A M/S INDIAN CHARGE CHROME LTD. AND ANR.

v.

UNION OF INDIA AND ORS.

DECEMBER 11, 2006

B [Y.K. SABHARWAL, CJ., C.K. THAKKER AND P.K. BALASUBRAMANYAN, JJ.]

Mines and Minerals (Regulation and Development) Act, 1957 ; sections C *11(5) & 17A (2)—Mineral Concession Rules, 1960 ; Rule 59—Recommendation by State to Central Government for approval to grant mining lease to a State Corporation under the Act—Correctness of—Held, State has power under the Act to make such recommendation—State cannot be estopped from exercising its statutory power—On facts, the recommendation is neither* **mala fide** *nor a colourable exercise of power and hence, valid.*

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Grant of mining lease out-of-turn by State to a private company in preference to claimants steel companies—Correctness of—Held, on facts, State has not fulfilled the conditions under the Act and Rules—No reasons were disclosed and hence, the grant is unjustified and illegal.

E **Challenges in all the appeals, transferred cases and the cases covered by transfer petitions ate the correctness of the decision of the State Government to grant lease of land for mining purpose to State Mining Corporation and to grant out-of-turn lease to a steel company N in preference to other applicants-steel companies claiming lease.**

F **The steel companies, who opposed grant of lease to the steel company and the State Mining Corporation, contended that the Central Government and not the State Government has power to grant lease to the Corporation under section 17A (2) of the Mines and Minerals (Regulation and Development) Act, 1957 in view of the heading of the section; that the Central** G **Government rejected the approval sought by the State Government u/s 17A (2) of the Act; that the State Government u/s had not disclosed all relevant material facts to Central Government about the efficiency of the Corporation; that the decision is irrational; that the change of policy of allotting land is *mala fide* and is a colourable exercise of power to defeat the earlier judgments of the High Court and this Court; that the Committee, which was set up to**

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look into distribution of lands of mining among the applicants-steel companies, rejected the grant of lease to the State Corporation; that no reasons were given for granting out-of-turn lease to N and hence the lease was unjustified and illegal; that conditions laid down under section 11(5) of the Act have not been fulfilled and hence, the State Government cannot grant the lease to N;

Steel company N contended that the State Government granted lease to it in exercise of power conferred under section 11(5) of the Act.

The State and the State Mining Corporation contended that the ore is required by many industries in the country and that if the whole area is divided and given for private exploitation, there may be difficulty in ensuring equitable distribution of the ore; the power vested under section 17A of the Act was independent of the power under section 11 of the Act; that it was always open to the State Government with the approval of the Central Government to grant lease to it under the Act; that the decision of this Court in earlier proceedings does not stand in the way of exercising power by the State Government under the Act;

Disposing of the cases, the Court

HELD: 1.1. On the scheme of the Mines and Minerals (Regulation and Development) Act, 1957, the decision or recommendation under section 17A of the Act can be taken or made until the area in question is actually leased out to any applicant in terms of Section 11 of the Act. The power of the State Government saved by Section 17A (2) of the act is in no way fettered or curtailed. It cannot be said that the recommendation made by the State Government is *per se* invalid or that it is one without authority. The State Government could exercise the power under section 17A (2) of the Act until a grant is actually made since it is an overriding power. [652-D-F]

1.2. The direction of the Court in earlier proceedings to deal with the land on the basis of the recommendations of the Committee does not by itself preclude the exercise of power by the State under Section 17A (2) of the act to make a recommendation that the exploitation be left to a corporation owned or controlled by it. [653-A, B]

1.3. Adoption of a particular stand by the State Government in earlier proceedings cannot estop the State from taking a decision under Section 17A (2) of the Act to recommend to the Central Government to grant lease to the State Corporation so as to ensure a fair and just distribution of the scarce

A mineral. The same cannot be taken to be *mala fide.* The power under Section 17A (2) of the act is a statutory power and there could be no estoppel against the exercise of statutory power. It cannot be said that the decision of the State Government is vitiated by *male fides* or is borne of colourable exercise of power or that it is irrational. [653-F-G; 654-A, C]

B 1.4. The recommendation of the State government for the approval of the Central Government for leasing out land to a State Corporation is well within the power of the State Government under Section 17A (2) of the Act. The heading of the Section cannot control the natural effect of sub-section (2) of Section 17A of the Act or the power conferred by it. [654-F]

C 1.5. The State Government took the decision that further fragmentation of the area would not be in the interests of scientific mining and that to ensure even distribution among the consumers in the country, it is necessary to leave the mining to a Corporation controlled by the Government. It is a policy decision and in the present case, the decision is not irrational, unreasonable D or patently illegal as to justify interference by this Court. [655-B, C, D]

1.6. The Central Government took the stand that as the matter was pending in this Court, it would not be appropriate for it to take a decision. It cannot be said that the Central Government has rejected the request of the State Government for reserving the area for exploitation by the Corporation.

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1.7. In the absence of any material, it cannot be said that the recommendation of the State Minister was not *bona fide* or that is was tainted in any manner by *mala fides.* The decision was reiterated by the Cabinet. It was really a policy decision and the role of this Court in respect of such a policy decision and its Scrutiny is limited and within the scope of that limited F scrutiny, there was no justification in interfering with the decision of the Government. The decision of the State Government to seek the approval of the Central Government for grant of a lease to a corporation controlled by it, cannot be held to be invalid. [656-D-H; 657-A, D]

G *Indian Metals and Ferro Alloys Ltd.* v. *Union of India and Ors.,* [1990] Supp. 2 SCR 27; *Tata Iron and Steel Company Ltd.* v. *Union of India and Anr.,* [1996] Supp. 3 SCR 808 and *Ferro Alloys Corporation Ltd. and Anr.* v. *Union of India and Ors.,* [1992] 2 SCR 49, referred to.

2.1. The reason of granting out-of-turn lease to the company N H overriding the claims of others is not disclosed. On the materials, it cannot

be said that the conditions under Section 11(5) of the Act are fulfilled in this case. [659-C, D]

2.2. The State Government had to proceed on the basis of the directions of this Court in earlier proceedings and make allotments as recommended by the Committee. The State Government did not forward the application of the company N to the committee for consideration and recommendation. The decision to lease to the company N was straight away taken. Hence, the decision to grant lease to the company N out-of-turn was not justified, legal or proper. On materials, what emerges is that there was no valid recommendation by the State Government for the grant of a lease to the company N and there was hence no valid approval of the Central Government. Non-compliance with Rule 59 of the Mineral concession Rules, 1960 also vitiated the proposal to lease to the company N. [659-E-F; 660-C]

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

From the final order and Judgment dated 18.5.2001 of the High Court of Orissa at Cuttack in O.J.C. No. 1830/1999.

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Civil Appeal NOS.8502/2002, 6787/2004, 6788/2004, Transferred Case Nos . 9/2002, 21/2005 and Transfer Petition (C) Nos. 928/2005, 701/2005, 932/2005 a..d 446/2005.

B. Dutta, A.S.G., K.K. Venugopal, Dr. A.M. Singhvi, Mukul Rohtagi, P.P. Rao, T.S. Doabia, Ashok Desai, Dr. Rajiv Dhawan, C.A. Sundaram, D.A. Dave, B.A. Mohanty, Anuradha dutt, Fereshte D. Sethna, Vijayalakshmi Memon, Ekta Kapil, Anupam, Amit Bhandari, Haripriya, Raj Kumar Mehta, Dashmeet singh chadha, Abhishek Kumar, Anshuman Ashok, Suman Kukrety, K.K. Lahiri. Indu Sharma, Praveen Kumar, Ejaj Maqbool, Jana Kalyan Das, Suman Jyoti Khaitan, P.S. Sudheer, Rishi Maheshwari, Shally B. Maheshwari, Anne Mathew, Prantik Hazarika, S. Santanam Swaminadhan, Rohini Musa, Ashok K. Srivastava, Anita Sahani, R.N. Verma, V.K. Verma, A. Bobde, K.K. Lahiri, Keshav Mohan, Vikash Singh, Taruna Singh, Abhijit Sinha, Ashok Mathur, Ajay choudhary, S.B. Upadhyay and Shibashish Mishras for the appearing Parties.

The Judgment of the Court was delivered by

A **P.K. BALASUBRAMANYAN, J.** 1. M/s Indian Charge Chrome Limited (hereinafter referred to as, "I.C.C.L.") has challenged the decision of the Orissa High Court in O.J.C. No. 1830 of 1999 in Civil Appeal Nos. 8501 and 8502 of 2002. In Transferred Case (C) No. 9 of 2002, which was withdrawn to this Court from the High Court of Delhi, the same Company had challenged by way of C.W.P. No. 4230 of 2001 the grant of approval for what it called B an out of turn lease to M/s Nava Bharat Ferro Alloys Ltd. (hereinafter referred to as, "Nava Bharat"), respondent No. 3 in the Civil Appeals. Whereas, the Writ Petitions in the Orissa High Court challenged the recommendation of the State Government, the Writ Petition in the Delhi High Court challenged the grant of approval by the Central Government to the lease in favour Nava C Bharat.

2. M/s GMR Technologies & Industries Limited (hereinafter referred to as, "GMR") filed O.J.C. No. 2236 of 2002 in the High Court of Orissa challenging the decision of the State Government to grant a lease of the extent of 436.295 hectares to the Orissa Mining Corporation Limited (hereinafter referred to as, D "OMC") against a recommendation to grant a lease to it of an extent of 43.579 hectares out of it. The said Writ Petition was allowed by the High Court of Orissa and the said decision is challenged by OMC in C.A. No. 6787 of 2004 and in C.A. No. 6788 of 2004.

3. M/s Jindal Strips Ltd. (hereinafter referred to as, "JINDAL") challenged E in the High Court of Orissa by way of Writ Petition No. 7575 of 2003 the decision of the State Government to recommend the grant of the lease in favour of OMC ignoring its own claim for a lease and the said Writ Petition was got transferred to this Court and is numbered as Transferred Case No. 21 of 2005. This case also challenges the recommendation of the State F Government for grant of a lease to OMC of the remaining extent of 436.295 hectares.

4. The proposal of the State Government to grant a lease to OMC was also challenged by I.C.C.L. before the Orissa High Court in Writ Petition (C) No. 1326 of 2005 and that is sought to be got transferred to this Court by G way of Transfer Petition No. 928 of 2005. Similarly, M/s Ferro Alloys Corporation Limited (hereinafter referred to as, "FACOR") also challenged the recommendation of the State Government for grant of lease to OMC by filing Writ Petition (C) No. 5960 of 2005 in the High Court of Orissa and the same is sought to be got transferred to this Court in Transfer Petition (Civil) No. 701 of 2005. Nava Bharat, in its turn, challenged the proposal to grant a lease H

to the OMC, in Writ Petition (Civil) No. 6459 of 2005 in the High Court of Orissa and the same is sought to be got transferred to this Court by way of Transfer Petition (Civil) No. 932 of 2005. Balasore Alloys Limited, formerly known as Ispat Alloys Limited (hereinafter referred to as, "ISPAT") filed Writ Petition (Civil) No. 3767 of 2005 in the High Court of Orissa challenging the very same proposal to grant a lease to OMC and that Writ Petition is sought to be got transferred to this Court in Transfer Petition (Civil) No. 446 of 2005. A B

5. Thus, the challenges in all these appeals, transferred cases and the cases covered by the transfer petitions, are to the proposal for grant of a lease of an extent of 84.881 hectares to Nava Bharat, the denial of a lease to GMR and the recommendation of the State Government to grant a lease of the entire remaining extent of 436.295 hectares (which includes the extent of 84.881 hectares proposed to be leased out to Nava Bharat) to OMC. Considering that the questions to be decided in the appeals and transferred cases by this Court are the same as the ones raised in the writ petitions in the High Court that are sought to be transferred to this Court, the transfer petitions are allowed and the cases withdrawn thereby are also disposed of by this Judgment. Arguments have been addressed in all the matters. C D

6. This litigation has had a chequered career. It had come to this Court on three prior occasions. The facts are detailed in those decisions in *Indian Metals & Ferro Alloys Ltd.* v. *Union of India & Ors.*, [1990] Supp. 2 S.C.R. 27, *Tata Iron & Steel Company Ltd.* v. *Union of India & Anr.*, [1996] Supp. 3 S.C.R. 808 and *Ferro Alloys Corporation Ltd. & Anr.* v. *Union of India & Ors.*, [1999] 2 S.C.R. 49. Still, a few facts may be reiterated. Chromite ore is said to be a scarce metal ore in India. It is mainly available in the State of Orissa in the Sukinda Valley. An extent of 1812.993 hectares of land was granted on mining lease to Tata Iron and Steel Company (hereinafter referred to as, "TISCO") on 22.10.1952. The lease was for 20 years. In the year 1972, TISCO obtained a renewal of the lease, but the area was reduced to 1261.476 hectares. This renewal was again for 20 years. Before the expiry of the term, TISCO applied in the year 1991 for renewal of the lease for a further period of 20 years in respect of the entire extent of 1261.476 hectares. The State Government recommended the renewal and the Central Government granted its approval under Section 8(3) of the Mines and Minerals (Regulation and Development) Act, 1957. But, at the instance of some interested persons, the Central Government reviewed its decision and granted approval for renewal of the lease only in respect of 650 hectares, roughly half of the original area. TISCO challenged the said decision to reduce the extent, by way of a writ E F G H

A petition in the High Court of Orissa. I.C.C.L., Indian Metals & Ferro Alloys ('IMFA', for short), JINDAL and ISPAT also filed writ petitions in the High Court of Orissa challenging the approval for renewal of the lease to TISCO in respect of an extent of 650 hectares. All these writ petitions raising a challenge to the decision of the Union Government dated 5.10.1993 were allowed by the High Court, which directed the Union Government to consider B the matter afresh after hearing all those who had filed writ petitions. The decision of the Orissa High Court was challenged by TISCO in this Court. This Court dismissed the appeal filed by TISCO, thus confirming the decision of the High Court and directed the Union Government to consider the matter afresh. But pending the proceedings in this Court, since there was no order C of stay passed by this Court, the Union Government on 17.8.1995, granted sanction for renewal of the mining lease in favour of TISCO in respect of 406 hectares. The Union Government also directed that the balance area of 855.476 hectares be distributed by way of leases among the other claimants in terms of a Committee report prepared as per the direction of this Court, in an earlier proceeding.

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7. Subsequently, regarding 855.476 hectares remaining for grant of leases to the applicants other than TISCO, the State Government recommended to the Union Government that one-half of the said area could be allotted to the other four pending applicants and the balance half of the area of 855.476 hectares can be leased to others who also required the mineral. This proposal E was implemented. After these four grants, the balance extent left is said to be 436.295 hectares.

8. Meanwhile, FACOR filed Writ Petition No. 12032 of 1997 in the High Court of Orissa challenging the assessment of its need made by what came F to be known as Sharma Committee constituted as directed by this Court. That Writ Petition was dismissed by the Orissa High Court on 31.8.1998. Meanwhile, the State Government set up another Committee, the Dash Committee, for considering the distribution of the area of 436.295 hectares, the area remaining out of 855.476 hectares, after the distribution among the four companies. FACOR challenged the decision of the High Court of Orissa before this Court. G While Dash Committee was considering the claims of the various applicants, a recommendation was made by the State Government for grant of a lease to Nava Bharat of an extent of 84.881 hectares out of the 436.295 hectares in respect of which claims were being considered by the Dash Committee. This recommendation was challenged by I.C.C.L. in the Orissa High Court in O.J.C. 1830 of 1999. Meanwhile, on 22.3.1999, this Court in the FACOR's appeal

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upheld the recommendations of Sharma Committee as also the recommendation of the State Government dated 29.6.1997 allotting 50% of 855.476 hectares to the four applicants then claiming and leaving out 436.295 hectares for distribution by way of lease among other needy entities. This Court directed that the remaining 436.295 hectares be allotted after the report of the Dash Committee. It may be noted here that after Mr. Dash left the scene, the Committee came to be known after his successor, as the Chahar Committee.

9. The Orissa High Court, meanwhile, dismissed the Writ Petition, O.J.C. No. 1830 of 1999 filed by I.C.C.L. challenging the decision recommending an out of turn lease to Nava Bharat. I.C.C.L., as we have noticed in the beginning, has challenged that decision in the appeals. Subsequently, the Orissa Government decided that the balance extent of 436.295 hectares be granted on lease to OMC and that decision also has been challenged in the High Court and the High Court held the decision invalid. That decision of the High Court is also under challenge. The position, therefore, now is that the correctness of the decision to grant a lease to Nava Bharat of 84.881 hectares and the validity of the recommendation of the State Government to grant a lease of the remaining area of 436.295 hectares to OMC, are both in question before this Court. The challenge to the grant in favour of Nava Bharat is on the basis that Nava Bharat was nowhere in the picture when the four companies that were dealt with in the earlier judgments were claiming the grant of leases and in respect of whom directions were issued by this Court and there was no reason for ignoring the priority in their favour and granting a lease out of turn to Nava Bharat especially in the teeth of the report of Sharma Committee and the partial implementation of its recommendations by lease of 50% of the areas claimed by the four companies. The decision to grant the mining lease to OMC was struck down by the High Court by taking the view that in the light of the earlier orders of this Court, it was not open to the State Government to take such a decision. The correctness of the same is also in question. Thus, we are concerned with the question whether the decision to grant a lease to Nava Bharat on the facts and in the circumstances of the case was justified and whether the proposal of the State Government to grant the balance area to OMC could be justified. Actually, if the claim of OMC were to be upheld in the sense that the recommendation of the State Government for the grant of a lease to OMC in respect of the balance extent left, is found sustainable, there would be no need to consider specifically the challenge made by I.C.C.L. and GMR to the grant of a lease to Nava Bharat. But since the recommendation of the State Government to grant the lease to OMC has to have prior approval of the Central Government and the approval

had not yet been granted, that aspect will also have to be decided on merits. We, therefore, think that it will be appropriate to consider first, the question whether it was open to the State Government to make a recommendation that the balance extent of 436.295 hectares be leased to OMC in preference to the other private parties who are making claims for the lease and thereafter consider the challenge raised to the grant of lease to Nava Bharat.

10. Based on the arguments raised before us, the two important provisions of the Mines and Minerals (Regulation and Development) Act, 1957 that fall for our consideration are Sections 11 and 17A. The challenge to the grant of lease to Nava Bharat involves interpretation of Section 11 and the role of the various sub-sections therein. The challenge to the recommendation of the State Government to grant the balance extent to OMC involves interpretation of Section 17A and the nature of power conferred thereunder. What is the effect of the prior proceedings in this Court will also arise. In the background facts of this case, Rule 59 of the Mineral Concession Rules, 1960 has also relevance. This is for the reason that the area was previously held under lease by TISCO and it would become available for grant only on compliance with Rule 59(1) or in terms of Rule 59 (2), whereunder a power is vested with the Central Government to relax the provisions of sub-Rule (1).

11. Section 10 of the Act provides for applications for prospecting licences or mining leases being made to the State Government by a person interested. Section 11 deals with the preferential right amongst such applicants for the grant of a lease. Sub-section (1) of Section 11 confers a preferential right on a person, who had already been granted a reconnaissance permit or prospecting licence. We are not concerned with that provision in this case. Sub-section (2) of Section 11 provides that in a case where the Government has not notified a particular area in the official gazette as being available, and two or more persons have applied for a mining lease, the applicant whose application was received earlier shall have a preferential right to be considered for grant of a mining lease over the applicant whose application was received later. According to the proviso, in a case where the State Government had invited applications, all applications received during the period specified for the making of such application and applications which had been received prior to the publication of the notification inviting applications and which are pending, shall be deemed to have been received on the same day for the purpose of assigning priority under sub-section (2). In other words, all applications received until the dead line fixed, had to be considered on the

same footing. The further proviso indicates that where such applications are received on the same day, the Government may take into consideration the matters specified in sub-section (3) and may grant the mining lease to such one of the applicants as it may deem fit. Sub-section (3) sets out the matters to be considered. They include, the special knowledge or experience of the applicant, financial resources of the applicant, the nature and quality of the technical staff employed or to be employed by the applicant, the investment which the applicant proposes to make and such other matters as may be prescribed. Sub-section (4) provides that subject to the preferential right available to a reconnaissance permit holder or a prospecting licensee, all applications received pursuant to a notification by the State Government during the period specified in the Notification shall be considered simultaneously as if they all had been received on the same day and the Government had to take into consideration the matters specified in sub-section (3) and grant the lease to such one of the applicants as it deemed fit. Sub-section (5) of Section 11 has particular relevance in respect of the grant to Nava Bharat, since Nava Bharat entered the fray only after this Court had directed that the balance area of 855.476 hectares be allotted to the four applicants other than TISCO that were in the fray at that stage. We think it appropriate to set down here, sub-section (5) of Section 11 with the proviso thereto:

> "11 (5). Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier.
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> Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section."

It is the case of Nava Bharat that though it had applied later, its application was considered and the lease to it recommended and got approved in view of the exercise of power by the State Government under sub-Section (5) of Section 11 of the Act. We shall consider this aspect at the appropriate stage.

12. Section 17A deals with reservation of area for purposes of conservation. Sub-Section (1) provides that the Central Government, with a view to conserving any mineral and after consultation with the State

A Government, may reserve any area not already held under any prospecting licence or mining lease and notify in the official gazette such area by specifying the boundaries thereof and the mineral or minerals in respect of which such area will be reserved. Sub-section (1A) of Section 17A enables the Central Government to reserve any such area for undertaking mining operations through a Government Company or corporation owned or controlled by it. B Sub-section (2) of Section 17A enables the State Government, with the approval of the Central Government, to reserve any area not granted on lease for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and its right to notify the same. Since, OMC relies heavily on this provision, we think it appropriate to set C down sub-section (2) of Section 17A hereunder.

> "17A(2). The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or D controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved."

Sub-section (3) of Section 17A is not relevant for our present purposes.

E 13. It is the case of Nava Bharat that the grant to it was justified in terms of Section 11(5) of the Act and the State Government was entitled to extend a preference to Nava Bharat and the decisions of this Court rendered earlier cannot and did not stand in the way of such exercise of power by the State Government. The case of those who oppose the grant to Nava Bharat is that the conditions of sub-Section (5) of Section 11 have not been fulfilled in the F case on hand and even otherwise, at the present stage, it was not open to the State Government to act under sub-Section (5) in the light of the directions contained in *Indian Metals & Ferro Alloys Ltd.* v. *Union of India & Ors.*, (supra), *Tata Iron & Steel Company Ltd.* v. *Union of India & Anr.*, (supra) and *Ferro Alloys Corporation Ltd. & Anr.* v. *Union of India & Ors.*, (supra) G decisions rendered by this Court. Similarly, the case of OMC is that the power under Section 17A was independent of any other power, or the power under Section 11 and it was always open to the State Government, no doubt, with the approval of the Central Government, to reserve any area that may be available for exploitation by a corporation owned or controlled by the Government. OMC was such a corporation and the State Government having

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made that recommendation to the Central Government, it was for the Central Government to take a decision on the question of approval as contemplated by sub-Section (2) of Section 17A of the Act and on the grant of such approval it was perfectly open to the State Government to grant a lease in respect of the balance 436.295 hectares to OMC and there was nothing in the prior decisions of this Court which stood in the way or which could control the exercise of power, the independent power, by the State Government under Section 17A of the Act. The case of those who oppose the stand of OMC is that in the light of the prior decisions of this Court and the binding directions issued therein, and the stand it had adopted earlier, the State Government could not invoke its power or exercise its right under Section 17A(2) of the Act at this stage and the Orissa High Court was right in taking up that position while striking down the recommendation of the State Government.

14. As a result of the prior directions of this Court, what has transpired is that out of the 1261.476 hectares earlier leased to TISCO, a renewal has been granted to it in respect of 406 hectares. Out of the balance extent of 855.476 hectares, leases of varying extents have been granted to I.C.C.L./ I.M.F.A., JINDAL, ISPAT and FACOR and what is left is said to be 436.295 hectares. This Court directed in the last of the decisions that this area had to be distributed in terms of the recommendations of the Dash Committee, that became Chahar Committee. It is therefore the case of the applicants other than OMC that the distribution of this area could only be in terms of the recommendations of the Chahar Committee. The Chahar Committee not having recommended the grant of any extent to OMC, in fact it had rejected the claim of OMC altogether, it was not open to the State Government to purport to recommend the grant of a lease of that extent to OMC. It is the further submission that while making the recommendation to the Central Government, the State Government had not disclosed all the relevant facts and the material fact that OMC was inefficient, was not in a position to exploit the areas already held by it and that a number of mines under it were remaining idle had not been brought to the notice of the Central Government. The Orissa High Court did not go into the latter question or the scope of the power under Section 17A of the Act, but proceeded on the footing that in the light of the prior directions of this Court, it was not open to the State Government to exercise its right or power under Section 17A of the Act.

15. As we see it, the power under Section 17A *is an independent* power. It is not related to the power available under Section 11 of the Act. It is open

A to the Central Government to reserve an area in terms of Section 17A(1) if it is thought expedient and it is in the interests of the nation or that it is necessary to conserve a particular metal or ore or the area producing it. It is also open to the Central Government to decide that such area should be exploited by a company or corporation owned or controlled by it. Of course, that situation has not arisen in this case. Under sub-section (2) of Section B 17A, with the approval of the Central Government, the State Government may reserve any area not already held under any prospecting licence or mining lease for undertaking the exploitation through a Government company or corporation owned or controlled by it and on fulfilling the conditions referred to in sub-section (2) and in an appropriate case, also the conditions of sub-C section (3). Again, the exercise of power by the State Government under sub-section (2) of Section 17A has no reference to the entertaining of applications under Section 11 or the preferences available thereunder. The area in question was under a mining lease to TISCO and after the mining lease expired, the area of 436.295 hectares had not been leased out to any other person. According to us, nothing stands in the way of the State Government seeking the approval D of the Central Government for the exploitation of that area in respect of a precious metal ore by a Government company or a corporation owned or controlled by it like OMC. Therefore, it cannot be said that the recommendation made by the State Government is *per se* invalid or that it is one without authority. On the scheme of the Act, the decision or recommendation under Section 17A can be taken or made until the area in question is actually leased E out to any applicant in terms of Section 11 of the Act. Here, the area had not actually been leased at this relevant time though a decision has been taken to lease out 84.881 hectares out of it and the power of the State Government saved by Section 17A (2) of the Act is in no way fettered or curtailed.

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16. In that perspective, the two relevant aspects to be considered are whether the prior decisions of this Court have in any way fettered the exercise of that power by the State Government and whether the decision of the State Government in that behalf is vitiated for any other reason. On the first aspect, it is true that this Court accepted the report of the Sharma Committee and G directed that the recommendation therein be considered for implementation. At that stage, the State Government allotted 50% of the area available, to the four entities based on their applications, in partial fulfilment of the recommendations of Sharma Committee. When the matter came up again before this Court, this Court ultimately directed that the balance 50% of the left out area, namely, 436.295 hectares be dealt with on the basis of the report H

of the Dash Committee. When this Court made that direction, this Court was not dealing with any exercise of power by the State Government under Section 17A(2) of the Act or was not dealing with the question, in the context of exercise of any such power. Therefore, the direction to deal with 436.295 hectares on the basis of the recommendations of Dash Committee, succeeded by Chahar Committee, does not by itself preclude the exercise of power by the State under Section 17A(2) of the Act to make a recommendation that the exploitation be left to a corporation owned or controlled by it. We are therefore not in a position to accept the argument that the prior decisions precluded the State Government from invoking its right under Section 17A(2) of the Act. Of course, the prior approval of the Central Government, that is necessary, is to be sought and obtained and in that context, the State Government has moved the Central Government for approval.

17. What is argued on behalf of GMR is that though the submission that the power under Section 17A(2) of the Act could be exercised at any time could be considered sound and logical, the question in the present case has to be viewed in the background of events leading to the said decision and the context in which that decision was taken so as to determine whether the alleged change of so-called policy is *mala fide* or arising out of colourable exercise of power with the sole purpose of defeating the prior judgments of the court and especially the direction of the Orissa High Court in favour of GMR. It is true that on the prior occasions when the dispute before the High Court and before this Court centered round the entitlement of various applicants for grant of fresh leases after the TISCO lease was not renewed in full, the stand of the State Government was that it would abide by the recommendations of Dash Committee transformed into Chahar Committee. But it is difficult to postulate that the adoption of such a stand in the context of the disputes then arising, could estop the State from taking a decision under Section 17A(2) of the Act to recommend to the Central Government that the compact area left, which was the only balance area left, be granted on lease to the Government controlled Corporation, OMC so as to ensure a fair and just distribution of the Ore, which was a scarce commodity in the country. There is no dispute that there were various entities that needed the ore in question and that some of them had made requests for grant of leases of varied extents of lands. If at that stage the Government, after considering what was contained in the Chahar Committee report itself and the noting of the concerned Minister, decided to reconsider the question and take a decision to recommend the grant of the area without it being fragmented on lease to OMC, it is difficult to accept the contention that the same must be taken to

A be *mala fide*. The power under Section 17A(2) is a statutory power and normally there could be no estoppel against the exercise of statutory power. That apart, though the claims were being considered as directed by this Court, the various claimants had not changed their positions or had made any investments towards mining and in that context, the contention that the decision that was taken was one in colourable exercise of power, cannot be B accepted. The considerations relating to environment, relating to fragmentation and relating to even distribution of the ore to be extracted for supplies to industries in the country as a whole are all relevant considerations and it cannot be said that the decision of the Cabinet dated 27.8.2001 is vitiated by *mala fide*s or is borne of colourable exercise of power or that it is irrational.

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18. It is argued on behalf of the I.C.C.L. that the purpose put forward by the State Government for exercise of power under Section 17A (2) of the Act is not within the province of that provision since extraction and equitable distribution of the mineral is not one of the aspects relevant for exercise of power under Section 17A of the Act. Learned counsel pointed out that the D heading of the Section is "Reservation of area for purposes of conservation" and exploitation and distribution is not conservation. Moreover, it was submitted that the said power under sub-section (1) of Section 17A of the Act rested with the Central Government and not with the State Government. There may be substance in the submission of learned counsel, but what we E are concerned with is the power of the State Government, of course, with the approval of the Central Government, to reserve an area for undertaking mining operations through a Government company or corporation owned or controlled by it. This is exactly what is sought to be done by the State Government in this case, of carrying on the mining operations in the balance area through a corporation owned or controlled by the State Government. We are therefore F of the view that the recommendation of the State Government for the approval of the Central Government for leasing out the extent to OMC is well within the power of the State Government under Section 17A(2) of the Act. The heading of the Section cannot control the natural effect of sub-section (2) of Section 17A of the Act or the power conferred by it. That provision deals specifically with the power of the State Government to carry on mining G operations through a corporation owned or controlled by it. The said argument cannot also be accepted to invalidate the decision of the State Government to seek the approval of the Central Government for grant of lease to OMC of the balance area left, in a bloc.

H 19. We also do not find any substance in the contention that the

decision to grant a lease of the remaining extent to OMC is irrational in the context of the performance of OMC and the other attendant circumstances of the case and in the context of the National Mining Policy. The argument that on principle the necessity of industries established in Orissa for captive mining had also been approved and the said aspect could not be lost sight of while taking such a decision cannot be the controlling factor. What we find is that the area available for chromite ore mining has already been divided among TISCO, the four companies and AIKITH and what is left is the extent of 436.295 hectares. It is clear that a number of companies have applied for leases of varying extents from that remaining extent and if the State Government took a decision that further fragmentation of the area would not be in the interests of scientific mining and to ensure even distribution among the consumers in the country, it is necessary to leave the mining to a corporation controlled by the Government, it is difficult to say that the decision is irrational. In a sense, it is a policy decision and though in a given case this Court could interfere with a policy decision of the Government, we cannot say that the present case is one where the decision is so irrational, unreasonable or patently illegal as to justify interference by this Court. All industries outside the State of Orissa also require the precious ore and it is the duty of the Government to ensure a just distribution at a fair price. In the circumstances, it is difficult to say that the decision taken to retain the area in a compact bloc for mining by a Government controlled Corporation is irrational. We therefore reject this contention.

20. The contention on behalf of the Companies, that the Central Government must be taken to have rejected the approval sought by the State Government under Section 17A(2) of the Act, cannot be accepted. It is seen that the Central Government took the stand that as the matter was pending in this Court, it would not be appropriate for it to take a decision. The application or request of the State Government is seen to have been returned. Of course, the Central Government is also entitled to seek further clarifications or additional facts so as to make up its mind on the question of approval. As matters stand at this stage, the Central Government has refused to take a decision one way or the other on the request of the State Government. It is therefore not possible to proceed on the basis that the Central Government has already rejected the request of the State Government for reserving the area for exploitation by OMC.

21. Then the question is whether there is anything in the process of decision making by the State Government that makes the decision itself

A vitiated. What is contended is that the Chahar Committee had recommended that the distribution be made among the various applicants and that OMC was not eligible for getting a lease of any extent. It was when that recommendation was put up that the concerned Minister made a noting indicating a sudden turn around, recommending consideration of the question
B whether the lands or the area available with the State, should also be divided among the private operators and whether it would not be in the interests of a just and equitable distribution of the ore and the protection of the environment, to have the area in a bloc for being exploited by OMC. It is true that the earlier stand of the Government was that leases could be granted to private players including industries established in the State for captive
C mining. But, when the recommendation of the Chahar Committee was put up before him for his final view, it was open to the Minister concerned to go through the report and record his views thereon. In fact, Chahar Committee report itself had indicated some of these aspects, though it had overridden them and made recommendations for grant of leases to the various applicants
D in the light of the directions of this Court and the High Court. If a Minister, on going through the report, feels that the aspects highlighted in the report themselves would justify the retaining of the resources with the State so as to ensure a just distribution of the mineral among the needy and for protection of the environment, in the absence of any other material, it could not be said that the recommendation of the Minister was not bona fide or that it was
E tainted in any manner by *mala fides*. It is interesting to note that Mr. Chahar himself as Secretary of the Ministry concerned thereafter highlighted the aspects pointed out by the Minister and recommended in his capacity as Secretary of the concerned Ministry that it would be appropriate to retain the area for being exploited by the Government controlled corporation. The file
F shows that this noting of the Minister in the light of the recommendation of the Secretary to the Ministry was considered by the Cabinet and the Cabinet approved the noting of the Minister or the course recommended therein to exploit the mineral through OMC and not to divide the balance area left with the Government among various private entrepreneurs. The decision was reiterated by the Cabinet and a request was made by the State Government
G to the Central Government for approval of this proposal. There is nothing to show that the noting of the Minister was tainted in any manner or that the subsequent cabinet decision was vitiated for any reason that could be gone into by the Court. In a sense, counsel for OMC and the State of Orissa are right in submitting that it was really a policy decision and the role of this Court in respect of such a policy decision and its scrutiny was limited and
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within the scope of that limited scrutiny, there was no justification in interfering with the decision of the Government. Of course, as we have indicated earlier, it is for the Central Government to give its approval or not to give its approval to the proposal of the State Government. The Central Government is yet to take a decision. Since, we have not reached that stage, we are also not called upon to pronounce on it at this stage.

22. It is urged that it was a volte-face by the Minister concerned and what changed in three days between the stand till then adopted and the note made has not been explained. What is put forward is that the Chahar Committee report itself justified such a change in perspective and if the taking of such a decision of this nature is not precluded by the prior proceedings, the recommendation of the Minister was a rational one and the Cabinet was justified in approving it. We have already held that the orders earlier made by this Court did not preclude such a decision being taken. There is nothing to show that the noting was not made *bona fide* or that any extraneous consideration influenced it. When the occasion arose, the Minister made the noting. It put forward a relevant point of view. There is no merit in the contention that it was a hurried turn around on the part of the Minister.

23. We are therefore satisfied that the decision of the State Government to seek the approval of the Central Government for grant of a lease to OMC, a corporation controlled by it, could not be held to be invalid.

24. In this context, it was contended that the State Government had not disclosed the full facts to the Central Government. Learned Senior Counsel for I.C.C.L. was at pains to point out that OMC was inefficient; that it had failed to exploit the area earlier granted to it on lease; that many of its mines remain unexploited and that it would be imprudent to entrust this area also to OMC for mining of chromite ore. Learned counsel also contended that OMC did not have even qualified persons at his helm and elsewhere and in that situation, the recommendation of the State Government must be found to be imprudent and ineffective. Learned counsel for the OMC and the State of Orissa sought to controvert these submissions with reference to certain materials to show that there was no merit in these charges against OMC. We do not think that we are called upon to go into this question here. It is for the Central Government to consider whether all these aspects are relevant. It has to consider all the relevant facts while applying its mind to the question of grant of permission sought for by the State Government in terms of Section 17A(2) of the Act. It would, therefore, be premature for us to pronounce on

A the merits or demerits of the arguments sought to be raised regarding the efficiency and the competency of OMC to exploit minerals. But certainly these arguments — whether they are relevant or not in the context of Section 17A(2) of the Act, the Central Government will have to decide — should alert the State Government to ensure that competent, honest and qualified persons B are put in charge of OMC and the requisite expertise obtained for the purpose of making its working more efficient. This is independent of the question of approval involved in this case.

25. We find some merit in the contention of learned counsel for the State and OMC that the fact that the ore is required by many industries in the C country other than the applicants for leases for captive mining and if the whole area is divided and given for private exploitation, there may be difficulty in ensuring equitable distribution of the ore was a relevant consideration for the State Government in making the recommendation under Section 17A (2) of the Act. We cannot certainly say that this aspect is not a relevant circumstance. Anyway, as we have indicated, it is not for us to pronounce D on it at this stage and that would also be one of the aspects to be considered by the Central Government when it considers the request of the State Government for approval under Section 17A(2) of the Act.

26. In our view, the High Court was not right in holding that what had E transpired thus far, or the directions of this Court earlier made, precluded the State Government from exercising the power and seeking approval in terms of Section 17A(2) of the Act. As we have held, the State Government could exercise that power until a grant is actually made since it is an overriding power. The taking up of a particular stand earlier, cannot also preclude the exercise of that power. Whether it has laid itself open to claims for damages F by its prior actions is a different question and that cannot control the exercise of the power under Section 17A of the Act.

27. Now, we come to the lease proposed to be granted to Nava Bharat. In view of our upholding the decision of the State Government subject to approval by the Central Government, the lease proposed has to be found to G be still born; or that the decision no more survives. But it is necessary to consider the contentions put forward, since the question would become relevant if for any reason, the Central Government chooses not to approve the request or decision of the State Government to lease the balance extent of 436.295 hectares to OMC.

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28. As regards the allotment to Nava Bharat, we see considerable force in the submission on behalf of the I.C.C.L. that the decision to grant lease to Nava Bharat in preference to the other applicants who were before the Government was incorrect and calls for interference. On the materials, it is not established that the State Government exercised its power under sub-section (5) of Section 11 of the Act. Nava Bharat was a subsequent entrant into the fray and had claimed the grant even while the claims of various applicants were being considered by Dash Committee. Even without sending the request of Nava Bharat to Dash Committee for consideration and recommendation, the State Government proceeded to recommend the grant of a lease to Nava Bharat from out of the extent available with it. This was a case to which the rule of preference under Section 11 of the Act as modified by the earlier orders of this Court applied and there was a preference available to those who had applied for leases earlier. Of course, the position had been explained in the first decision in *Indian Metals & Ferro Alloys Ltd.* v. *Union of India & Ors.* (supra). What is the reason that led to overriding the claims of others is not disclosed. On the materials, it cannot be said that the conditions of sub-Section (5) of Section 11 are fulfilled in this case. No special reasons are recorded justifying such an out of turn grant.

29. If it was a case of consideration of the claims under Section 11 of the Act, we feel that the State Government was bound by the directions of this Court issued ultimately in *Ferro Alloys Corporation Ltd. & Anr.* v. *Union of India & Ors.*, (supra). The State Government had to proceed on the basis of the directions contained therein and make allotments as recommended by the Dash Committee or the successor Chahar Committee. Of course, the State Government might have been in a position to forward the application of Nava Bharat also to the said Committe for consideration and recommendation and might have thereafter acted on the basis of recommendations of the Chahar Committee. But that was not done and the decision to lease to Nava Bharat was straight away taken. We see some force in the submission on behalf of I.C.C.L and GMR that no proper reasons are given for overriding the preferences of others especially in the light of the directions of this Court while deciding to grant a lease in favour of Nava Bharat. Notwithstanding the valiant effort in that behalf made by learned Senior Counsel for Nava Bharat to salvage the grant made to it, we are of the view that on the facts and in the circumstances of the case, the decision to grant a lease to Nava Bharat out of turn was not justified, legal or proper.

30. When the State Government made the recommendation for grant of

A a lease to Nava Bharat, the infirmities in that recommendation were pointed out by the Central Government, in its letter dated 27.6.2001. The violation of Rule 59 was also pointed out. Instead of placing the letter before the Chief Minister or the Cabinet and obtaining directions thereon, the Steel and Mines Department on its own chose to send a letter dated 30.6.2001 purporting to conform to the requirements. When the matter reached the Chief Minister and B the Cabinet, the decision taken was to withdraw the earlier request for grant of approval of lease to Nava Bharat. On the materials, it is clear that the letter dated 30.6.2001 sent by the Secretary of the Steel and Mines Department was not one consistent with the Rules of Business framed under Article 166 of the Constitution of India. The letter also lost its efficacy in view of the C decision taken by the Cabinet to withdraw the recommendation itself. The position that emerges is that there was no valid recommendation by the State Government for the grant of a lease to Nava Bharat and there was hence no valid approval of the Central Government. Non-compliance with Rule 59 of the Rules also vitiated the proposal to lease to Nava Bharat.

D 31. In view of our conclusion that the State Government was entitled to seek the approval of the Central Government in respect of the balance extent of 436.295 hectares, in which was included the proposed Nava Bharat grant, for exploitation by OMC and since, we are satisfied that the grant to Nava Bharat cannot be sustained, the proposed grant or grant to it has to E be set aside. We do so. If it is a question of reconsideration of the applications of various entities for grant of leases in respect of 436.295 hectares, it would be a case where the claim of Nava Bharat would also have to be considered along with the claim of others in the light of the directions earlier issued by this Court. This contingency may arise only if the Central Government does not grant approval to the request of the State Government F under Section 17A(2) of the Act. To that extent, we allow the appeals of I.C.C.L.

32. Taking note of the circumstances, it is for the State Government to make a fresh request to the Central Government in terms of Section 17A(2) of the Act setting out all the relevant details for consideration of the Central G Government. Thereupon the Central Government will have to take a decision in terms of Section 17A(2) of the Act and in the context of Section 17A of the Act and all relevant attendant circumstances. We make it clear that the prior directions of this Court or that of the High Court cannot and do not stand in the way of the Central Government in applying its mind to the H request made by the State Government under Section 17A(2) of the Act and

in taking an independent decision thereon. All that is necessary at the moment is to hold that the recommendation of the State Government cannot be rejected by the Central Government on the ground that it has no freedom or right to take a decision on the request, in view of the prior orders of this Court or on the ground that adequate details are not forthcoming. In the latter contingency, it is for the Central Government to seek such further details from the State Government as it deems fit and thereafter to come to a decision.

33. The decisions of the High Court of Orissa are thus set aside. The appeals are allowed in the manner indicated above. The State Government is directed to make a proper request in terms of Section 17A(2) of the Act and the Central Government is directed to take a decision thereon bearing in mind all the aspects as indicated hereinbefore. What is to happen thereafter will depend upon the decision the Central Government takes and the consequences that flow therefrom. Those are aspects that will have to be tackled at the appropriate time, if the need or occasion for it arises.

34. Since, this matter has been pending for years and what is involved is exploitation of a precious mineral, we direct the State Government and the Central Government to comply with the directions we have made expeditiously. The State Government should send its request within a period of four months from today with all relevant details and the Central Government should take its decision on the recommendation within a period of four months from the date of receipt of the recommendation, if necessary, after calling for any further detail that it may consider relevant.

35. Thus, the appeals of the State of Orissa and OMC are allowed, that of I.C.C.L. and GMR are allowed to the extent of setting aside the grant of lease to Nava Bharat and the Transferred Cases are disposed of in the light of the above decision. The parties are directed to bear their costs in this Court.

B.S. Matters disposed of.