
(2012) 11 DEL CK 0233

Delhi High Court

Case No: Writ Petition (C) 9000 of 2011

M/s B. Kumaragowda
and Sons

APPELLANT

Vs

Union of India and
Others

RESPONDENT

Date of Decision: Nov. 1, 2012

Acts Referred:

- Mines and Minerals (Development and Regulation) Act, 1957 - Section 10, 11, 11(4), 17, 17(2)

Citation: (2013) 5 AD 452 : (2013) 196 DLT 175

Hon'ble Judges: Vipin Sanghi, J; Sanjay Kishan Kaul, J

Bench: Division Bench

Advocate: Dhruv Mehta with Mr. Yashraj Deora, Mr. Sriram Krishna, Ms. Anupama Dhruva and Mr. Sameer Abhyankar, for the Appellant; Neeraj Chaudhari, CGSC with Mr. Saquib and Mr. Ravjyot Singh for R-1/UOI and Mr. S.K. Bagaria, with Ms. Kirti Mishra, for R-3, for the Respondent

Final Decision: Dismissed

Judgement

Sanjay Kishan Kaul, J.

The petitioner firm seeks to impugn the notification dated 21.10.2011 issued by the Central Government in exercise of the powers conferred u/s 17A(1A) of The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as, "the said Act") in consultation with the State Government of Karnataka, reserving for 20 years" prospecting and mining operations in the area of 140 hectares in the North-Eastern Block Range, Bhavihalli Village, Sandur Taluk, Bellary District of State of Karnataka in favour of the Steel Authority of India Limited for its plant known as M/s. Vishveshwaraiah Iron & Steel Plant/respondent No. 3. The notification states that this would not include the area already held in prospecting licence or mining lease and declares that no prospecting licence or mining lease shall be granted within the boundary of such reserved area. The

facts giving rise to the present writ petition are being set out hereinafter:

1.1 The petitioner had filed a mining lease application in respect of Iron and Manganese Ore before the State Government of Karnataka on 19.02.2004 over an extent of 315.66 hectares of land in Bhavihalli Village, NEB Range, Sandur Taluk, Bellary District, which had been registered as Application No. 96:AML:2004. The petitioner confined this claim subsequently to only 169.52 hectares. The area over which the petitioner sought mining lease was previously held under mining lease by M/s. Chowgule & Company, which was subsequently surrendered.

1.2 Respondent No. 3 filed a mining lease application subsequently on 21.01.2007 for land measuring 140 hectares out of the same area, which was numbered as Application No. 117:AML:2007. It is in pursuance to this application, it is alleged, that the State Government of Karnataka issued a show-cause notice dated 26.04.2007 to the petitioner to explain as to why the mining lease application filed by the petitioner on 19.02.2004 should not be rejected in view of the provisions of Rule 59(1) of The Mineral Concession Rules, 1960 (hereinafter referred to as, "the said Rules"). This was followed up with another representation dated 19.07.2007.

1.3 However, the Secretary (Mines, SSI and Textile), Government of Karnataka/respondent No. 2, addressed a communication dated 30.07.2007 to the Secretary, Ministry of Mines, Government of India, referring to the application of respondent No. 3. This communication states that the steel plant was sourcing the requirement of Iron Ore from its captive mines at Kemmangundi in Chickmagalur District of Karnataka since its inception in the year 1923, but the mining operations were stopped in the year 2004 at the instance of the Ministry of Environment and Forest, Government of India as the mining area was adjacent to Bhadra Wildlife Sanctuary "B" Block. This had resulted in respondent No. 3 being forced to procure its requirements of Iron Ore from outside source at higher costs. Respondent No. 3 was stated to be the only integrated public sector steel plant in the State of Karnataka, which was doing value addition to the Iron Ore and had generated about 2700 direct employment and additional several thousand people were engaged through indirect employment. It had also provided infrastructure facilities for schools, colleges and several other social institutions. The application of respondent No. 3 for 140 hectares was overlapping on previously held and surrendered mining lease area of M/s. Chowgule & Co. and, thus, it attracted Rule 59 of the said Rules. Not only that, there were some 25 prior applications received in respect of the same area. However, in view of the provisions of Rule 59(2) of the said Rules, it was requested that the approval may be obtained of the Government of India (i.e., the Central Government) for exemption from notification and to reserve the area u/s 17A(2) of the said Act for a period of 30 years.

1.4 It is the case of the petitioner that the said communication, in fact, amounted to an order which, in effect, had rejected the application filed by the petitioner for mining lease of the same area and, thus, a Revision Application was filed before the Central

Government under Rule 54 of the said Rules. On 29.08.2007, respondent No. 1, on hearing the petitioner as well as the State of Karnataka/respondent No. 2, passed an interim order dated 29.08.2007 staying the operation of the order/letter dated 30.07.2007. The Revision Application is stated to have been taken up for final hearing on 25.09.2007 by a Bench of two Members and the order was reserved. However, before the order could be pronounced, the State of Karnataka is stated to have addressed a letter dated 15.03.2008 to the Central Government referring to the earlier order/letter dated 30.07.2007 and informing that inadvertently the provision therein had been wrongly mentioned as Section 17A(2) instead of Section 17A(1A) of the said Act. Not only that, respondent No. 3 is stated to have filed an application dated 07.04.2008 seeking vacation of the interim order dated 29.08.2007. The order reserved on the Revision Application on 25.09.2007 is stated to have been pronounced only on 15.09.2009 whereby the Revision Application was dismissed. The Revision Application had been heard by a Bench of two Members, while the Order was stated to have been passed by a third-person being the Joint Secretary (Mines). It was found out that the two Members originally constituting the Tribunal, in fact, had a divergence of view and, thus, it was referred to a third-person/Member, who passed the final order.

1.5 In view of the strange procedure adopted, where no opportunity of hearing was given to any of the parties before the said third-person/Member to whom the matter was referred to on account of divergence of opinion between the two Members constituting the Tribunal, the petitioner filed Civil Writ Petition No. 13697/2009 before this Court. The petitioner pleaded that apart from the violation of the principles of natural justice, neither Section 17A(1A) nor Section 17(2) of the said Act would apply to the facts of the present case as the proposal u/s 17A(1A) has to emanate from the Central Government albeit in consultation with the State Government. It has also been set out in the present writ petition that in respect of a Revision Application filed by M/s. Chowgule & Co., the Mines Tribunal vide an order dated 22.10.2010 had been pleased to quash the same order/letter dated 30.07.2007 by stating that Section 17A(1A) of the said Act could not have been resorted to in the fact situation. The case, the petitioner has pleaded before us, is that the aforesaid provisions would be attracted only if it was a virgin area and had never been held under a mining lease.

1.6 The writ petition was entertained by the learned Single Judge of this Court and while issuing notice on 21.12.2009, the order/letter dated 30.07.2007 was stayed. This interim order, the petitioner alleges, was disobeyed by the State of Karnataka by issuance of a letter/order dated 06.10.2010 while again recommending the case of respondent No. 3 for grant of mining lease and seeking approval u/s 5(1) of the said Act, which requires prior consent of the Central Government. We may notice that a reading of the said communication dated 06.01.2010 shows that the history of the case has been sketched out since 45 applications had been received for the area concerned and were pending unconsidered, it was deemed appropriate to consider even those applications and, thus, a hearing was conducted on 07.11.2009 after issuing notice to all the applicants. It is on

the basis of the said hearing that the State Government was stated to have recommended the application of respondent No. 3 for grant of mining lease. The salient facts for the same are stated to be that only one public sector enterprise producing Iron Ore in steel plant in the State was respondent No. 3 with its major customers including defence, railways, nuclear, aeronautical, space, engineering, automobile and thermal sectors as the customers and was catering to the need of the strategic importance of the State as also for the country. In view of the absence of raw material like Iron Ore, the plant had been unable to work to the full capacity even though the Government of India had come forward to fund the expansion/modernization of the plant. The mineral was to be utilized for the captive purpose and the applied area was in forest land. The aforesaid application is stated to have necessitated the filing of an application being CM No. 4029/2010 by the petitioner seeking a stay of the letter/order dated 06.01.2010. On 23.03.2010, the learned Single Judge, while issuing notice, granted interim stay of this letter/order dated 06.01.2010. On merits, the petitioner also filed a Revision Application No. 13 (11) 2010-RC-I before the Mines Tribunal in which the judgment is stated to have been reserved, as set out in the petition.

1.7 The writ petition was, however, ultimately dismissed by the learned Single Judge vide an Order dated 28.10.2010. The learned Single Judge in the Order relied upon the judgment of the Supreme Court in [Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others](#), where the scope and ambit of Rules 59 and 60 of the said Rules in the context of the provisions of the said Act has been discussed. In order to appreciate the ratio, we consider it necessary to reproduce Rules 59 and 60 of the said Rules, which are as under:

59. Availability of area for regrant to be notified.-

(1) No area-

(a) which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease; or

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) of rule 7A or sub-rule (1) of rule 15 or sub-rule (1) of rule 31, as the case may be; or

(d) in respect of which a notification has been issued under sub-section (2) or sub-section (4) of section 17; or

(e) which has been reserved by the State Government or u/s 17A of the Act,

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 7D or sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be; 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 thirty 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 nothing in this rule shall apply to the renewal of a lease in favour of the original lease or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under rule 58 or u/s 17A of the Act is proposed to be granted to a Government company, no notification under clause (ii) shall be required to be issued:

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of sub-section (1) of section 11, no notification under clause (ii) shall be required to be issued.

(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 grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to 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, shall be deemed to be premature and shall not be entertained.

(emphasis supplied)

1.8 We also reproduce Section 11(4) of the said Act, which reads as under:

11. Preferential right of certain persons.-

.....

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section (3),

may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(emphasis supplied)

1.9 In the context of the aforesaid Rules and Section 11 of the said Act, it was concluded by the Apex Court that a harmonious reading would require that notifications would be issued u/s 11(4) in the case of categories of areas covered by Rule 59(1) of the said Rules and the opinion of the Division Bench of the Karnataka High Court concluding that applications made prior to the notification under Rule 59(1), which are premature and cannot be entertained under Rule 60, would revive upon issuance of the notification, was set aside.

1.10 The learned Single Judge, thus, concluded that the application of the petitioner for grant of mining lease cannot simply be considered till such time no notification is issued under Rule 59(1) of the said Rules or an exemption is granted by the Central Government under Rule 59(2) of the said Rules. Another aspect analysed by the learned Single Judge was the assailability of the letter/order dated 30.07.2007. The learned Single Judge was of the view that the very scope of Rules 59(1) and 59(2) of the said Rules show that recommendation by the State Government to the Central Government does not have any meaning till there is concurrence of the Central Government and, thus, there could be no question of adjudication of that letter. The provisions of Section 17A(1A) and 17(2), which were referred to, are reproduced here-in-below:

17. Reservation of area for purposes of conservation.-

....

(1A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

(2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved.

.....

(emphasis supplied)

1.11 The learned Single Judge concluded that it is only when the Central Government decides not to invoke its powers under Rule 59(2) of the said Rules, the question of issuance of notification under Rule 59(1) of the said Rules would arise. Similarly, the decision of the State Government in issuing the letter/order dated 06.01.2010 was also held to be invalid as it was contrary to law explained by the Supreme Court in Sandur Manganese and Iron Ore Ltd."s case (supra) in reference to Rules 59(1) and 59(2) of the said Rules as that exercise of examining comparative merit of the applications could not have been taken up, though it was simultaneously observed that the concluding portion was to be subject to the Central Government exercising power under Rule 59(2) of the said Rules.

1.12 The petitioner thereafter preferred LPA No. 3/2011 against the Order dated 28.10.2010. On 20.04.2011, while issuing notice, the Division Bench observed that it would be appropriate to permit the Central Government to take a decision on the proposal/recommendation dated 30.07.2007, which would be filed before the Division Bench, but would not be given effect to till further orders. The Central Government filed an affidavit dated 30.07.2011 informing the Division Bench that it had taken a decision qua both the proposals/recommendations dated 30.07.2007 on 12.10.2009 and the recommendation dated 30.07.2007 had been treated as closed. Along with the affidavit, the decision taken by the Central Government was filed. It has been noted that with regard to the recommendation of the State Government dated 06.01.2010 for granting of mining lease in favour of respondent No. 3, the High Court had already observed that there was no occasion for the State Government to hear all the applicants at that stage in view of the judgment of the Supreme Court in Sandur Manganese and Iron Ore Ltd."s case (supra). A fresh request for reservation is stated to have emanated u/s 17A(1A) of the said Act by the Secretary, Ministry of Steel noticing the criticality of the operations of respondent No. 3 and that proposal had been forwarded to the State Government of Karnataka as part of the consultation process. The comments of the State Government were still awaited.

1.13 In view of the aforesaid stand, the LPA was disposed of on 13.09.2011 giving liberty to the petitioner to assail any decision, which may ultimately be taken.

1.14 The Revision Application filed by the petitioner on merits before the Mines Tribunal against the communication/order dated 06.01.2010 is stated to have been listed on 30.11.2011 when the notification dated 21.10.2011 was produced, which has been impugned in the present writ petition.

2. It is the case of the petitioner that the emphasis laid on the aspect of end use of the mineral in order to grant/reserve the area in favour of respondent No. 3 is only an eye-wash and could not be the legal basis for the grant in favour of the said respondent under the said Act. Under an earlier notification dated 15.03.2003, respondents No. 1 and 2 had de-reserved the area, which had been lying reserved for 40 years, which was in close proximity to the plant of respondent No. 3 as opposed to the area in question, which

was at a distance of more than 350 kms. In terms of another notification dated 10.07.2007, 12,566 acres was de-reserved in Chitradurga District, which was approximately 80 kms. from the plant of respondent No. 3. Mining operations and transportation of Iron Ore in Bellary District had been suspended in terms of an Order dated 29.07.2011 passed by the Supreme Court in SLP (C) No. 7366-7367/2010 titled "Government of A.P. & Ors. v. M/s. Oblapuram Mining Co. Pvt. Ltd. and Ors." and the Environment Impact Assessment (EIA) study was directed to be undertaken in pursuance to an Order dated 05.08.2011 while permitting only National Mineral Development Corporation (for short, "NMDC") to undertake mining in the area to meet the requirements of the steel industry. Certain other Orders had also been passed therein permitting Mine Ore to be lifted and monitoring the mining in the area.

3 The petitioner alleges that a premeditated approach had been adopted while reserving area in favour of respondent No. 3 apart from the fact that u/s 17A of the said Act, permission was relatable only to a virgin area, which was not so in the facts of the present case.

4. The writ petition has been opposed by both respondents No. 1 and 3. Respondent No. 2 did not enter appearance and was, thus, proceeded ex-parte vide Order dated 17.07.2012.

5 The stand of respondent No. 1/Union of India (i.e., the Central Government) in substance, apart from denying the allegation of any favoritism, is that the interpretation, which the petitioner seeks to put on the provisions of the said Act, is not tenable. Qua Section 17A(1A) of the said Act, it has been stated that the expression "may reserve any area not already held under any prospecting licence or mining lease" is sought to be read as reference to an area, which has never been previously given out for any prospecting licence or mining lease and should be a virgin area. This is stated to be contrary to a plain reading of the said Section. The relevant time, when it should not be reserved, is at that particular time, i.e., not currently being held under any prospecting licence or mining lease and cannot imply that it was not at any time in the past also not held for any prospecting licence or mining lease, which may stand suspended, surrendered or annulled. The applicability of Rule 59(1) of the said Rules is to only arise in cases where applications for grant of mineral concessions have been filed u/s 10 of the said Act. This would imply that there is no such requirement u/s 17A(1A) of the said Act. The powers u/s 17A have been held to be independent of the powers and not relatable to the power u/s 11 of the said Act in view of the pronouncement of the Supreme Court in [Indian Charge Chrome Ltd. and Another Vs. Union of India \(UOI\) and Others](#), .

6. The reference to the proceedings before the Supreme Court relating to mining in Bellary District is stated to be misconceived as directions have been issued from time to time by the Supreme Court for resumption of certain types of lease.

7 It has been emphasized that a fresh proposal/request has emanated u/s 17A(1A) of the said Act in favour of respondent No. 3 from the Central Government for which consent was sought by the State Government, which ultimately gave rise to the impugned notification. In this process, technical comments were also sought from the Indian Bureau of Mines, which opined in favour of respondent No. 3 vide its letter dated 05.07.2011. Keeping in mind the steel production capacity of respondent No. 3, the recommended area not being held under a prospecting licence or a mining lease and respondent No. 3 being possessed of the necessary, financial and technical expertise justifying its need, the State Government gave its consent vide letter dated 13.9.2011 qua reservation of the area.

8. The stand of respondent No. 3 is more or less on similar lines emphasizing that there is no reference to any virgin area under the provisions of Section 17A of the said Act. The only requirement is that it should not be "a held area", which is so in the present case.

9. The judgment in M/s. Indian Charge Chrome Ltd.'s case (supra) has been relied upon where also the area in issue was earlier held by TISCO and was sought to be reserved in favour of Orissa Mining Corporation. It was not a virgin area. The Supreme Court held that the power u/s 17A(2) was available to the State Government and, thus, on para materia basis, it is pleaded that the Central Government has the power in the present case. The need for raw material has once again been emphasized in the counter affidavit. Insofar as the averments in the petition regarding alternative sites in proximity to the plant of respondent No. 3 is concerned, it has been stated that the Mineral/Iron Ore earlier available in that area was having a less percentage of "Fe" content and was not useful in making of iron and steel material in integrated steel plant of respondent No. 3.

10. Learned senior counsel for respondent No. 3 also relied upon the judgment of the Supreme Court in Pallava Granite Industries (India) (P) Ltd. v. Union of India & Ors., (2007) 15 SCC 30 to advance the proposition that reservation of right in favour of public sector enterprise was permissible inter alia on the ground of welfare requirements of the State.

11. We may notice that in the context of reliance placed by learned senior counsel for respondent No. 3 on the judgment in M/s. Indian Charge Chrome Ltd.'s case (supra), learned senior counsel for petitioner relied upon the judgment of a learned Single Judge of the Karnataka High Court in [Sri H.G. Rangangoud Vs. Ministry of Coal and Mines, Department of Mines, Government of India and Others](#), to contend that the judgment of the Supreme Court has been noticed by the learned Single Judge while dealing with a similar notification dated 27.06.2003, as in the present case. In that notification also, in exercise of power u/s 17A(1A) of the said Act, the Central Government in consultation with the Government of Karnataka reserved for undertaking mining operations through State Trading Corporation of India Ltd. in certain areas in the Bellary District. The allegation was that the exercise of power u/s 17A(1A) of the said Act was not bona fide and was exercised in a biased manner in favour of the Central Government Undertaking,

i.e., STC. The other limb of the argument was that the exercise of the power of the Central Government should have been on its own and not at the behest of STC, which had virtually moved the Central Government for issuance of notification and, thus, it amounted to abdication of its function/responsibility by a statutory body and, therefore, also the notification is not tenable in law. Learned Single Judge found, on perusal of records, that the development for issuing the impugned notification had taken place in the light of failure on the part of STC to seek grant of mining lease of the subject land. It was observed that while a situation of this nature by itself may not come in the way of exercise of power u/s 17A(1A) of the said Act, the manner in which the power was exercised became quite relevant and would have a bearing on the validity of the notification. The proposal for reservation was held not to originate from the Government and for itself, but originated only by STC, the Central Government Undertaking and not for the reservation in favour of the Central Government as STC was an applicant earlier. STC being essentially a commercial trading organization, its endeavour would be to market Ore in a profitable manner and the stress would be on the commercial part of the activity and not necessarily either the conservation part or the research and development part. Thus, if it was the intention of the Central Government to exploit the Ore in the scientific and systematic manner, it was observed that it could have employed its agency, i.e., NMDC. The record was observed not to inspire the confidence of the Court that power u/s 17A(1A) of the said Act had been exercised in a proper and bona fide manner. The Central Government was stated to have examined the question of issuance of notification u/s 17A(1A) of the said Act as though the Section confers power on the Central Government to grant lease to its Undertaking or Corporation, the power had been exercised only for the benefit of STC. Since the power has to be exercised in a manner provided for the purpose for which it was so provided and the power having been exercised for the benefit of STC, it was held to be bad in law.

11.1 On a plain language of the notification, it was observed that it may appear that the notification is within the four corners of Section 17A(1A) of the said Act, but when action on the part of the Central Government, while issuing the notification was examined, it became apparent that the power u/s 17A(1A) of the said Act was not utilized for the purpose and the manner in which it is conferred on the Central Government. The Central Government was held not to have bestowed its attention to the need for exercising the power u/s 17A(1A) of the said Act on its own and the cumulative effect revealed a case of colourable exercise of power and not a bona fide exercise of power for issuing a notification.

11.2. We are informed an appeal being WA No. 1778/2007 against the aforesaid decision dated 14.08.2007 of the learned Single Judge in WP No. 19339/2005 is still pending adjudication before the High Court of Karnataka-Principal Bench at Bangalore.

12. We have had to sketch out the facts in detail even though the controversy is comparatively in limited compass. This is so as there has been considerable past history of inter se litigation which, of course, stands concluded as observed aforesaid. We have

to emphasize that the factum of there being some earlier proposals emanating from the State Government, which were held to be not in accordance with the procedure as prescribed under the said Act and the said Rules, does not imply that the impugned notification is ipso facto bad in law. In order for the petitioner to succeed, it must successfully assail the impugned notification, which is the result of the process initiated by the Central Government u/s 17A(1A) of the said Act.

13. The said Act was brought into force to provide for the development and regulation of mines and minerals under the control of the Union. This is in view of Entry 54 of the Union List in the Seventh Schedule of the Constitution of India (hereinafter referred to as, "the Constitution") providing for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by the Parliament by law to be expedient and public interest. These mines and minerals being national wealth, thus, require to be regulated by the said Act.

14. There is no real controversy qua the law enunciated in M/s. Indian Charge Chrome Ltd.'s case (supra). The facts set out in the case show that there was no notification issued in terms of Section 11(4) of the said Act read with Rule 59 of the said Rules. The scope of the provisions of Sections 11 and 17A of the said Act was explored. It was examined as to whether power u/s 17A was independent of any other power or power u/s 11 of the said Act. The Supreme Court observed that the power u/s 17A was independent power and was not relatable to power available u/s 11 of the said Act. Thus, it was open to the Central Government to reserve an area in terms of Section 17A(1), if it thought expedient and it is in the interest of the nation or that it is necessary to conserve the particular metal or ore or the area producing it. It was also held that it was open to the Central Government to decide that such area should be exploited by a Company or a Corporation owned or controlled by it. The recommendation of the State Government for approval of the Central Government for leasing out the extent of area to the State Corporation was held to be well within the powers of the State Government u/s 17A(2) of the said Act. The requirement was for the Central Government to consider. Thus, to our mind, no arguments qua issues, which are res integra in view of this judgment, are permissible.

15. Another judgment brought to our notice recently pronounced by the Supreme Court is in Monnet Ispat and Energy v. Union of India and Ors., 2012 (6) SCALE 650 , which has considered the scheme of the said Act. It has once again been held that by virtue of Section 17 of the said Act, the Central Government has been given special powers to undertake prospecting or mining operations in certain cases. The scope of Section 17A of the said Act was once again emphasized. The approval u/s 17A(2) of the said Act was held not to mean a "prior approval" as used in Section 11 of the said Act and such approval may be "express" or "implied".

16. Learned senior counsel, faced with the aforesaid legal principles, sought to confine his submissions on a triple-plea:

(i) the previous facts set out in this petition show that the proposal in question, which gave rise to the impugned notification, did not actually emanate from the Central Government, as was a pre-requisite u/s 17A(2) of the said Act;

(ii) the notification cannot reserve for a public sector, but for itself and only prospecting and mining could have been granted; and

(iii) de-reservation in certain other areas in close proximity to the plant of respondent No. 3 would show that the exercise was without any application of mind.

17 We find none of the aforesaid three pleas sustainable.

18. It is, no doubt, true that there were earlier endeavours by the State Government on an application by respondent No. 3 to reserve the area for the benefit of respondent No. 3. The importance of respondent No. 3 has been emphasized in various communications, i.e., the factum of it being a public sector enterprise; the only plant of public sector enterprise; respondent No. 3 catering to the needs of a wide spectrum of industries; and the said respondent losing the benefit of certain area for mining on account of the same falling in forest area. It is not as if a private enterprise was sought to be favoured one against the other. The process was, however, found to be procedurally faulty in view of the manner in which it was sought to be carried out. It is this faulty procedure, which gave rise to certain adverse decisions where interim orders were granted against the State Government. The State Government, however, ultimately realized its folly and that matter was brought to a close, as would be apparent from the Orders passed by the learned Single Judge on 28.10.2010 and of the Division Bench thereafter on 13.09.2011. That chapter was put to an end. This would not imply that there was any mala fide exercise being carried out, but only that procedurally an incorrect course was sought to be adopted. Those proceedings came to an end as the Central Government itself closed that chapter. The procedure to be followed for relevant notifications to be issued keeping in mind the provisions of Section 11 of the said Act read with Rules 59 and 60 of the said Rules is different from the exercise to be carried out u/s 17A of the said Act. This issue is no more res integra in view of the authoritative pronouncements of the Apex Court in M/s. Indian Charge Chrome Ltd.'s case (supra) and Monnet Ispat & Energy's case (supra). Thus, when the exercise was undertaken u/s 17A of the said Act, a fresh process started. It may also be noticed that Sections 17 and 17A of the said Act fall under the heading of "Special Powers of Central Government to undertake prospecting or mining operations in certain cases". Section 17A was inserted by Act 37 of 1987 w.e.f. 10.02.1987. Sub-section (1A) of Section 17A was inserted by Act 25 of 1994 w.e.f. 25.01.1994. The fresh exercise by the Central Government, thus, began when the proposal was forwarded to the State Government of Karnataka as part of the consultation process. Not only that, the opinion of Indian Bureau of Mines was obtained as communicated vide its letter dated 05.07.2012, which ultimately gave rise to the notification dated 21.10.2011. It, thus, cannot be said that the exercise carried out is not in conformity with the provisions of Section 17A(1A) of the said Act.

19. We are fortified in our views by the observations of the Supreme Court in Pallava Granite Industries (India) (P) Ltd."s case (supra). In the said case, the matter pertained to grant of mining lease and it was observed that in scrutiny of administrative or executive function, there has to be flexibility and play given for exercise of power/discretionary power as long as it is in public interest. Thus, the right of the Government to employ its own agency by cancelling its decision to grant contract to private parties was upheld and, in fact, it was observed that a grant cannot fetter or hamper future executive action/decision to revoke grant in public interest. In the context of Section 17A(2) of the said Act, while examining the reserving and demarcating mining areas for development through State Government agencies requiring approval of the Central Government, it was observed that the approval in that case was not a conditional approval. The Supreme Court relied upon the observations made in Antonio Buttigieg v. Stephen H. Cross, AIR 1947 PC 29, which held that a Government cannot, by contract, hamper its freedom of executive action in matters which concern the welfare of the State. Similarly, the Supreme Court referred to, with approval, the observations made in Edward Keventers (Successors) (P) Ltd. v. Union of India, AIR 1983 Del 376 that every grant has to be subject to any future executive action, which must be decided by the needs of the community and that the Government cannot, by contract, hamper its freedom of action in matters concerning the welfare of the State. Distinction was, thus, drawn between creation of a right or interest in the property as against transfer of such right or interest.

20. We are unable to agree with the reasoning of the learned Single Judge of the Karnataka High Court in Sri H.G. Rangangoud S/o Late H.R. Gaviappa"s case (supra). In our view, the reasoning runs contrary to the judgment of the Supreme Court in M/s. Indian Charge Chrome Ltd."s case (supra), even though that judgment had been noticed. No doubt, the notification in the present case is worded in a similar language as in that case. The learned Single Judge also opined that the language of the notification did seek to suggest a proper exercise of power in terms of Section 17A(1A) of the said Act. However, thereafter the learned Single Judge somehow proceeded to go into the aspect of the background, which resulted in exercise of power by the Central Government, which was pleaded by leaned senior counsel for the petitioner to be similar in the present case. The fact that earlier an endeavour was made for the benefit of a public sector corporation, but subsequently the Central Government itself chose to exercise that power, in our view, does not make the exercise of power bad in law. When it is to be examined whether a power has been exercised in the manner so provided, really, there is no fault. It is not as if the Government is denuded of the authority of curing a technical defect. We also feel that the conclusion of the learned Single Judge that since STC is a commercial enterprise albeit a public sector enterprise, commercial considerations would weigh and, thus, the mining operations could have been carried out through another Government Organization, i.e., NMDC is not warranted. In our view, it is not for the Court to decide as to through which agency the Government would like the operations to be carried out-one public sector enterprise or another one. The Court in scrutiny of such administrative actions does not sit as an appellate authority, but is only concerned with the exercise of

power in such a manner that it is not hit by the Wednesbury principle of unreasonableness. Apart from this, the procedure, as provided in the statute, must be followed. We are, thus, of the view that this judgment not only runs contrary to the observations of the Supreme Court in *M/s. Indian Charge Chrome Ltd.*'s case (supra), but goes well beyond the accepted parameters of judicial scrutiny of administrative actions with powers especially being conferred under a statute. It also goes contrary to the observations in *Pallava Granite Industries (India) (P) Ltd.*'s case (supra).

21. We may notice that on a plain reading of Section 17A(1A) of the said Act, the interpretation sought to be put forth by the petitioner that it should be a virgin area is not acceptable and, once again, this question is no more *res integra* in view of the judgment of the Supreme Court in *M/s. Indian Charge Chrome Ltd.*'s case (supra).

22. A reading of the notification shows that the Central Government, after consultation with the State Government, has reserved for 20 years for undertaking prospecting or mining operations through respondent No. 3, the Iron Ore deposits covering the area of 140 hectares. This is in conformity with sub-section (1A) of Section 17A of the said Act, which provides for the Central Government in consultation with the State Government to reserve the area through a Government Company. Thus, it is not understood as to what is the second plea, which is sought to be urged on behalf of the petitioner as the reservation is not for the public sector enterprise, but a reservation by the Central Government for undertaking prospecting or mining operations through the public sector enterprise.

23. Insofar as de-reservation of certain other areas in close proximity to the plant of respondent No. 3 is concerned, the respective stands are already reflected in the pleadings before us. It is the requisite quality of Ore, which is required for respondent No. 3 and not any Ore. In any case, this is a matter for the Central Government, who has examined as to how best prospecting can be carried out by the Central Government through the public sector enterprise.

24. In our mind, there can be no doubt that the petitioner can have no inherent right to claim a mining lease. This would go contrary to the very scheme of the said Act and the constitutional scheme envisaged in view of Entry 54 of the Union List in the Seventh Schedule of the Constitution. Mines and minerals are the wealth of the nation and that is why they are protected and their exploitation is controlled by a Central Legislation being the said Act.

25. We are, thus, of the view that the writ petition is without any merits and is dismissed with costs. On having perused the bill of costs furnished by respondent No. 3 for Rs. 10,31,393/-, respondent No. 1 not having furnished the bill of costs, we quantify the costs payable by the petitioner to respondent No. 1 at Rs. 15,000/- and to respondent No. 3 at Rs. 1,00,000/- respectively.