* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 19.10.2011

% Judgment delivered on: 09.11.2011

\+ **W.P.(C) 7587/2011 & C.M. Nos. 17174-75/2011**

TATA STEEL LTD. ..... Petitioner

Through: Dr. A.M. Singhvi and Mr. Ravindra Srivastava, Senior Advocates, with Mr. R.N. Karanjawala and Mr. Gopal Jain, Advocates

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Maneesha Dhir, Preeti Dalal and Mithun Jain, Advocate for respondent No. 1.

Mr. Ajit Kumar Sinha, Senior Advocate, with Mr. Devashish Bharuka & Ms. Jaya Bharuka, Advocates for the respondent No. 3.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? : **No**

2. To be referred to the Reporters or not? : **No**

3. Whether the judgment should be reported in the Digest? : **No**

J U D G M E N T

VIPIN SANGHI, J.

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner Tata Steel Limited assails the Order No.556, dated 19.08.2011 passed by the Mines Tribunal under Section 30 of the Mines and Minerals (Development and Regulations) Act, 1957

(MMDR Act) and Rule 54 of the Mineral Concession Rules, 1960 (MCR) in revision application preferred by respondent No. 3, M/s. Jayaswal Neco Industries Limited (JNIL).

2. By the impugned order, the said revision petition has been allowed, and the impugned order dated 31.01.2007 passed by the State Government, i.e. State of Chhattisgarh, respondent no.2 rejecting the application for four mining leases made by respondent no.3 has been set aside. A direction has been issued to respondent no.2, State of Chhattisgarh to pass a reasoned order in accordance with law, keeping in view Section 11(1) of the MMDR Act within a period of 90 days of the passing of the impugned order dated 19.08.2011.

3. Four Prospecting Licenses (PL) were sanctioned by the erstwhile Govt. of Madhya Pradesh in favour of respondent no.3, JNIL in Rowghat iron ore of Matla Reserve Forest of Narayanpur Forest Division, South Bastar District under the MMDR Act, for a period of two years. After completion of the prospecting operation under the said PLs, JNIL submitted four applications for granting mining leases against the said four PLs.

4. The details of the said applications have been set out in the impugned order and the same read as follows:

Sr. No.	Application Date	Detail for the applied area	Area applied (Ha)
1	2	3	4
1	16/5/2000	Forest Compartment No. 122 (Part), 137 (Part), 138 (Part)	186.00

2	16/5/2000	Forest Compartment No. 116 (Part), 117 (Part), 118 (Part), 119 (Part), 120 (Part), 139 (Part), 149 (Part), 155 (Part), 157 (Part), 167 (Part).	381.00
3	16/5/2000	Forest Compartment No. 180 (Part), 181 (Part), 194 (Part), 196 (Part), 112 (Part), 114 (Part), 111 (Part), 110 (Part), 105 (Part), 104 (Part), 195 (Part)	388.00
4	16/5/2000	Forest Compartment No. 111 (Part), 110 (Part), 109 (Part), 108 (Part), 107 (Part), 82 (Part), 106 (Part), 105 (Part), 104 (Part)	646.47

The said four applications were rejected by the respondent no.2 State Government.

5. Respondent no.3 assailed the order of the State Govt. by filing the aforesaid revision application under Section 30 of the MMDR Act readwith Rule 54 of the MCR. It appears, by order dated 28.09.2007, the Mining Tribunal allowed the revision application preferred by respondent no.3. Respondent no.2, State of Chhattisgarh assailed the order dated 28.09.2007 of the Mining Tribunal before this Court by filing W.P. (C) No.396/2008. By order dated 13.01.2009, the said writ petition was disposed of.

6. The Division Bench was of the view that the Tribunal should have considered the report dated 20.09.2007 submitted by the Chief Vigilance Officer (CVO), Mineral Exploration Corporation Limited, Nagpur (now, Chief Vigilance Officer, Indian Bureau of Mines), which was the outcome of a reference/complaint made on 15.07.2007 by the

Secretary, Khanij Sadhan Vibhag, State Govt. of Chhattisgarh to the Secretary, Ministry of Mines, Govt. of India. The Division Bench observed that the said report of the CVO dated 20.09.2007 was not placed before the Mining Tribunal when the impugned order dated 28.09.2007 was passed by the Tribunal. Consequently, without commenting on the content of the report of the CVO, one way or the other, the Division Bench remanded the matter back for reconsideration by the Tribunal after taking into consideration the said report of the CVO. The order dated 28.09.2007 was, therefore, set aside. The impugned order has now been passed by the Tribunal in pursuance of the order of the Division Bench of this Court, as aforesaid, and after taking into consideration the report of the CVO.

7. The petitioner, Tata Steel Limited was impleaded as a party in the revision proceedings, as the petitioner had also staked a claim to obtain mining leases in respect of the areas in question.

8. The first submission of learned senior counsel for the petitioner is that the Tribunal, while passing the impugned order, has not considered the report of the CVO, which records the factual findings against respondent no.3. It is submitted that the report of the CVO establishes that the respondent no.3 had, in fact, not carried out any prospecting operations after obtaining the PL, and that respondent no.3 had forged and fabricated reports and communications to claim that it had conducted prospecting operations in the areas in question.

9. It is secondly argued that the PL granted to respondent no.3 did not become operational as it was conditional upon the obtainment of clearance under Section 2 of the Forest Conservation Act, 1980 (Forest Act) which was never obtained. It is argued that the Central Govt. while granting the PL had put the following mandatory condition:

> *"Before allowing the grant of PL, the State Government may kindly ensure the compliance of the amended provisions of the Act and Rules, and other applicable Act and Rules, including Forest (Conservation) Act, 1980."*

10. It is argued on the basis of Section 19 of the MMDR Act, that the PL was granted in contravention of the provisions of the Act and the Rules framed thereunder, and, therefore, the same was void and of no effect. Respondent no.3, on account of its failure to comply with the statutory requirements, as also to carry out the prospecting operations in the area in question, did not derive any preferential right to obtain a mining lease under Section 11 of the MMDR Act.

11. Learned senior counsel for the petitioner has read out various portions of the report of the CVO in support of the aforesaid submissions. It is argued that the scope of the jurisdiction of the revisional authority is limited, and the revisional authority could not have examined the report of the CVO threadbare. It is also submitted that the PL having been granted in respect of reserve forest land, to which Forest Act was applicable, no such license could have been granted without prior permission of the Divisional Forest Officer, and without fulfilling the conditions in this regard. No prospecting

operations could have been carried out in the reserved/protected forest area. It is argued that the State Govt. had raised various queries on the Divisional Forest Officer, Narayanpur, Forest Division in relation to the prospecting operations claimed to have been carried out by the respondent no.3, and in response to the queries, the Divisional Forest Officer had responded by stating, inter alia, that permission for land entry for prospecting was not granted by the office of the Divisional Forest Officer; no officer/official was deputed for inspection during prospecting/exploration operation and watching the prospecting operations; the respondent no.3 had not carried out any prospecting operation, and; as prospecting operation had not been carried out, no damage had been caused to forest area. At the same time, it was stated that the office of the Divisional Forest Officer had received undertaking of respondent no.3 on 16.09.1999 in compliance of the conditions laid down.

12. Learned senior counsel for the petitioner further submits that the fabrication of the communications and prospecting reports is established by the fact that copies thereof were not sent to the State Govt. even though the same is prescribed under the Rules. It is argued that the communication allegedly sent to Indian Bureau of Mines, Nagpur (IBM) were sent after the formation of the State of Chhattisgarh, whereas they purportedly show that they were sent prior to the date of the formation of the State of Chhattisgarh. Even the telephone connections of the numbers printed on the letterhead of the

respondent no.3 in these communications were obtained much after the date on which the said communications were purportedly sent.

13. It is argued that under Rule 52 of the Mineral Concession and Development Rules, 1988 (MCDR), the holder of a PL is required to simultaneously submit a copy each of the notice/return/intimation required to be submitted under the said Rules to the State Govt. concerned in whose territory the mine or the prospecting area is situated or to such other authority as the Govt. may specify in this behalf.

14. The petition is opposed by respondent no.3, who has appeared on caveat. Learned counsel for respondent no.3 points out that the vigilance enquiry report prepared by the CVO itself shows that all the correspondence and documents sent by respondent no.3 were found on the record of IBM, and there was no violation or irregularity found therein. It is submitted that a perusal of the report of the CVO would show that the lapse was on the part of the office of the IBM who did not maintain a proper system of receiving documents and granting acknowledgment thereon. It is on this account that some confusion was created. It is argued that the report of the CVO was considered by the CVC as well as by the Govt. and the only lapse found, was in the office of the IBM, as aforesaid, in the process of acknowledging receipt of documents and correspondences. It is for this reason that the only action taken on the basis of the report of the CVO was to issue a caution to the IBM and its officers concerned. No action was proposed to be taken against respondent no.3, as no wrongdoing was attributed

to the said respondent. It is further submitted that it does not lie in the mouth of the State Govt. to claim that the respondent no.3 had not carried out the prospecting operation. The Tribunal in the revisional order takes note of the letter dated 08.10.2004 issued by the State Govt. to the Central Govt. confirming that the prospecting operation had been carried out by respondent no.3 in the subject area and 64 million tonnes was approved/established as the ore as in the prospecting reports. The State Govt. has, therefore, admitted that respondent no.3 had conducted the prospecting operations. Learned counsel further submits that the Tribunal having returned a finding of fact after examining the material placed before its, this Court should not interfere with the same, as the same is well reasoned and founded upon cogent material considered by the Tribunal.

15. Learned counsel submits that the revisional power of the Central Govt. under Section 30 of the MMDR Act has to be viewed in the light of the fact that the mining lease can be granted by the State Govt. only with the previous approval of the Central Govt. (under Section 5 of the MMDR Act). He further submits that Rule 55(4) of the MCR throws further light on the power of the Central Govt. While dealing with a revision application against the order of the State Govt., the Central Govt. may confirm, modify or set aside the order or pass such other order in relation thereto, as the Central Govt. may deem just and proper. The power of the Central Govt. under Section 30 of the MMDR Act is wide, and not narrow, as contended by the petitioner.

16. Learned counsel for the respondent further submits that the Tribunal while disposing of the petitioners revision application has not directed the grant of the mining lease to respondent no.3, but has merely directed the State Govt. to pass a reasoned order in accordance with law, keeping in view Section 11(1) of the MMDR Act within a period of 90 days. He submits that the petitioner has no reason to be aggrieved by the impugned order.

17. Having heard learned counsels for the parties and perused the impugned order as well as the document relied upon by the parties, I am of the considered view that the impugned order dated 19.08.2011 passed by the Tribunal has been passed within the Tribunal's jurisdiction, is legal and justified, and I do not find any infirmity therein which would call for interference in the exercise of the jurisdiction of this Court under Article 226 of the Constitution of India.

18. A perusal of the impugned order would show that the same is detailed and has considered all the submissions raised by the petitioner as well as the State Govt. in support of the order of the State Govt. dated 31.01.2007. So far as the report of the CVO is concerned, for the consideration whereof the matter was remanded back to the Tribunal, the Tribunal has in depth considered the said report, as is evident from para 8 onwards of the impugned order. In para 9, the Tribunal notices the status of report prepared by CVO under Section 8(1)(c) of the Central Vigilance Commission Act, 2003 (CVC Act). The Tribunal rightly observed that the report of the CVO is not final. The said report is forwarded to the CVC. The CVC advices the Central Govt.

on the action to be taken. It is for the Central Govt. to consider the advice of the CVC and take appropriate action.

19. In this case, after the CVO submitted its report to the Ministry of Mines on 20.09.2007, the Ministry of Mines examined the CVO report and sought advice from the CVC on 27.02.2008. The CVC examined the CVO report and on 20.03.2008 advised the Ministry of Mines to issue a mere caution memo to Sh. M.K. Pareshar, RCOM, Sh. Ajay Srivastava, STA(G) and Sh. AM. Kamble, Sr, Mining Geologist of the IBM. This was done under Section 17(2) of the CVC Act. The Ministry of Mines acted under Section 17(3) of the CVC Act, accepted the advice of the CVC, and closed the complaint against respondent no.3 by only issuing a direction to IBM to comply with the advice of the CVC. This was done vide letter dated 17.04.2008. Pertinently, the allegations contained in the report of the CVO to the effect that there was forging of acknowledgement of letters claimed to have been issued by JNIL; that there was no record of receipt of letters addressed by JNIL to Controller General IBM; that the prospecting report was prepared after the creation of the State of Chhattisgarh, i.e. after the date when it was purported to have been submitted; that the analysis report was prepared after 12.09.2005, were not accepted by the CVC and by the Ministry of Mines. This was primarily on the basis of the finding that the proper office procedure with regard to maintaining of receipt of letters; issuing acknowledgement for hand delivered letters; proper maintenance of files, work diaries, etc., were not being followed by IBM. Pertinently, the CVO had also returned the aforesaid finding, and

the finding that there was no system at IBM of keeping a record of the specimen signatures of Officers on whom statutory powers are bestowed, and those occupying sensitive seats.

20. I may also refer to the various findings of fact returned by the Tribunal in the impugned order which have not been challenged before me. The Tribunal records that "*Perusal of the CVO report clearly reveals that these three documents were found in the original record of IBM and the existence cannot be construed as fabricated documents*".

21. On the question as to how the documents were being received in the office of IBM, IBM had clarified "*that different persons were authorized during the relevant period for receiving dak (incoming letters). In their absence, in practice, someone else can receive the dak*".

22. The learned Tribunal also rejects the approach of the CVO in comparing the signature on the acknowledgement with the signature of the Regional Controller of Mines (RCOM). This approach was rejected by observing that every government authority/ministry receives innumerable letters, many of them are addressed to the higher authorities like the Minister, Secretary etc. and it cannot be expected that every letter is acknowledged in person. As a normal course of practice, there is a department or section, or atleast a person assigned to accept the incoming dak. IBM accepted to existence of such a procedure. For this reason, the Tribunal has held that the comparison of the signature on the acknowledgement produced by JNIL with that of

the RCOM is an erroneous approach. The Tribunal also observes that this erroneous approach appears to be the reason why both the CVC and the Ministry of Mines discarded the findings of the CVO regarding forgery. The petitioner has not been able to point out any error in the said reasoning adopted by the Tribunal to arrive at its finding.

23. The Tribunal also takes note of the clarification issued by RCOM which was apparently ignored by the CVO while making his report. RCOM had issued a letter dated 22.02.2007 stating that as per office records, the relevant documents (which according to the petitioner and the State Govt. were fabricated and acknowledgment thereon was forged) are found in order, and that there was no standing violation regarding prospecting operations for the areas in question. RCOM had clarified that the letters of the respondent no.3, JNIL, which were alleged to be forged and fabricated, related to compliance of MCDR, 1988, and show that the Rules were considered as complied. RCOM had also stated that there should not be any doubt that the documents were not submitted in 1999 and 2000. The Tribunal also notes that the prospecting reports submitted by respondent no.3 were available with the State Government and this fact had been admitted by them. Pertinently, there are finding of fact returned on the basis of record produced before the Tribunal. These finding of fact have not been assailed, and could not have been assailed before this Court, except on the ground of perversity. That is not the case argued by learned senior counsels for the petitioner.

24. The CVC and the Ministry of Mines accepted the report of the CVO only with regard to mismanagement in maintenance of records by IBM which led to creation of confusion and, accordingly, issued a caution memo to the erring officials. The Tribunal also notes that these subsequent developments were not brought to the notice of this Court, when it was hearing W.P. (C) No.396/2007 and it proceeded to pass the order dated 13.01.2009.

25. I may note that the said writ petition had been preferred by the State of Chhattisgarh, i.e. respondent no.2 and the failure on their part to report the aforesaid developments to this Court throws light on the disposition of respondent no.3 towards respondent no.2. At this stage, I may note that the petitioner and the respondent no.2 entered into a Memorandum of Understanding (MOU) on 04.06.2005, whereunder the petitioner intends to set up an integrated steel plant of 5 MTPA in Bastar Distt of respondent no.2 State.

26. The Tribunal notes in the impugned order that the State Govt. had assured the petitioner the grant of mineral concession in the very same area which was under the holding by some other private party for mineral concession. While on the one hand, the applications for grant of mining leases were pending before the State Govt. since the year 2000 which were not disposed of till January 2007, on the other hand, in respect of the same area, the State Govt. entered into a MOU with the petitioner. The Tribunal raises, and in my view rightly so, doubt as to the intention of the State Govt.

27. It has been argued before me that the report of the CVO is a quasi judicial report and the findings returned by the CVO are binding. I cannot accept this submission. The proceedings before the CVO are not quasi judicial in nature. He simply conducted an enquiry, and on the basis of the information collected by him, made his report. The CVO under its procedure did not give any opportunity to the entity/person being enquired into to furnish his/its explanation. No hearing was held before making the report. The stand of the party under enquiry was neither called for nor considered. It is precisely for this reason that the report of the CVO was taken up by the Ministry in consultation with the CVC, and further action is founded upon the scrutiny of the report by the CVC. The limited purpose for which the proceedings before the CVC are considered to be judicial proceedings is stated in section 12 of the CVC Act. The purpose is only this – that the evidence led before the CVC is accorded the same sanctity as that recorded before a Court.

28. The submission of the petitioner that the four prospecting licenses in question were granted without obtaining approval of the Central Govt. under section 2 of the Forest Act and, therefore, the said prospecting licenses were null and void under section 19 of the MMDR Act has been considered by the Tribunal in para-17 of the impugned order. The view taken by the Tribunal is that a challenge to the grant of the PLs could have been raised within a period of three months under section 30 of the MMDR Act. The Tribunal has further held that in the revision proceedings preferred by respondent no.3, JNIL against

denial of mining lease to respondent no.3, the said issue could not be raised, as the scope of the proceedings under section 30 was limited to the challenge to the order of the State Govt. dated 31.01.2007. The Tribunal holds that nobody challenged the grant of PL to respondent no.3, and that the challenge raised by the petitioner herein and the State Govt. was barred by limitation.

29. The argument of the petitioner that the grant of PL to respondent no.3 is void *ab initio* and, therefore, such a ground could be set up at any stage has also been rejected by the Tribunal by holding that the State Govt. had the power under the MMDR Act to grant the PL. It had exercised its jurisdiction by grant of PL to respondent no.3. Whether the jurisdiction was exercised rightly, or wrongly, could have been a matter of challenge, if raised appropriately, at the relevant time. So long as the jurisdiction existed and has been exercised, the order could not be considered as void *ab initio*. I am inclined to accept this reasoning of the Tribunal, particularly as the State Govt. had itself admitted and acknowledged that respondent no.3 had successfully conducted prospecting operations vide letter dated 08.10.2004.

30. The Tribunal rejects the petitioners submission with regard to the failure of respondent no.3 to obtain requisite clearance under the Forest Act by observing that the Conservator of Forest, Kankar granted permission to respondent no.3 vide letter dated 20.01.2000. A dispute could not be raised after eleven years to contend that the Conservator of Forest, Kankar was not the authorized officer, and therefore no permission was validly obtained. The Tribunal observes that the

permission granted by the Conservator of Forest was conveyed to the DFO, Narayanpur with instruction to ensure that prospecting operations are carried out properly. Pertinently, all these years the State Govt. did not raise any issue with regard to the permission obtained from the Conservator of Forest, Kankar. It was not the stand of the State Govt. that the Conservator of Forest was not authorized to grant the permission and, therefore, the prospecting operation carried out by respondent no.3 was liable to be ignored. This stand appears to have been raised for the first time after the petitioner became interested in obtaining the mining lease in respect of the same area, and is in the teeth of the letter of the State Govt. dated 08.10.2004, whereby it acknowledges that prospecting operation has been carried out by respondent no.3.

31. The contention of the State Govt. that the respondent no.3 had not given any undertaking before commencing prospecting operations was also not believed in the light of the undertakings stated to have been given by JNIL on 14.06.1999, 23.07.1999, 03.08.1999 and 26.12.1999. Pertinently, the Tribunal observes that these documents were not refuted by the petitioner or the State Govt. during the course of hearing. The Tribunal observes that intimation for commencement of prospecting operations was given by JNIL to IBM, and consequently no violation of Rule 4, 6 and 7 of the MCDR was established. The failure to submit a copy with the State Govt. could only have been an omission, but could not make the prospecting operations void. Pertinently, the IBM had acknowledged receipt of the prospecting

reports on 17.05.2000. The RCOM had also issued a letter dated 22.02.2007 confirming that there was no standing violation regarding prospecting operations in the areas in question. A perusal of Rule 7 of MCDR shows that the obligation of the holder of a prospecting license is required to send the intimation in Form A, of the commencement of prospecting operations, to the Controller General, Controller of Mines and the RCOM. It is not shown, how respondent no.3 is alleged to have breached the said procedural requirement.

32. The Tribunal rejected the submission of the petitioner and the State Govt. with regard to the alleged forgery of the prospecting reports on the ground that they were printed on letterheads of respondent no.3, which were produced after May 2000, firstly by observing that IBM had confirmed receipt of the prospecting reports in May 2000; secondly that the State Govt. had not made a straightforward submission as to when it actually got the prospecting reports; thirdly that the State Govt. had in its own letter dated 08.10.2004 addressed to the Central Govt. confirmed that prospecting operations had been carried out by JNIL and a clear estimation of iron ore reserves provides, and; lastly by accepting the explanation of respondent no.3 that initially the analysis reports were submitted on plain paper in May 2000 and thereafter the State Govt. called upon the respondent no.3 to verify the laboratory in which the analysis was done. Since analysis had been done in-house, a fresh report on JNILs letterhead had been supplied. Pertinently, the original analysis report on plain paper was found in the record of IBM during the CVO enquiry.

The Tribunal also notes that the State Govt. had also observed in its impugned order in para-12 that mining lease applications were submitted by respondent no.3 after completing prospecting operations alongwith prospecting reports, which were submitted on 16.05.2000.

33. The Tribunal takes note of the letter of Mining Office dated 26.07.1999 for demarcation of the area for prospecting by JNIL, letter of the District Mining Officer requesting the Divisional Forest Officer on 14.09.1999 to grant permission to start prospecting operations. IBM confirmed vide letter dated 22.02.2007 that there was no standing violation committed by respondent no.3 observed while carrying out prospecting operations in all the areas in question.

34. The aforesaid are all findings of fact based on the record produced before the Tribunal. Learned senior counsels for the petitioner have not been able to assail any of these findings of fact on the ground that they are not supported by the record. Even otherwise, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, does not function as a fact finding body. This Court's discretionary jurisdiction to interfere with orders in the exercise of its power of judicial review has been commented upon by the Supreme Court in the case of ***Surya Dev Rai v. Ram Chander Rai***, *(2003) 6 SCC 675*, in the following words:

> *"(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the*

above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis."

35. The reasoning adopted by the Tribunal for returning the findings of fact, as returned by it, cannot be said to be perverse. It cannot be said that the Tribunal has acted with perversity, or in complete disregard of the record before it, or beyond its jurisdiction, or that it would lead to grave injustice, if sustained. It was for the Tribunal to have scrutinized the order of the State Govt. on the basis of the evidence before it in the shape of record, and there is a detailed analysis to justify the findings of fact returned by the Tribunal.

36. The endeavour of the petitioner and the State Government to raise doubts on the prospecting reports by reference to the facts and figures has also been rejected by the Tribunal and, in my view, reasonably so. The Tribunal notes that the State Govt. had accepted the prospecting reports submitted by respondent no.3. The said prospecting reports had provided conclusive estimates of the reserve of iron ore in the area in question. The endeavour of the State Govt. to rely upon the estimate of reserves provided by Geological Survey of India in its regional exploration was considered and rejected by the

Tribunal in para-26 of the impugned order for technical reasons. The petitioner has not assailed the said finding before me. So far as the shortcomings found by the State Govt. in the prospecting reports are concerned, the Tribunal has observed that respondent no.3's response to the said alleged shortcomings had not been effectively dealt with by the State Govt. Moreover, the said shortcomings are to be looked into by the IBM during the preparation of the mining plan. It is observed that if the State Govt. had any issues, it ought to have issued a notice under Rule 26(3) of the MCR Rules, 1960, which has not been done.

37. Learned senior counsel for the petitioner has submitted that there is nil possibility of getting prior approval under the Forest Act from the Central Govt., even if the State Govt. were to grant mining lease to respondent no.3. That, in my view, cannot be a reason for the State Govt. to deny the mining lease of respondent no.3, who enjoys a preferential right. If the said clearance is not forthcoming for respondent no.3, it would also not be forthcoming for any other applicant including the petitioner. It cannot be predicated at this stage whether or not the Central Govt. clearance would eventually be granted or not, and if so, under what circumstance and with what conditions.

38. For all the aforesaid reasons, I find no merit in this petition and dismiss the same, leaving the parties to bear their respective costs.

(VIPIN SANGHI)
JUDGE

NOVEMBER 09, 2011
SR