

M/S INDIAN CHARGE CHROME LTD. AND ANR.

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v.

UNION OF INDIA AND ORS.

DECEMBER 17, 2002

[G.B. PATTANAİK, CJ., K.G. BALAKRISHNAN AND S.B. SINHA, JJ.]

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Mines and Minerals (Regulation and Development) Act, 1957/Mineral Concession Rules, 1960—Sections (1) and 11(4)/ Rule 59(1) and(2)—Mining lease—Grant of—Previously lease-hold area held by TISCO—Renewal of lease only in respect of some fraction of the area—Direction by Central Government to consider other four applicants for grant of lease in respect of the balance area—Rule 59(1) relaxed by Central Government in view of urgent need of the four applicants—State Government assessed the need of the four applicants and recommended allotment only in respect of 50% of the balance area—Further remaining area thrown open for consideration of other claimants including the four claimants—Decision of the State Government approved by Court—Expert Committee appointed to consider grant of further remaining area—During pendency of consideration by Expert Committee, State Government recommended one fraction of further remaining area in favour of an applicant 'N'—Recommendation approved by Central Government by relaxing provision under Rule 59(1)—Recommendation assailed which was dismissed by High Court—Appeal to Supreme Court—Case challenging approval by Central Government before High Court, transferred to Supreme Court—During pendency of appeal grant of lease in favour of 'N' withdrawn by State Government and the lease decided to be granted in favour of its own public sector undertaking—However the grant not approved by Central Government—Propriety of recommendation and its approval in favour of 'N'—Held, the recommendation and its approval is legal—There has been no infraction of Rule 59(2)—For grant of preferential right in favour of 'N' reasons in accordance with the requirements of Section 11(4) were recorded—It was permissible for the State Government to pick up any single applicant's application—Subsequent event is of no consequence since the issue before the Court is to examine the legality of the recommendation and its approval and not the right of 'N' to the lease-hold area—The subsequent event also does not exist in the eye of law as the decision of the State Government to grant the lease-hold area in favour of public sector undertaking was not accepted

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A by the Central government.

Practice and Procedure—Subsequent event—Effect of—Held, in view of the facts of the case and the issue for consideration before the Court, subsequent event is of no consequence.

B Tata Iron and Steel Company (TISCO) which originally held mining lease for 1261.476 Hectares land, applied for renewal of the lease. Central Government granted approval for renewal in respect of only 650 Hectares and directed the balance area to be made available to other industries. On challenge of the order of the Central Government, High Court decided that entire matter required reconsideration by the Central Government.

C The challenge to the High Court order was ultimately disposed of by Supreme Court. Central Government pursuant to the observation of High Court appointed an Expert Committee, which recommended grant of lease to TISCO only in respect of 406 Hectares. Committee also took into consideration claims of other claimants. Central Government by order

D dated 17.8.1995 on the basis of Report of the Committee asked State Government to take steps for grant of 406 Hectares to TISCO and to consider the applications of other 4 claimants namely, Jindal, Ferro, IMFA and Ispat Alloys in respect of balance area of 855.476 Hectares. It relaxed the provisions of Rules 59(1) of Mineral Concession Rules, 1960 in respect of the four claimants in view of their urgent need. State Government by

E order dated 29.6.1997 recommended for grant of lease to the four claimants in respect of the balance area of 855.476 hectares on the basis of 50% of their basic requirements i.e. 419 hectares. The recommendation of the State Government was confirmed by High Court and consequently by Supreme Court in *Ferro Alloys Corpn. Ltd. and Anr. v. Union of India and Ors.*, [1999] 4 SCC 149. State Government in the meantime had

F appointed an Expert Committee to examine grant of the remaining 436.295 hectares. The Court in para 50 of the judgment in *Ferro Alloys* case observed that the balance area will have to be taken into consideration by the Expert Committee as well as State Government for grant of lease to other claimants, and while doing so the Government will have to take

G into consideration the remaining 50% assessed needs of the four applicants. While the matter was being considered by the Expert Committee, State Government considered the case of 'N' and the Chief Minister, recommended grant of mining lease for 84.881 hectares in its favour, taking into account the fact that they have already established a

H ferro chrome plant in the State, but they did not have any mining lease

for chromium in their favour. Order of the Chief Minister was reiterated again by order dated 14.1.1999 and finally on 28.1.1999, the recommendations were sent to the Central Government for approval. Central Government by its letter dated 27.6.2001 pointed out some deficiencies in the recommendation. Therefore State Government, by its letter dated 30.6.2001, asked Central Government to exercise its power under Rule 59(2) and consider grant of approval had approved by invoking provisions under Section 11(4). Thereafter, State Government wrote a letter to Central Government stating that the recommendation by letter dated 30.6.2001 was not a valid recommendation. Central Government approved the recommendation after relaxing the provision under Rule 59(1) in exercise of its power under Rule 59(2).

The allotment to 'N' was challenged by the appellant herein, before Orissa High Court. 'N' and State Government filed interlocutory application seeking clarification of judgment in *Ferro Alloys* case wherein the Court observed that the observations in para 50 of the Judgment, will not in any way be construed to be pre-empting writ petition filed before High Court by the appellant herein.

The writ petition filed by the appellant herein was dismissed by Orissa High Court. Hence the present appeal. Appellant filed Writ petition before Delhi High Court challenging the order of Central Government approving the recommendation, which was subsequently transferred to this Court.

During pendency of the SLP, State Government took a decision to withdraw its earlier recommendation in favour of respondent 'N' and decided that the entire balance area of 436.295 hectares could be granted to its own public sector undertakings i.e. Orissa Mining Corporation but approval was not granted by the Central Government for the grant.

The questions for consideration before this Court were:

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

A 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 'N' cropped up?

3. Whether State Government recorded special reasons in terms of Section 11(4) of the Act for treating the application of 'N' in preferential manner? and

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4. Whether the Judgment in *Ferro Alloys* case prevented the State Government to take the case of any individual applicant and consider 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?

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Disposing of the appeals and transfer case, the Court

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HELD: Per Pattanaik, CJ (For himself and K.G. Balakrishnan, J.)

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1. Instant appeal is the appeal of a rival claimant against the Judgment of Orissa High Court, holding the recommendation made by the State Government in favour of the respondent 'N' to be legal and the original petition which was filed in the Delhi High Court and which stood transferred to this Court, is against the order of approval passed by the Central Government. To consider the legality of the same, the so-called subsequent event of reservation is of no consequence. This Court is not called upon to answer the question whether respondent 'N' has any right to the lease-hold area in which case possibly, it could have examined as to whether that right still subsists or not, but on the other hand is merely examining the legality of the recommendation made by the State Government as well as the legality of the approval thereto made by the Central Government. That apart, even the so-called subsequent decision of the State Government to reserve the entire area for being exploited through the public sector undertaking namely the Orissa Mining Corporation was not accepted by the Central Government. In this view of the matter, the so-called subsequent event also does not exist in the eye of law. [310-E-H; 311-A-C]

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2. The underlying principle engrafted under Rule 59 of the Mineral Concession Rules, 1960 is a transparency when the area is made available for re-grant, so that all persons interested can make their application and

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those applications can be dealt with, in accordance with the provisions or A
the Mines and Minerals (Regulation and Development) Act, 1957 and the
Rules. Sub-rule (2) of Rule 59 however empowers the Central Government
for reasons to be recorded in writing to relax the provisions of sub-rule
(1). The relaxation is in respect of an area, which was previously held
under a mining lease or a prospecting licence. When the entire area had B
been held by TISCO under a mining lease and when TISCO was granted
renewal only in respect of 406 hectares and the balance area became
available and the Central Government directed that the application for
mining lease by four other applicants could be considered, finding the
urgent need of those four applicants, including the present appellant, the
Central Government relaxed the provisions of sub-rule (1) of Rule 59. The C
balance area from out of the previously held area of TISCO, thus being
made available for grant of mining leases in favour of intended applicants
and the Central Government having relaxed the provisions of sub-rule (1),
it was not necessary to again exercise that power under sub-rule (2) out
of the balance area, excluding the area granted in favour of the four D
applicants, the present respondent could be granted an area of 84.881
hectares. That apart, the question of consideration of other applicants,
including the case of the appellant for grant of mining lease was being
done pursuant to the Judgment of this Court. Then again when the
impugned order of approval was granted by the Central Government, the
Central Government did exercise the power under sub-rule (2) of Rule E
59 and approved the recommendation made in favour of respondent 'N'.
Therefore, it cannot be said that there has been an infraction of Rule 59(2)
inasmuch as no special case has been made out for grant in favour of 'N'.
[311-E-H; 312-A-C]

3. It is no doubt true that Section 11 provides for a preferential right F
of certain persons and sub-section (4) thereof postulates that the State
Government may, for any special reasons to be recorded, grant or permit
mining lease to an applicant, whose application was received later in
preference to an applicant whose application was received earlier. A
Committee of Expert Body was considering the respective need of all the G
applicants, after the Judgment of this Court in TISCO's appeal, in the
light of the order of the Central Government dated 17.8.1995. The State
Government had already granted after assessing the needs of the four
claimants namely IMFA, the present appellant, FACOR, ICCL, ISPAT
and recommended on the basis of their need at 50% and thus 419.18
hectares had been allotted out of 855.476 hectares, which was the balance H

A area that was available for grant after the renewal in favour of TISCO. That being the position and while the matter was being considered by the Expert Committee, the Government of Orissa did consider the case of 'N' and the Chief Minister on 14.8.1998, recommended grant of mining lease in its favour, taking into account the fact that they have already established a ferro chrome plant in the State, but they do not have any mining lease for chromium in their favour. The aforesaid order of the Chief Minister was reiterated again by order dated 14.1.1999 and finally on 28.1.1999, the recommendations were sent to the Central Government for approval. On the aforesaid premises, it cannot be said that there were no special reasons in terms of the provisions contained in sub-section (4) of Section 11 for grant of a preferential right in favour of 'N'. State Government did record the reasons in accordance with the requirements of Section 11(4), while recommending in favour of 'N'. [312-D-H; 313-A]

4. It cannot be said that it was not permissible for the State Government to pick up any single appellant's application, as has been done in the case of 'N' and consequently the so-called recommendation in its favour as well as the approval of the Central Government, is in contravention of the direction of this Court in *Ferro Alloys*' case. The State as the owner of the property is entitled to exercise its powers in respect of mineral wealth in accordance with the provisions of the Act and the Rules and the observations of this Court in the aforesaid case, merely indicated that while considering the cases of all other applicants in respect of the remaining area, the cases of the four applicants, who had been granted mining lease on the basis of their 50% need should also be considered. The Judgment of this Court does not put any fetter on the power of the State Government in exercising the preferential right under Section 11 and in considering the case of 'N' for the special reasons in terms of Section 11(4) of the Act. This is more apparent from the order that was passed on an interlocutory application filed by 'N' as well as the State Government wherein the Court observed that the so-called observations in the Judgment in *Ferro Alloys* case in paragraph 50, will not in any way be construed to be pre-empting writ petition filed before High Court by the appellant herein. There is nothing in the judgment which can be construed to mean that the State Government was enjoined to consider the case of any individual applicant in accordance with law, as has been done in the case of respondent 'N'. It also cannot be said that an individual applicant could not have been considered before the recommendation of the Committee, which had been set up to find out the

requirements of the respective claimants. To hold that way would tantamount to denuding the State Government of its power as the owner of the minerals to deal with the mineral resources of the State in accordance with the provisions of the Act and the Rules framed thereunder. There is no infirmity with the approval of the Central Government made, which is subject matter of the writ petition that had been filed in the Delhi High Court and which stands transferred to this Court. [313-F-H; 314-A-G]

Ferro Alloys Corporation Ltd. And Anr. v. Union of India and Ors., [1994] 4 SCC 149 and *Tata Iron and Steel Co. Ltd. v. Union of India*, [1996] 9 SCC 709, referred to

Per S.B. Sinha, J. (Dissenting)

1. So far as the subsequent events are concerned, State Government was entitled to change its policy decision. Cabinet had taken a decision to withdraw the recommendations made for grant of mining lease in favour of 'N' 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. [331-A-B]

2.1. The approval of the Central Government for grant of mining lease in favour of 'N' was made, having regard to (i) by invoking the provisions of Section 11(4) of the Act, (ii) by relaxation of Rule 59(1) of the Rules; and (iii) by grant of approval on the recommendations made by the State Government. The earlier order of the relaxation passed by the Central Government was made when before the State Government four applications were pending. The Central Government itself keeping in view the fact that at that point of time the private respondent was not an applicant, in its letter dated 27th June, 2001 held that non-compliance of Rule 59(2) constituted a deficiency. [330-A-B]

2.2. 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. [330-C-D]

A 2.3. 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 sub-rule
 B (2) of Rule 59 of the Rules, 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
 C of 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. [330-D-G]

D *Tata Iron and Steel Co. Ltd. v. Union of India*, [1996] 9 SCC 709,
 referred to.

E 2.4. Central Government, therefore, 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 Government could have initiated a proceeding for grant of
 mining lease. [330-G-H]

F 3. 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
 G invoking section 11(4) of the Act. Such reasons had not been communicated
 to the Central Government and evidently in that view of the matter the
 Central Government had issued letter dated 27th June, 2001 wherein the
 deficiencies have been pointed out. [328-E-F; 329-D]

H *Rupan Deol Bajaj v. K.P.S. Gill*, AIR (1996) SC 309 and *Union of India*,
v. Mohan Lal Capoor and Ors., [1973] 2 SCC 836, referred to.

4.1. State Government 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. This Court, in *Ferro Alloys* case, in no uncertain terms directed the State Government to consider to exercise its jurisdiction pursuant to the recommendations of the Expert Committee in respect of remaining area of 436.295 hectares. If a policy decision had been taken, any deviation or departure therefrom would attract the wrath of Article 14 of the Constitution of India. [324-B-E]

4.2. It is true that on the clarificatory applications filed by 'N' and State Government, this Court did not pass any positive order but made certain observations. 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, Central Government itself took the stand before High Court that the recommendations of the State Government was premature as it did not receive the report from the Expert Committee. This Court's directions in *Ferro Alloys* case 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. Therefore, State Government or the Central Government could not have taken any decision in violation thereof. [324-F-H; 325-A-D]

A 4.3. A binding judgment 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 Expert Committee. [325-D-E]

Ferro Alloys Corporation Ltd. and Anr. v. Union of India and Ors., [1994] 4 SCC 149, referred to

C 5. 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 State Government 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 record to show that he had the requisite authority. [322-G-H; 323-A-B]

Punjab Beverages Pvt. Ltd. v. Suresh Chand, (1978) II LLJ, referred to.

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8501 of 2002.

From the Judgment and Order dated 18.5.2001 of the Orissa High Court in O.J.C. No. 1830 of 1999.

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C.A. No. 8502 of 2002 and T.C. (C) No. 9 of 2002.

P. Chidambaram, Ashok H. Desai, D.A. Dave, V.A. Bobde and G.L. Sanghi, Ms. Anuradha Dutt, Ekta Kapil, Ms. B. Vijaya Lakshmi Menon, H K.K. Lahiri, Ashok Parija, Ejaz Maqbool, Ujjwal Kr. Jha, Asiam Ahmed,

Ranjan Kr. Jha, Gourav Kejriwal, Jana Kalyan Das, A. Subba Rao, Ms. Sunita Sharma, D.S. Mahra, Raj Kumar Mehta, Ms. M. Sarada Ajay Choudhary and S.B. Upadhyay for the appearing parties. A

The Judgments of the Court were delivered by

PATTANAİK, CJ. Leave granted. B

This appeal by grant of special leave is directed against the decision of the Orissa High Court dated 18th of May, 2001, dismissing the appellant's writ petition which had been filed against the recommendation of the State of Orissa dated 28.1.1999, seeking approval of the Government of India under Section 5(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act,) in respect of 84.881 Hectares of land, bearing chromite in Village Kalarangiata, Kaliapani in Sukinda Tahsil of Jaipur District, Orissa, in favour of M/s Nava Bharat Ferro Alloys Limited. The writ petition which had been filed in Delhi High Court and since transferred to this Court is directed against the order of approval of the Government of India dated 9.7.2001, in respect of the self-same area on the basis of the recommendation made by the State Government. C
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A large chunk of land had been granted for mining operation in favour of TISCO in the year 1952. A lease deed had been executed in respect of 1813 Hectares for chromite-extraction in favour of TISCO for a period of 20 years on 12.1.1953. In 1973, the State of Orissa, renewed the grant in respect of 1261.476 Hectares in favour of TISCO. The aforesaid lease was to expire on 3.10.1991. Before its expiry, TISCO applied for a second renewal for 20 more years under Section 8(3) of the Act and the State of Orissa had recommended the Central Government for a second renewal in respect of the entire area, but for a reduced period of 10 years. The Central Government however granted approval for renewal in respect of half of the area namely 650 Hectares in favour of TISCO and further directed that the balance area would be made available to other industries in accordance with the provisions of the Act and the Rules. This order of the Central Government was challenged by TISCO in the Orissa High Court in O.G.C. No. 7729 of 1993. In that writ petition, the rival claimants appeared and made their claims. The High Court, therefore, by its Judgment dated 4.4.95 decided that the entire matter requires reconsideration by the Central Government. This order of the High Court was assailed in this Court by TISCO in SLP No. 10830/1995. The Central Government, pursuant to the observations made by the Orissa High Court in E
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A its Judgment, appointed an Expert Committee under the Chairmanship of Shri S.D. Sharma, to examine the matter and assess the requirements of several aspirants. The said Sharma Committee gave a Report on 16.8.1995, by which TISCO was recommended for an area of 406 Hectares. The Sharma Committee also took into consideration the claims of other claimants and assessed their respective need, but did not undertake the task of recommending any area for being granted as lease in favour of any of those claimants. The Central Government, on the basis of the Report of the Sharma Committee, passed an order on 17.8.1995, requesting the State Government to take necessary steps for grant of 406 Hectares in favour of TISCO for a period of 20 years. The Central Government also further directed that the application for mining lease by 4 other applicants namely, Jindal, Ferro, IMFA and Ispat Alloys could be considered in respect of balance area of 855.476 hectares. The Central Government relaxed the provisions of sub-rule (1) of Rule 59 of the Mineral Concession Rules, on account of urgent need of the four applicants referred to earlier. The special leave petition filed by TISCO stood disposed of by Judgment of this Court since reported in [1996] 9 SCC 709. On 29th of June, 1997, the State Government recommended to the Central Government for grant of lease to 4 claimants in respect of the balance area of 855.476 hectares on the basis of 50 per cent of their respective requirements, which had been assessed by the Sharma Committee and further directed that the rest of the area should be thrown open for consideration of the claims of all other claimants along with the 4 claimants. This order of the State Government dated 29.6.1997 was assailed in Orissa High Court in O.G.C. No. 12302 of 1997 and the High Court dismissed the same. The aforesaid Judgment of the Orissa High Court was assailed in this Court by one of the four claimants and this Court also dismissed the same since reported in [1999] 4 SCC 149. The State of Orissa in the meantime had appointed a Committee under the Chairmanship of Shri Jagdish Prasad Dass to examine as to how the remaining area of 436.295 hectares will be granted and if so, in whose favour. On 28.1.1999, the State Government recommended the grant of 84.881 hectares in favour of respondent Nava Bharat, which was assailed by the present appellant in the Orissa High Court. The High Court having dismissed the writ petition filed by the appellant, the present appeal has been preferred in this Court.

H While the special leave petition filed by the appellant was pending in this Court, the State Government took a decision to withdraw its earlier recommendation in favour of Nava Bharat and decided that the entire balance

area of 436.295 hectares could be granted to its own public sector undertaking, the Orissa Mining Corporation. A

Mr. P. Chidambaram, the learned senior counsel contends that in view of the changed policy of the State Government which fact can be taken note of by this court as a subsequent event, the so-called recommendation in favour of Nava Bharat, which is the subject matter of challenge in the Civil Appeal, no longer remains valid and implementable and, therefore, the matter can be disposed of on that basis on taking cognizance of the subsequent events that have happened. In support of this contention, reliance had been placed on the decisions of this Court in case of [1984] SCC 369 and [1996] 5 SCC 268. The learned counsel further urged that no legal right has accrued in favour of Nava Bharat, on the basis of the so-called recommendation of the State Government as well as the approval of the same by the State Government until and unless a formal lease deed is executed. According to him, the aforesaid recommendation of the State Government as well as the order of approval of the Central Government at the most can be said to have created an inchoate right in favour of Nava Bharat, but no vested right exists in favour of Nava Bharat. It is then urged that in view of the observations made by this Court in the case reported in [1994] 4 SCC 149, it was obligatory on the part of the State Government to consider the question of grant of the balance 436.295 hectares only on receipt of the recommendation of Dass Committee and the State Government was not entitled to pick up any one application and grant any area in favour of any applicant and such pick up and grant in favour of Nava Bharat constitutes an infraction of the direction given by this Court in its Judgment reported in [1999] 4 SCC 149. It was further contended that assuming the State could, as owner exercise its power in favour of any applicant, the recommendation made for giving priority to a later applicant must be supported by special reasons to be recorded, as provided under Section 11(4) as well as under Section 5(1) of the Act. In the absence of any such special reasons in the case in hand for giving priority to Nava Bharat in terms of Section 11(4), the recommendation itself is vitiated and the High Court committed error in rejecting the said contention. According to him, the so-called reasons contained in the Note dated 5.8.88 could be the reasons satisfying the requirements of Section 5(1) of the Act and cannot be the reasons for giving priority under Section 11(4). The learned counsel further urged that the Central Government having indicated the deficiency in the recommendation of the State Government by letter dated 27th June, 2001, the so-called reply of the State Government on 30th of June, 2001 was in fact not on the authority of the State Government and on the other hand was a

- A reply by an officer of the Government. That being so, in the eye of law the deficiency pointed out by the Central Government had not been cured and the Central Government could not have accorded the approval on that basis. Coming to the mistake committed by the Central Government in its approval dated 9th of July, 2001, which is the subject matter of challenge in the transferred writ petition, Mr. Chidambaram contends that the same is vitiated due to non-application of mind and the Central Government also has not recorded any reasons in terms of Rule 59(2) of the Minerals Concessions Rules and no special case has been made out in favour of Nava Bharat. According to the counsel, the earlier relaxation made on 17.8.1995 was only for 4 of the applicants, whose cases were treated as special case and that relaxation made under Section 59(2) will not enure to the grant in favour of Nava Bharat in the case in hand. The learned counsel also contended that the State Government having indicated that the subsequent reply of 30th of June, 2001 was not under the authority of the Government, the approval of the Central Government, on the basis of an unauthorised clarification, is vitiated and that approval cannot be sustained.

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- Mr. Ashok Desai, the learned senior counsel appearing for the respondents Nava Bharat, contended that the alleged subsequent decision of the State Government to exploit the entire balance area through a public sector undertaking namely, Orissa Mining Corporation, was not approved by the Central Government and the Central Government in its letter dated July 19, 2002, has already communicated the same and, therefore, the so-called subsequent decision of the Government, keeping the areas reserved for exploitation through its own public sector undertaking, cannot be held to be a subsequent event, on which the cases in hand can be disposed of: He further contended that it is the appellant, who assails the legality of the decision of the High Court, upholding the recommendation made by the State Government as well as the legality of the approval made by the Central Government to the said recommendation. That being so, the so-called subsequent event would be of no consequence. Mr. Desai also contended that Rule 59 of the Mineral Concession Rules deals with availability of areas for re-grant to be notified when such area was previously held or which is being held under a prospecting licence or a mining lease. Sub-rule (2) of Rule 59 empowers the Central Government to relax the provisions of sub-rule (1) for reasons to be recorded in writing. Such relaxation is made in respect of the area and in the case in hand, this has been made on 17.8.1995, when the question of consideration for grant in respect of the four other applicants
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- cropped up. That being the position, no further relaxation was required. He

then contended that even if such relaxation can be held to be required, the same has been done in the case in hand by the Central Government. With regard to the contention of Mr. Chidambaram that the State Government did not indicate any special reasons for picking up the case of Nava Bharat, as required under Section 11(4) of the Act, Mr. Desai contends that the State Government did indicate in its Order dated 5th of August, 1998, the special reasons for recommending the grant in favour of Nava Bharat Ferro Alloys, the same being under the Industrial Policy of 1996, preference has to be accorded in the matter of grant of PL/ML to local industrial units in the State and Nava Bharat is one such industry and also Nava Bharat Ferro Alloys is the only chrome based industry which does not have any captive area. The order further indicates that the State Government decided to give preference to Nava Bharat which was really starving and was in dire need of raw materials. This being the position, the contention of Mr. Chidambaram that there was no special reasons, is wholly unsustainable. According to Mr. Desai, when pursuant to the letter of the Union Government, the Secretary intimated the reason on 30th of June, 2001, it was not necessary for him to submit the file to the Minister concerned inasmuch as the reasons had been recorded by the Chief Minister himself. According to Mr. Desai, it is the existence of reasons, that is the requirement and those reasons being there, which was duly looked into by the High Court, the contention of Mr. Chidambaram that the intimation of reasons was unauthorised, cannot be sustained. On the question that by Judgment of this Court, the State Government was not entitled to pick and choose any applicant before the receipt of the Expert Committee's Report, Mr. Desai contends that neither there is any such observation in the Judgment of this Court in [1999] 4 SCC 149, which has been made clear in the order dated 10th of August, 2000, when an application for clarification was filed, which was registered as I.A.No.2 of 2000. Mr. Desai also further urged that the Central Government having accorded the approval to the recommendation of the State Government, proposing to grant of 84.881 hectares to Nava Bharat, the contention of the petitioner in the transferred writ petition that the said order of approval is contrary to the relevant provisions of the Act and the Rules, is wholly unsustainable. Mr. Desai lastly contended that the State Government having produced the relevant file, which was seen by the Orissa High Court, while disposing of the Judgment and the same having been produced in this Court, the Court may examine the file and if it is satisfied that all the formalities had been duly complied with, then the jurisdiction of this Court need not be invoked, even if there is some error in communicating the decision by an officer of the State.

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A In view of the rival submissions at the Bar, four questions arise for our consideration:

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?

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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?

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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.

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4. Whether the Judgment of this Court since reported in [1999] 4 SCC 149, 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?

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So far as the first question is concerned, at the outset, it may be stated that it is the appeal of a rival claimant against the Judgment of the Orissa High Court, holding the recommendation made by the State Government in favour of the respondents Nava Bharat to be legal and the original petition which was filed in the Delhi High Court and which stood transferred to this Court,

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is against the order of approval passed by the Central Government. To consider the legality of the same, the so-called subsequent event to reservation is of no consequence. This Court is not called upon to answer the question whether the respondents Nava Bharat has any right to the lease-hold area in which case possibly, it could have examined as to whether that right still subsists or not, in view of the so-called order of reservation in favour of the Orissa

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Mining Corporation. There is no dispute with the proposition that a Court can always take up the subsequent event into consideration and either grant or refuse the release on that score, but that principle is of no application to the case in hand inasmuch as this Court is not going to enforce any right of the respondents Nava Bharat, but on the other hand is merely examining the

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legality of the recommendation made by the State Government as well as the

legality of the approval thereto made by the Central Government. That apart, even the so-called subsequent decision of the State Government to reserve the entire area for being exploited through the public sector undertaking namely the Orissa Mining Corporation was not accepted by the Central Government, which is apparent from the statement of the Ld. Advocate General in a writ petition which had been filed before the Orissa High Court as well as the copy of the letter dated 18th of July, 2002 of the Government of India in the Ministry of Coal and Mines, that was produced before us in this Court. In this view of the matter, the so-called subsequent event also does not exist in the eye of law. The counsel appearing for the State however submitted that the Government of Orissa is pursuing the matter but unless and until the Central Government accords approval to the reservation, the so-called reservation in favour of the Orissa Mining Corporation would not come into existence. Consequently the first question that arises for consideration, must be answered against the appellant.

Coming to the second question, Rule 59 of the Mineral Concession Rules, operates when an area which was previously held under a prospecting licence or a mining lease or which was reserved by the Government or any local authority for any purpose other than mining or in respect of which the order granting a permit or lease has been revoked or in respect of which a notification has been issued under sub-section (2) or sub-section (4) of Section 17 when becomes available for grant. The underlying principle engrafted under Rule 59 is a transparency when the area is made available for re-grant, so that all persons interested can make their application and those applications can be dealt with, in accordance with the provisions of the Act and the Rules. Sub-rule (2) of Rule 59 however empowers the Central Government for reasons to be recorded in writing to relax the provisions of sub-rule (1). The relaxation is in respect of an area, which was previously held under a mining lease or a prospecting licence. In the case in hand, we are not concerned with other clauses of Rule 59(1). When the entire area had been held by Tisco under a mining lease and when Tisco was granted renewal only in respect of 406 hectares and the balance area became available and the Central Government directed that the application for mining lease by four other applicants could be considered, finding the urgent need of those four applicants, including the present appellant, the Central Government relaxed the provisions of sub-rule (1) of Rule 59. The balance area from out of the previously held area of Tisco, thus being made available for grant of mining leases in favour of intended applicants and the Central Government having relaxed the provisions of sub-rule (1), it was not necessary to again exercise that power

- A under sub-rule (2) out of the balance area, excluding the area granted in favour of the four applicants, the present respondent could be granted an area of 84.881 hectares. That apart, the question of consideration of other applicants, including the case of appellant for grant of mining lease was being done pursuant to the Judgment of this Court. Then again when the impugned order of approval was granted by the Central Government, the
- B Central Government did exercise the power under sub-rule (2) of Rule 59 and approved the recommendation made in favour of respondent Nava Bharat. In that view of the matter, we do not see any force in the contention of Mr. Chidambaram that there has been an infraction of Rule 59(2) inasmuch as no special case has been made out for grant in favour of Nava Bharat. We
- C answer the second question accordingly.

- Coming to the third question, it is no doubt true that Section 11 provides for a preferential right of certain persons and sub-section (4) thereof postulates that the State Government may, for any special reasons to be recorded, grant permit or mining lease to an applicant, whose application was received later
- D in preference to an application whose application was received earlier. Be it be stated that a Committee of Expert Body was considering the respective need of all the applicants, after the Judgment of this Court in Tisco's appeal, in the light of the order of the Central Government dated 17.8.1995. The State Government had already granted after assessing the needs of the four claimants namely IMFA, the present appellant, FACOR, ICCL, ISPAT and recommended on the basis of their need at 50% and thus 419.18 hectares had
- E been allotted out of 855.476 hectares, which was the balance area that was available for grant after the renewal in favour of Tisco. That being the position and while the matter was being considered by the Expert Committee, the Government of Orissa did consider the case of Nava Bharat Ferro Alloys Ltd.
- F and the Chief Minister on 14.8.1998, recommended grant of mining lease in favour of Nava Bharat Ferro Alloys, taking into account the fact that they have already established a ferro chrome plant in the State, but they do not have any mining lease for chromium in their favour. We have examined the relevant file ourselves and we find detailed discussion in that respect in the
- G note sheet and the order of the Chief Minister thereon. The aforesaid order of the Chief Minister was reiterated again by order dated 14.1.99 and finally on 28.1.99, the recommendations were sent to the Central Government for approval. On the aforesaid premises, we are unable to accept the contention of Mr. Chidambaram that there were no special reasons in terms of the provisions contained in sub-section (4) of Section 11 for grant of a preferential
- H right in favour of Nava Bharat Alloys. We, accordingly hold that the State

Government did record the reasons in accordance with the requirements of sub-section (4) of Section 11, while recommending in favour of Nava Bharat Ferro Alloys and the provisions of Section 11(4) must be held to have been duly complied with. A

The last question that requires consideration is the import and extent of the Judgment of this Court in the case of *Ferro Alloys Corpn. Ltd. and Anr. v. Union of India and Ors.*, [1999] 4 SCC 149. In the aforesaid case, which had been filed by one Ferro Alloys Corporation, one of the four beneficiaries in whose favour 419.181 hectares of land had been granted, out of the total balance area of 855.476 hectares of land on the basis of 50% respective requirement and that order of the State Government had been assailed in a writ petition filed in the Orissa High Court. That writ petition being dismissed, the matter had been carried to the Supreme Court. One of the questions for consideration was whether the order of the State Government dated 29.6.1997 was in any way conflict with the earlier order of the Central Government dated 17.8.1995, as upheld by the Supreme Court in *Tisco's* case. This Court, on consideration had observed that on a conjoint reading of the order of the State of Orissa and the notification dated 16.11.98 appointing Shri Jagdish Prasad Dass, as Chairman of the Committee to assess the requirement of chrome ore of needy applicants and the subsequent order of the State Government, granting 419.181 hectares in favour of four claimants, the balance of the available area to the extent of 436.295 hectares could be considered for being granted to other applicants, including the four applicants in whose favour there has been a grant to the extent of 419.181 hectares, on the basis of 50% assessment of their need. There has been an observation that the balance area will have to be taken into consideration by Shri Jagdish Prasad Dass as well as by the State of Orissa for grant of mining lease to other claimants, whose applications are pending scrutiny and while doing so, the Committee of the government will have to take into consideration the remaining 50% assessed needs for further grant of mining lease to FACOR as well as to three other applicants. Relying upon the aforesaid observations, the contention of Mr. Chidambaram for the appellant was that it was not permissible for the State Government to pick up any single applicant's application, as has been done in the case of Nava Bharat Ferro Alloys and consequently, the so-called recommendation in favour of Nava Bharat as well as the approval of the Central Government, is in contravention of the direction of this Court in the aforesaid Judgment. We are however unable to accept this submission. The State as the owner of the property is entitled to exercise its powers in respect of mineral wealth in accordance with the H

A provisions of the Act and the Rules and the observations of this Court in the aforesaid case, merely indicate that while considering the cases of all other applicants in respect of the remaining area, the cases of the four applicants, who had been granted mining lease on the basis of their 50% need should also be considered. The aforesaid Judgment of this Court does not put any fetter on the power of the State Government in exercising the preferential

B right under Section 11 and in considering the case of Nava Bharat for the special reasons in terms of Section 11(4) of the Act, as already stated. This is more apparent from the order that was passed on an interlocutory application being filed by the Nava Bharat as well as the State of Orissa being I.A. Nos. 1 and 2 on 10th of August 2000, wherein the Court observed that the so-called observations in the Judgment in Ferro Alloys Corporation in paragraph

C 50, will not in any way be construed to be pre-empting any decision of the High Court of Orissa in the pending writ petition in O.J.C. No. 1830 of 1999. Be it be stated that by that date, the writ petition filed by the appellant against the recommendation of the Government of Orissa dated 28.1.99 was pending and the High Court dismissed the said application, against which the present

D appeal has been preferred. On examining the Judgment of this Court in [1999] 4 SCC 149, we do not find anything stated therein, which can be construed to mean that the State Government was enjoined to consider the case of any individual applicant in accordance with law, as has been done in the case of the respondent Nava Bharat Ferro Alloys Ltd., nor are we in a

E position to accept the submission that an individual applicant could not have been considered before the recommendation of the Committee, which had been set up to find out the requirements of the respective claimants. To hold that way would tantamount to denuding the State Government of its power as the owner of the minerals to deal with the mineral resources of the State in accordance with the provisions of the Act and the Rules framed thereunder.

F We would accordingly answer the question No.4 against the appellant. 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. In the aforesaid premises, the appeals as well as the T.C. stand dismissed.

G **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.

H 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). A

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. v. Union of India*, [1996] 9 SCC 709], it may not be necessary to state the factual matrix of the matter in great details. B

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. C
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It is really a matter of surprise that despite the fact that the application H

- A 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.
- B 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:

- C "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
- D 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
- E 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
- F 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 apple-cart and would result in denuding the judgment of this Court of its real content, direction and efficacy. After the Court's
- G 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
- H 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*

A *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.

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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 Jagadish 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.”
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D (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:

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“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 pre-empting 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.”

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G In the meantime, the appellant herein had filed a Writ Petition questioning the said recommendations of the State Government dated 28.1.1999 before the Orissa High Court which was marked as OJC 1830 of 1999.

H 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: A

“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. B C

(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.” D E

It was requested:

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

(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; G

(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; H

(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

A 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."

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

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(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.

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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

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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:-

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(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 A

(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.” B

It was requested: C

“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.” D

(Emphasis supplied) E

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. F

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: G

“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 H

A 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.

B 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. v. Suresh Chand*, (1978) II L.L.J Page 1 (paragraph 15)].

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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

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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. A

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. B

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. C

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: D

“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.” E

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. F

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. G

H

A 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.

B 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.

C 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 uncertain 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 hectares. 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.

D E F 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.

G H 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:

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A “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.

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

C 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:

D “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.

F 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 Jaipur 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:

G

Sl. No.	Location of the Unit	No. of furnace installed	Annual capacity (in tonnes)
H 1.	Paloncha,	3 (three) are	75,000

	Khammam Dist- Andhra Pradesh	Furnace of 16.5 MVA each		A
2.	Raipur, Madhya Pradesh	2 (two) are Furnace of 3.6 MVA & 6.5 MVA	15,000	B
3.	Meramundali Distt. Dhenkanal (Orissa)	2 (two) are Furnace of 16.5 MVA	50,000	
		Total	1,40,000	C

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 tonnes as indicated below:-

- (a) The annual requirement of chromite comes to 0.378 million tonnes
- (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 tonnes

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 hect. 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

A to the grant of mining lease for Chromite over 84.881 hecets. in villages Kalarangiatta, Kaliapani etc. in Sukinda Tahasil of Jaipur 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.

B 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.

C 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.

D 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.

F 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.

G 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.”

H Well settled reasons are the links between material facts and conclusion.

[See *Union of India v. Mohan Lal Capoor and Ors.*, [1973] 2 SCC 836 at para 28}] A

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. B C

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. D

We may now consider the validity of the order granting approval by the Central Government. E

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. SSO/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. Jaipur (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 Anr. v. UOI and Ors.” F G

- A 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
- B 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.
- C 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.
- D 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
- E 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.
- F 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.
- G 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
- H 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.

ORDER

In accordance with the majority view, the appeals as well as the T.C. stand disposed of

K.K.T.

Appeals/T.C. disposed of.