

CASE NO.:
Review Petition (civil) 353 of 2003

PETITIONER:
INDIAN CHARGE CHROME LTD. & ANR.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 01/04/2005

BENCH:
Y.K. Sabharwal, K.G. Balakrishnan & S.B. Sinha

JUDGMENT:
JUDGMENT
O R D E R
Review Petition(civil)No.353 of 2003
IN
CIVIL APPEAL NO.8501 OF 2002
[With R.P. (C) Nos.469/03 & 741/03 in T.C. No.9/02, R.P. (C)
Nos.354/03 in C.A.No.8502/02 & 401/03 in C.A. No. 8501/02]

Y.K.SABHARWAL, J

Civil Appeal Nos.8501 and 8502 of 2002 and Transferred case No.9 of 2002 were decided by this Court in terms of judgment dated 17th December, 2002. The civil appeals had been filed against the decision of Orissa High Court dated 18th May, 2001 reported in [AIR 2002 Orissa 45]. The transferred case was a writ petition filed in Delhi High Court that had been transferred to this Court. The civil appeals and the writ petition were dismissed.

In these petitions seeking review of the aforesaid judgment, the limited point for consideration at this stage is whether the review petitions deserve to be admitted and consequently the civil appeals and the transferred case deserve to be reheard or not. For considering this limited point, it is not necessary to note facts in detail, the same having been noted in the judgment under review reported in Indian Charge Chrome Ltd. & Anr. v. Union of India & Ors. [(2003) 2 SCC 533].

Facts in brief relevant for deciding the limited point are that the State of Orissa made recommendation dated 28th January, 1999 seeking the approval of the Government of India under Section 5(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short, 'the Act') in respect of 84.881 hectares of land, bearing chromite in Village Kalarangiata, Kaliapani in Sukinda tehsil of Jajpur district, Orissa in favour of M/s. Nava Bharat Ferro Alloys Ltd. (for short, 'Nava Bharat'). The said recommendation was challenged before the Orissa High Court by the review petitioner M/s. Indian Chrome Ltd. The writ petition was dismissed by the High Court in terms of judgment dated 18th May, 2001.

After the decision of the High Court, the Central Government by its letter dated 27th June, 2001, upon consideration of the recommendation dated 28th January, 1999 pointed out to the State Government the following two deficiencies :

"(i) The recommended area is not free for grant and, therefore, before considering this area for grant of 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 28-1-1999 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 S. 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 S. 11(4) of the Act which after December, 1999 amendment has been rechristened with modification as S. 11(5) of the Act."

The State Government was asked to 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 S. 11(5) of the Act (Prior to December, 1999 S. 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."

The aforesaid letter was replied by an officer of the State Government on 30th June, 2001.

The Central Government, in terms of its letter dated 9th July, 2001, on consideration of letters dated 28th January, 1999 and 30th June, 2001, conveyed its approval to the grant of the mining lease in favour of Nava Bharat under Section 5(1) by invoking the provisions of Section 11(5) of the Act and relaxing the provisions of Rule 59(1) of the Mineral Concessions Rules, 1960 and Rule 59(2) of the Rules and in compliance with the judgment of the High Court.

The approval dated 9th July, 2001 was challenged in the writ petition aforementioned which was transferred and decided by this Court along with the civil appeals.

When the matters were pending in this court, a note dated 25th August, 2001 was approved by the State Cabinet on 28th August, 2001 deciding to withdraw recommendation dated 28th January, 1999. It was, inter alia, noted that clarification sent on 30th June, 2001 was not valid since due approval of the competent authority specified in the Rules of business of the State Government under Article 166 of the Constitution of India was not obtained. It was proposed to grant the entire balance area of 436 hectares to Orissa Mining Corporation.

Four questions that were framed by the majority judgment for consideration are :

"1. Whether the so-called reservation of the entire area for being exploited by the Orissa Mining Corporation, puts an end to the right of the respondents and the appeal as well as the writ petition could be disposed of on that ground ?
2. Whether in fact there has been any relaxation of the provisions of Rule 59(1) by the Central Government under Rule 59(2) in respect of the area in question and if so, once the relaxation having been granted, further any relaxation when the question of grant in favour of Nava Bharat cropped up ?
3. Was there really any reasons recorded by the State Government in terms of Section 11(4) of the Act for treating the application in the preferential manner ? and lastly
4. Whether the Judgment of this Court since reported in (1999) 4 SCC 149 (1999 AIR SCW 913 : AIR 1999 SC 1236), prevented the State Government to take the case of any individual applicant and considered the same on its own merits, before receipt of the recommendation of the Committee, which had been set up to find out the requirements of the respective claimants and submit the recommendation thereto ?"

While considering the third question, an order dated 14th January, 1999 said to have been made by the Chief minister was taken into consideration for rejecting the contention of the petitioners that there were no special reasons in terms of the provisions contained in sub-section (4) of Section 11 [now sub-section (5)] for grant of a preferential right in favour of Nava Bharat.

Insofar as the writ petition challenging the approval dated 9th July, 2001 granted by the Central Government, it was noted that "we also do not find any infirmity with the approval of the Central Government made, which is the subject matter of the writ petition that had been filed in the Delhi High Court and which stands transferred to this Court".

One of the contentions that had been raised on behalf of the petitioners at the hearing of the appeals and the transferred case that the letter dated 30th June, 2001 was not issued under the authority of the State Government and, thus, the approval of the Central Government on the basis of an unauthorized clarification stood vitiated and could not be sustained. That was also the stand of the State Government in the Cabinet note dated 25th August, 2001 approved on 28th August, 2001. To support the contention that there are errors apparent on the face of the record, we have been taken through the judgment to show that the aforesaid contention was urged. It appears clearly that the contention was made but there has been omission to consider it. The approval was inter, alia, based on the clarification given in the letter dated 30th June, 2001. At this stage, the only question is as to an error apparent on face of record having occurred in non-consideration of this nature of contention and not on its merit or demerit. The validity of the approval was in question in the transferred case as also in the civil appeals wherein reliance was sought to be placed on the invalidity of the approval as a subsequent event.

There is another error apparent, namely, the reliance upon the aforesaid order of the Chief Minister dated 14th January, 1999 while dealing with the third question and rejecting the contention about non-existence of special reasons in terms of Section 11 (4) (or sub-section (5) now) without any opportunity to supply a copy of the order dated 14th January, 1999, or to deal with it. It is not on record. So far even we have had no opportunity to peruse it. It is also not referred to in the recommendation of the State Government dated 28th January, 1999.

It is true, as contended by learned counsel opposing the admission of the review petitions that review petitions should not be lightly entertained and mere fact that there were two views, one in terms of the majority and

the other dissenting, cannot be the basis for recalling the majority judgment and rehearing the matter, but that is not the ground for the conclusion we have reached, as aforesaid, for admitting the review petitions. We have found errors apparent on record, as noticed above, namely:

1. Non-consideration of the contention regarding illegality of the communication dated 30th June, 2001; and
2. Absence of opportunity to explain the order dated 14th January, 1999.

These are manifest errors which have crept up in the judgment under review resulting in grave miscarriage of justice. Accordingly, we admit these petitions and recall the judgment dated 17th December, 2002 and direct that the civil appeals and transferred case be listed for hearing. We make it clear that observations made in this order are only for the purpose of deciding the limited aspect of admission of the review petitions.

JUDIS