4) of the Act are separate and distinct from considerations of the matter relating to grant of mining lease.

It was, therefore, obligatory on the part of the State Government to assign sufficient and cogent reasons upon taking into consideration the cases of all applicants for grant of mining lease and communicate the same to the Central Government so as to enable it to apply its mind thereupon with a view to consider as to whether it is a fit case where approval for grant of mining lease should be granted upon invoking Section 11(4) of the Act.

In *Rupan Deol Bajaj v. K.P. S. Gill* [AIR 1996 SC 309] it is stated:

"Necessity to give reasons which disclose proper appreciation of the issues before the Court needs no emphasis. Reasons introduce clarity and minimise chances of arbitrariness."

Well settled reasons are the links between materials facts and conclusion. [See *Union of India vs. Mohan Lal Capoor & others* {(1973) 2 SCC 836 at para 28}]

This court by an order dated 24th August, 2001 directed the State of Orissa to produce records pursuant where to the records have been produced. Some reasons are stated to have been assigned by the authorities in the records of the case. But no such reason appears to have been communicated. However, all notings in the said file have been made in the Oriya language. In absence of any English translation having been made available to us, it is difficult for us to arrive at a conclusive finding as to whether the records have been placed before the Chief Minister for the purpose of grant of approval of mining lease or for the purpose of passing an order in terms of Section 11(4) of the Act. We are also not aware as to whether reasons assigned, if any, were sufficient ones and conform to the requirement of Section 5 or Section 11(4) of the Act.

Be that as it may, admittedly such reasons had not been communicated to the Central Government and evidently in that view of the matter the Central Government had issued the aforementioned letter dated 27th June, 2001 wherein the deficiencies have been pointed out.

We may now consider the validity of the order granting approval by the

Central Government.

The relevant portion of impugned order of the Central Government dated 9th July, 2001 reads as under:-

"I am directed to refer to your letter No. SS0/III(G)SM-36/97/SM dated 28.1.99 and your letter No. 8083/111(G)SM/101/2000/SM dated 30.6.2001 on the above mentioned subject and to convey the approval of the Central Govt. to the grant of mining lease for Chromite over an area of 81.881 hecets. in village Kalarangiatta, Kaliapani etc. in Sukinda Tahsil, Distt. Jajpur (Orissa) in favour of M/s. Nava Bharat Ferro Alloys Ltd. for a period of 30 (thirty) years under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 by invoking the provisions under Section 11(5) of the Act and by relaxing the provisions of Rule 59(1) of the M.C. Rules, 1960 under Rule 59(2) of the Rules and in compliance with the orders dated 18th May, 2001 of the Hon'ble High Court of Orissa in OJC No. 1830/99 filed by M/s. ICCL and another vs. UOI & others."

The approval of the Central Government for grant of mining lease in favour of Navbharat was made, having regard to (i) by invoking the provisions of Section 11(5) of the Act; (ii) by relaxation of Rule 59(1) of the M.C. Rules 1960; (iii) by grant of approval on the recommendations made by the State Government. It stands admitted that the earlier order of the relaxation passed by the Central Government in the year 1995 was made when before the State Government four applications were pending. The Central Government itself keeping in view of the fact that at that point of time the private respondent was not an applicant, in its aforementioned letter dated 27th June, 2001 held that non-compliance of Rule 59(2) constituted a deficiency.

In terms of Rule 59(2) the power of relaxation is conferred upon the Central Government in a special case. Such a special case was made out by the State Government only having regard to the applications filed by the four other applicants. It was a one time relaxation which could not remain valid for all times to come.

It is true that relaxation is given in relation to an area but therefor a special case has to be made out. At the earlier occasion relaxation was sought for having regard to the cases of TISCO and four applicants only. Thus, in relation to other applicants a separate order of relaxation afresh was required to be passed. Having regard to the sub-rule 2 of Rule 59 of the Rules, I am of the opinion that in this case a fresh order of relaxation was required to be passed by the Central Government upon assigning sufficient reasons therefor. The impugned order does not contain reason. In any event, the same does not sub-serve the statutory requirement as the Central Government had no jurisdiction to direct approval of grant of mining upon invoking Section 11(4) as also upon relaxing the requirement of Rule 59(2) simultaneously. An application for grant of mining lease can be considered only when Rule 59(2) stands complied with and not prior thereto. Purported simultaneous compliance of the provision of the law would not satisfy the statutory requirements. If the order of the Central Government is accepted the same would amount to grant of relaxation with retrospective effect which is impermissible in law.

The Central Government, therefore, in my opinion before granting approval was required to pass an order of relaxation afresh having regard to the provisions of Section 14 of the General Clauses Act, 1897; whereafter only the State of Orissa could have initiated a proceeding for grant of mining lease.

So far as the subsequent events as pleaded by the appellants is concerned, suffice it to point out that the State Government was entitled to change its policy decision. It has been noticed that the Cabinet had taken a decision to withdraw the recommendations made for grant of mining lease in favour of the private respondent as also reserve the area for Orissa Mining Corporation, a public sector undertaking. Once the recommendations stand withdrawn, the order of Central Government granting approval became non-est. By reason of such withdrawal the writ petition

filed by the applicant became infructuous. For the reasons aforementioned I would set aside the impugned judgment and allow the appeals and transfer case.

JUDIS