SUPREME COURT OF INDIA

M/s. Kalinga Mining Corporation

Vs.

Union of India

C.A.No.1013 of 2013

(Surinder Singh Nijjar and H.L.Gokhale JJ.)

07.02.2013

JUDGMENT

SURINDER SINGH NIJJAR,J.

1. Leave granted in both the Special Leave Petitions.

2. By this common judgment, we propose to dispose of both the aforesaid appeals. The Appeal arising out of Special Leave Petition (C) No. 23141 of 2007 has been filed challenging the order dated 31st August, 2007 rejecting the preliminary issue raised by the appellant in OJC No.3662 of 2002. The Appeal arising out of Special Leave Petition (C) No. 5130 of 2009 has been filed challenging the final order dated 24th November, 2008 in OJC No. 3662 of 2002 upholding the order dated 27th September, 2001.

CIVIL APPEAL NO.1013 OF 2013

[Arising out of SLP (C) No. 23141 of 2007]

3. We may notice here briefly the facts as noticed by the High Court.

4. On 27th October, 1953, the appellant M/s. Kalinga Mining Corporation applied to the Government of Orissa for a prospecting licence. This was granted by the State Government on 15th September, 1961 in respect of an area of 480 acres in Kalaparbat Hill range of Keonjhar district subject to compliance of lease stipulations. The appellant applied for the grant of mining lease also for iron

manganese ore over 420 acres in Kalaparbat Hill range of Keonjhar district. As the same was not considered by the State Government, the appellant filed a revision before the Central Government. The same was disposed of by the Central Government on 23rd July, 1962 by intimating the State Government that since the prospecting licence was not granted in favour of the appellant, the mining lease application could not be considered. The direction was issued to the State Government to consider the application of the appellant for mining lease which was dated 4th September, 1961 on merit by 1st January, 1964. Since no decision was taken by the State Government by stipulated date, the application of the appellant dated 4th January, 1961 was deemed to have been refused. By notification dated 20th July, 1965, the State Government of Orissa threw open an area of 438.5 acres in Kalaparbat Hill Range area, Keonjhar district for mining under Rule 58(1) of Mineral Concession Rules, 1960 for mining in respect of manganese and iron ore. On 10th September, 1965, six applicants including the appellant and respondent No.10 submitted their applications for grant of mining lease in respect of the aforesaid area. It appears that the mining lease applications of the appellant as well as the respondent No.10 were not disposed of by the State Government within the statutory period, therefore, both of them separately moved the Central Government in revision. By an order dated 7th April, 1967, the Central Government allowed the revision petitions of the appellant and respondent No.10 and directed the State Government to consider their mining lease applications. Still no decision was taken by the State Government, as a result of which the appellant moved another revision petition before the Central Government on 22nd July, 1967. The Central Government rejected the revision of the appellant by its order dated 13th October, 1967.

5. Being aggrieved, the appellant filed OJC No.855 of 1969 seeking a direction from the High Court for grant of mining lease in its favour. Respondent No.10 intervened in the aforesaid writ petition. By an order dated 21st June, 1971, the High Court dismissed the writ petition filed by the appellant.

6. Pursuant to the order of the Central Government dated 7th April, 1967, the State Government on 3rd September, 1971, for the first time, passed an order recommending the grant of mining lease in favour of respondent No.10 and sought the approval of the Central Government as required under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957. The Central Government by its order dated 18th January, 1972 refused to accord its approval in favour of respondent No.10. It appears that the State Government on 25th April, 1972 again requested the Central Government for grant of approval to its

recommendation made in favour of respondent No.10 Dr. Sarojini Pradhan. However, by its letter dated 29th December, 1972, the Central Government directed the State Government to reject the mining lease application of Dr. Pradhan. Thereafter on 8th June, 1973, the State Government rejected all pending mining lease applications including the application of appellant and Dr. Sarojini Pradhan.

7. Challenging the aforesaid order, both the appellant and Dr. Pradhan filed the revision petitions before the Central Government. The Central Government by its order dated 2nd May, 1978 rejected the revision filed by Dr. Sarojini Pradhan but allowed the revision filed by the appellant with a direction to the State Government to pass a fresh order on merits.

8. It appears that Dr. Pradhan filed a writ petition being OJC No.829 of 1978 challenging the order passed by the Central Government dated 2nd May, 1978. On 4th September, 1987, the High Court allowed the writ petition with the following directions : "We direct the Central Government to reconsider the question of grant of approval for the grant of lease of iron ore and manganese in respect of the area after giving all parties concerned an opportunity of hearing. The mode and manner of hearing shall be regulated by the Central Government and it shall convey its decision by a speaking order, i.e. by giving reasons for the decision."

9. We may notice here that in the aforesaid writ petition, the appellant and the other applicants had filed applications for intervention. However, the cases of interveners were not considered individually by the High Court, having regard to the directions which were given by it. Few days after the aforesaid decision dated 4th September, 1987, Dr. Pradhan died on 10th September, 1987. Since at that time Dr. Pradhan was only an applicant for the mining lease, the appellant claims that her application was lapsed.

10. An application was filed by the legal heirs of Dr. Pradhan for substitution in the revision filed by her and was pending before the Central Government. In OJC No.829 of 1978, a Miscellaneous Case No.1773 of 1988 was filed wherein the aforesaid fact of death of Dr. Pradhan and the fact of application for substitution of her legal heirs were considered. In the aforesaid application, a direction was given by the High Court on 28th April, 1988 to the Central Government to inform the parties about the stage of revision and the date on which the revision petition was posted for hearing. It was made clear that the legal heirs of Dr. Pradhan may appear before the Central Government on 16th May, 1988 and seek directions;

regarding the hearing of revision application. With these observations, the miscellaneous case was disposed of. Another Misc. Case being Misc. Case No.1977 of 1988 was field in the aforesaid OJC NO.829 of 1978. In the aforesaid Case No.1977 of 1988, on 11th May, 1988, the High Court passed the following order:

> "Heard.
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> On 28.4.1988, on a complaint made by the petitioner that no action had been taken by the Central Government to implement our judgment in OJC No.829/87, we directed that the legal representatives of the deceased petitioner would appear before the Central Government on 16th May, 1988 to take steps regarding hearing. An application has now been filed stating that the legal representatives could not appear before the Central Government on that day due to difficulties stated in the petition. The counsel for the parties now agree that the legal representatives of the deceased petitioner would appear before the Central Government on the 6th of June, 1988 on which day a date of hearing shall be fixed.
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> The Misc. case is disposed of accordingly."

11. It may be noted here that in both the Misc. cases the appellant was a party and was heard.

12. In the meantime, another matter being OJC No.1431 of 1980 was filed. In the aforesaid matter, a Division Bench of the High Court rejected the contentions of the State that on the death of Dr. Pradhan, her writ petition will abate.

13. Thereafter on 11th May, 1990, the Central Government conveyed to the State Government its approval of grant of mining lease in favour of the legal representatives of Dr. Pradhan. The appellant, however, claims that no such order, with reasons, was made available to the parties. In view of the aforesaid approval, the State Government by its order dated 24th May, 1990 asked the legal representatives of Dr. Pradhan to furnish certain information and documents regarding the grant of mining lease. By a letter dated 26th June, 1990, the legal representatives of Dr. Pradhan furnished the information and documents to the State Government. At this stage, the appellant filed OJC No.4316 of 1990 challenging the order dated 11th May, 1990 passed by the Central Government, even though the said order was not made available to the parties. On 18th

December, 1990 the High Court passed an interim order staying the operation of the order of Central Government dated 11th May, 1990.

14. Whilst this controversy between the parties about the abatement of the application of Dr. Pradhan for mining, as also the writ petition filed by her, was pending, a significant change took place in that on 20th February, 1991 Rule 25A was inserted in the Minor Concession Rules, 1961 w.e.f. 1st April, 1991. The aforesaid rule permitted the legal representatives to continue pressing an application for grant of mining lease even if the applicant dies.

15. It appears that OJC No.1269 of 1982 filed by Dr. Pradhan challenging the order passed by the State Government rejecting the application filed by her for mining lease for "lime stone and Dolmite" over an area in respect of certain other areas which are not subject matter of the present proceedings came to be decided on 23rd February, 1993. In this judgment, the High Court held that Rule 25A is clarificatory in nature and allowed the substitution of legal heirs of Dr. Pradhan to pursue the mining application.

16. On 13th December, 1996, the High Court disposed of OJC No.4316 of 1990 directing the State Government to reconsider the matter and pass a fresh and speaking order after hearing the appellant, legal representatives of Dr. Pradhan and one M/s. Balasore Minerals. On 8th April, 1999, the Central Government approved the recommendations of the State Government for grant of lease in favour of legal representatives of Dr. Sarojini Pradhan. Thereafter, terms and conditions were offered by the State Government to the legal representatives of Dr. Pradhan on 8th July, 1999, which were accepted by them on 20th July, 1999.

17. At this stage, the appellant filed OJC No.11537 of 1999 challenging the order dated 8th April, 1999. By judgment dated 2nd July, 2001, the High Court allowed the aforesaid writ petition, quashed the order of the Central Government and remanded the matter for fresh consideration. Relying on the order passed in OJC No.1269 of 1982, it was held that on the death of the original applicant Dr. Pradhan, her application for mining lease does not abate. The Court also held that this being a pure question of law, the issue has become final and shall not be reopened in the hearing before the Central Government.

18. The appellant challenged the order dated 2nd July, 2001 passed in OJC No.11537 of 1999 by filing SLP (C) No.13556 of 2001 on the issue of allowing the legal representatives of the deceased to be substituted in place of the latter. This

was dismissed in limine on 24th August, 2001. Thereafter on 26th September, 2001, the Central Government approved the recommendations of the State Government for grant of mining lease in favour of legal representatives of Dr. Pradhan.

19. The appellant filed a fresh OJC No.3662 of 2002 (writ petition) challenging the grant of lease dated 27th September, 2001, on the basis that it constituted a new cause of action. At this stage, according to the appellant, another significant change took place in that on 9th September, 2003, this Court set aside the order passed by the High Court in OJC No.1269 of 1982 on 23rd February, 1993, which had been filed by the legal representatives of Dr. Pradhan for certain other areas. It was held by this Court in Saligram Khirwal Vs. Union of India Ors.[1] that legal heirs cannot pursue an application for mining lease. Thus, the interpretation placed on Rule 25A by the High Court to the effect that it was clarificatory in nature, was reversed by this Court. It was held that Rule 25A was only prospective. Upon such interpretation, this Court further observed that the legal heirs shall be at liberty to make a fresh application in their own right.

20. On 2nd June, 2006, the High Court passed further order in OJC No. 3662 of 2002 directing that any action taken in connection with the grant of lease shall be subject to the result of the writ petition. On 21st February, 2007, the writ petition was allowed to be amended in view of the judgment in Saligram's case (supra). The appellant raised a preliminary objection relating to the maintainability of the application for the grant of mining lease by the legal heirs of Dr. Pradhan, contending that on the death of the original applicant, her application for grant of mining lease abates and the legal heirs cannot maintain the said application. By order dated 31st August, 2007, the High Court held that the controversy stood concluded between the parties by the rejection of the earlier SLP (C) No. 13556 of 2001 on 24th August, 2001. It was held that the order dated 24th August, 2001 having attained finality, the question of allowing the legal heirs to be substituted for the deceased applicant had also attained finality between the parties and would operate as res judicata. The subsequent decision in Saligram's case (supra) is of no consequence. Therefore, the preliminary objection raised by the appellant about the maintainability of the mining lease application by the legal heirs of Dr. Pradhan was rejected. It is this interim order which has been challenged in the present appeal.

21. We may further notice here that OJC No. 3662 of 2002 was ultimately dismissed by the High Court on 24th November, 2008. The dismissal of the

aforesaid writ petition was challenged by the appellant by filing SLP (C) No. 5130 of 2009.

22. From the aforesaid narration of the facts, it becomes apparent that only two issues arise in this appeal for consideration viz.:

> (a) Is Rule 25A, as introduced in the Mineral Concession Rules, 1960, w.e.f. 1st April, 1991, by way of amendment dated 20th February, 1991, clarificatory in nature, and hence retrospective, or is it only prospective in nature?
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> (b) Whether the dismissal of the SLP on 24th August, 2001, filed by the appellant against the judgment of the High Court dated 2nd July, 2001 in OJC No. 11537 of 1999 would attract the principles of res judicata, so as to disentitle the appellant from urging the invalidity of the application of the legal heirs in place of the deceased Dr. Pradhan, in the pending proceedings in OJC No. 3662 of 2002, the judgment which is the subject matter of the present appeal?

23. We have heard the learned counsel for the parties at length.

24. Mr. K.K. Venugopal, learned senior counsel appearing for the appellant, submitted that the dismissal of the earlier SLP on the preliminary issue will not act as a bar against the SLP challenging the order passed at the final stage. He submitted that in SLP (C) No. 13556 of 2001, this Court did not entertain the challenge against the order of the High Court permitting the legal heirs of Dr. Pradhan to be substituted for her and to pursue the litigation with regard to the mining lease. In support of this submission, the learned counsel relied on The Chamber of Colours and Chemicals (P) Ltd. Vs. Trilok Chand Jain[2], Taleb Ali Anr. Vs. Abdul Aziz Ors.[3], and Shah Babulal Khimji Vs. Jayaben D. Kania Anr.[4] He further submitted that the principle of res judicata would not be applicable when the law is subsequently declared contrary to the law earlier declared, on the basis of which the decision was given which is sought to be reopened. In support of this proposition, he relies upon the law laid in cases of Mathura Prasad Bajoo Jaiswal Ors. Vs. Dossibai N.B. Jeejeebhoy[5], Nand Kishore Vs. State of Punjab[6], Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) Through His LRs[7], and Kunhayammed Ors. Vs. State of Kerala Anr.[8]

25. In Kunhayammed (supra), it was held that the dismissal in limine is not a decision on merits, it is only an expression of opinion that the Court would not exercise jurisdiction under Article 136 (Paras 14, 16 and 17). Additionally in the written submissions, the learned counsel has also relied upon the judgment in the case of Saligram (supra). On the basis of this judgment, it was submitted that upon the death of an applicant for mining lease, the application abates and the legal heirs would have no legal right to step into the shoes of the deceased applicant, and that such an application would be non est in the eyes of law. If so, any recommendation for grant of mining lease to the legal heirs, or approval of such recommendation of the Central Government, would be mere nullities in the eyes of law. He relied on paragraphs 11 and 12 of the judgment. Learned senior counsel further submitted that the judgment in Saligram's case (supra) involved an interpretation of the statutory Rule 25A. Such an interpretation is in the realm of public law. It would, therefore, be a judgment in rem. Principle of res judicata would have no application in such a case. In support of this proposition, learned senior counsel relied on the judgment of this Court in U.P. Pollution Control Board Ors. Vs. Kanoria Industrial Ltd. Anr.[9] He submitted that the law declared in the aforesaid judgment would necessarily apply to any pending case where the issue is a live one. The contrary interpretation placed on Rule 25A by the High Court in the earlier proceedings would be of no consequence. An application which is non est and the order made thereon in favour of the legal heirs is a mere nullity, in the eyes of law, and cannot be treated as a valid application in the pending writ petition OJC No. 3662 of 2002. Mr. Venugopal further submitted that the legal position was made clear by this Court even before insertion of Rule 25A in the case of C. Buchi Venkatarao Vs. Union of India Ors.[10].

26. Mr. Dushyant Dave, learned senior counsel for the respondent No. 10 submits that in the facts and circumstances of this case, it is not open to the appellant to question the status of the LRs of respondent No. 10 on the basis of the "order" in the case of Saligram Khirwal (supra).

27. Learned senior counsel submits that the case of Saligram Khirwal (supra) is merely an order and not a judgment. There is no declaration of law in the case of Saligram Khirwal (supra). In fact, this Court has not interpreted Rule 25A of the Rules in the aforesaid order. The order makes it clear that Rule 25A, on its plain reading does not have any applicability to the situation emerging from the facts in that case. He further submitted that even assuming for the sake of argument that Saligram's order lays down any principle of law, the same can not aid the appellant in reopening the status of the LRs of the respondent No. 10 in the present case. He

seeks support for the aforesaid proposition from the explanation to Order 47 Rule 1 of the Code of Civil Procedure, 1908. He relies on the judgment of this Court in the case of Shanti Devi Vs. State of Haryana Ors.[11] and Union of India Ors. Vs. Mohd. Nayyar Khalil Ors.[12] The learned senior counsel reiterates that the claim made by the appellant would be barred by res judicata. In support of his submission, he relies on the judgment in the case of State of West Bengal Vs. Hemant Kumar Bhattacharjee Ors.[13] and Mohanlal Goenka Vs. Benoy Kishna Mukherjee Ors.[14]. On the basis of the aforesaid judgments, it is submitted that even if the judgment dated 2nd July, 2001 rendered by the High Court in OJC No. 11537 of 1999 and the dismissal of the SLP (C) No. 13556 of 2001 are considered to be erroneous in view of the earlier judgment of this Court in C. Buchivenkata Rao (supra) and/or orders in Saligram (supra), the matter regarding LRs of respondent No. 10 and their status to maintain and proceed with the mining lease application can not be reopened since it has become final inter parte. According to the learned senior counsel, res judicata is not a mere technical rule, it is based on principle of justice and public interest, viz. a litigant should not be vexed twice over the same issue and there should be finality. The rule is based on equity, justice and good conscience. Subsequent change in law cannot unsettle a matter which has attained finality. He points out that principles of res judicata and constructive res judicata have been applied even to Public Interest Litigation, which cannot be said to be in the realm of private law. He submits that the judgment relied by the appellant in the case of Mathura Prasad (supra) is distinguishable as it is dealing with a situation where there was inherent lack of jurisdiction and is therefore, not applicable in the present case.

28. Mr. Mohan Jain, has also submitted that the claim of the appellant is clearly barred by the principle of res judicata. He has relied upon the case of Satyadhyan Ghosal Ors. Vs. Deorajin Debi (Smt.) Anr.[15]

29. We have considered the submissions made by the learned counsel for the parties.

30. At the outset, it needs to be noticed that the parties herein have been competing for the same mining lease for the past half-a-century. A perusal of the facts narrated herein above would also show that there have been several rounds of litigation between the parties. Although, we have noticed all the facts in-extenso for the purpose of deciding the issue of res judicata, it is necessary to recapitulate the foundational facts with regard to the aforesaid issue of res judicata. On 3rd September, 1971, the State Government passed an order recommending the grant

of mining lease in favour of respondent No. 10. Since the Central Government did not approve the recommendation made by the State Government, on 8th June, 1973, it rejected all pending mining lease applications including the application of the appellant and Dr. Sarojini Pradhan. On 2nd May, 1978, in a revision petition filed by the appellant challenging the order of cancellation of its application for grant of lease, the Central Government issued a direction to the State Government to pass a fresh order on merits. This order was challenged by Dr. Pradhan in OJC No. 829 of 1978. The writ petition was allowed by the High Court on 4th September, 1987 by directing the Central Government to reconsider the question for the grant of lease after giving all parties concerned an opportunity of hearing. During the pendency of the revision petitions, Dr. Pradhan died on 10th September, 1987. Since OJC No. 829 of 1978 was still pending in the High Court, the legal heirs of Dr. Sarojini Pradhan by way of a Misc. Case No. 1773 of 1988 brought the fact of her death on the record of the proceedings and sought a direction of the High Court to be substituted as her legal heirs. It is a matter of record that on the application filed by the legal heirs for substitution in place of respondent No. 10, the appellant was duly heard. The application made by the LRs of respondent No. 10 was allowed on 28th April, 1988 with the following observations:-

> "Misc. Case No. 1773 of 1988
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> Heard counsel for the parties.
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> 2. By judgment dated 4/9/1987, while quashing Annexure 5 the order passed by the Central Government, and the consequential order passed by the State Government as per Annexure 8 and the revisional order as per Annexure 11, we directed the Central Government to re-consider the question of grant of approval for the grant of lease for iron ore and manganese giving the parties concerned an opportunity of hearing. A grievance is now made that despite lapse of more than six months, nothing is heard from the Central Government. In the meanwhile, the sole petitioner has died and it is stated than an application for substitution of his legal representatives has already been filed and the revision is pending before the Central Government.
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> 3. In these circumstances, we would require the central government to inform the parties the further stage of the revision and the date to which the revision would be posted for hearing. The legal representatives of the

petitioner may appear before the Central Government on 16th May, 1988 to take directions regarding hearing of the revision.

4. The Misc. Case is disposed of accordingly. A copy of this order be communicated to the Central Government. A copy of this order be also handed over to the standing counsel for the Central Government. Certified copy of this order be granted in course of today, if an urgent application is made therefore."

31. It appears that the LRs of respondent No. 10 failed to appear before the Central Government on 16th May, 1988. Therefore, they filed another Misc. Case No. 1977 of 1988 seeking another opportunity to appear before the Central Government. Therefore, the High Court by its order dated 11th May, 1988 directed the LRs of Dr. Sarojini Pradhan to appear before the Central Government on 6th June, 1988. As is evident from the order, which we have reproduced in the earlier part of this judgment that the direction was issued on the agreement of the counsel for the parties. In the meantime in another matter being OJC No. 1431 of 1980, the Division Bench rejected the contention of the State that on the death of Dr. Sarojini Pradhan, her writ petition will abate and the substitution of the LRs of Dr. Sarojini Pradhan was allowed. In accordance with the directions issued by the High Court in the orders dated 28th April, 1988 and 11th May, 1988, the LRs of respondent No. 10 duly appeared before the Central Government. Upon hearing the concerned parties, the Central Government took a decision under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 to approve the grant of mining lease in favour of LRs of Dr. Sarojini Pradhan. Appellant ought to have challenged the status of the LRs before the High Court at the time of the hearing of Misc. Case No. 1773 of 1988 and Misc. Case No. 1977 of 1988. Appellant, it would appear, had accepted the locus standi of the LRs of Dr. Sarojini Pradhan. This is evident from the fact that in the subsequent hearing before the Central Government, which were held consequent upon the directions issued by the High Court in the aforesaid two Misc. cases, the appellant raised no objection with regard to the locus standi of the legal heirs of respondent No. 10. Clearly, therefore, a final decision had been reached with regard to the acceptability of the locus standi of the LRs of respondent No. 10 to step into the shoes of the deceased Dr. Sarojini Pradhan. The appellant decided to raise the issues of the abatement of the application of Dr. Sarojini Pradhan only after a decision was taken by the Central Government on 11th May, 1990, which approved the recommendation of the State Government for grant of mining lease in favour of the legal heirs of Dr. Sarojini Pradhan. It is also noteworthy that OJC No. 4316 was decided on 13th

December, 1996 with a direction to the Central Government to reconsider the matter and pass a speaking order. In the aforesaid writ petition, Dr. Sarojini Pradhan was a respondent. The appellant sets out in meticulous detail the history of litigation between the parties. It is specifically noticed in the judgment that although a number of contentions have been raised to challenge the order dated 11th May, 1990, ultimately the dispute was confined to the question as to whether or not it was necessary for the Central Government to hear all the applicants alongwith Dr. Sarojini Pradhan. The main ground for challenging the order of the Central Government accepting the recommendation of the State Government was that the Central Government had failed to pass a speaking order. The locus standi of the LRs of respondent No. 10 was not under challenge in the proceedings before the High Court in OJC No. 4316 of 1990. The writ petition was allowed, a direction was again issued to the Central Government to reconsider the matter and pass a fresh speaking order giving reasons for the decision after hearing all the concerned parties. This was the second time when the locus standi of the LRs of respondent No. 10 was accepted judicially. It is noteworthy that the appellant accepted the aforesaid judgment. It was not assailed either by way of a review petition before the High Court or by way of a Special Leave Petition before this Court. In such circumstances, it would be difficult to accept the submissions of Mr. Venugopal that the High Court has erroneously accepted the plea raised by the LRs of the respondent that the claim of the appellant is barred by res judicata. Considering the principle of res judicata, this Court in the case of Mohanlal Goenka Vs. Benoy Kishna Mukherjee (supra) held as under:

> "22. There is ample authority for the proposition that even an erroneous decision on a question of law operates as res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates a res judicata."

32. This court also held that "a wrong decision by a court having jurisdiction is as much binding between the parties as a right one and may be superseded only by appeals to higher tribunals or other procedure like review which the law provides." [See State of West Bengal Vs. Hemant Kumar Bhattacharjee (supra)]

33. In view of the aforesaid clear enunciation of the law by this Court, it would appear that even if the judgment dated 2nd July, 2001 rendered by the High Court in OJC No. 11537 of 1999 and the dismissal in limine of SLP (C) No. 13556 of 2001 arising from the aforesaid judgment is considered to be erroneous in view of the judgment in Saligram's case (supra), the matter regarding the locus standi of

the LRs of respondent No. 10 to proceed with a mining lease application cannot be permitted to be reopened at this stage since it has become final inter partes.

34. Even though, strictly speaking, res judicata may not be applicable to the proceedings before the Central Government, the High Court in exercise of its power under Article 226 was certainly entitled to take into consideration the previous history of the litigation inter partes to decline the relief to the appellant. Merely because the High Court has used the expression that the claim of the appellant is barred by res judicata would not necessarily result in nullifying the conclusion which in fact is based on considerations of equity and justice. Given the history of litigation between the parties, which commenced in 1950s, the High Court was justified in finally giving a quietus to the same. The subsequent interpretation of Rule 25A by this Court, that it would have only prospective operation, in the case of Saligram (supra), would not have the effect of reopening the matter which was concluded between the parties. In our opinion, if the parties are allowed to re-agitate issues which have been decided by a Court of competent jurisdiction on a subsequent change in the law then all earlier litigation relevant thereto would always remain in a state of flux. In such circumstances, every time either a statute or a provision thereof is declared ultra vires, it would have the result of reopening of the decided matters within the period of limitation following the date of such decision. In this case not only the High Court had rejected the objection of the appellant to the substitution of the legal heirs of Dr. Sarojini Pradhan in her place but the SLP from the said judgment has also been dismissed. Even though, strictly speaking, the dismissal of the SLP would not result in the merger of the judgment of the High Court in the order of this Court, the same cannot be said to be wholly irrelevant. The High Court, in our opinion, committed no error in taking the same into consideration in the peculiar facts of this case. Ultimately, the decision of the High Court was clearly based on the facts and circumstances of this case. The High Court clearly came to the conclusion that the appellant had accepted the locus standi of the LRs of Dr. Sarojini Pradhan to pursue the application for the mining lease before the Central Government, as well as in the High Court.

35. In view of the conclusions recorded by us above, it is not necessary to express an opinion on the interpretation of Rule 25A of the Mineral Concession Rules, 1960. In any event, the judgment in the case of Saligram (supra) has concluded that the Rule would have only prospective operation. The legal position having been so stated, it is not necessary for us to dilate upon the same.

36. This now brings us to the second appeal arising out of Special Leave Petition, i.e., 5130 of 2009, wherein the appellant has challenged the final judgment rendered by the High Court in the amended OJC No. 3662 of 2002 which was decided on 24th November, 2008.

37. The appellant now claims that order dated 27th September, 2001 is void as it has been passed in breach of rules of natural justice. Mr. Krishnan Venugopal, Senior Advocate, appearing for the appellant has submitted that in pursuance of the order dated 2nd July, 2001 passed by the High Court in OJC No. 11537 of 1999, parties were heard by Mr. S.P. Gupta, Joint Secretary for two days, i.e., 28th August, 2001 and 13th September, 2001. However, the order dated 27th September, 2001 has been passed by Dr. R.K. Khatri, Deputy Secretary, who did not hear the parties at all. Mr. Krishnan submits that, by virtue of the orders passed by the High Court, the proceedings before the Central Government were quasi-judicial in nature. Therefore, it was necessary that the same officer who gave a hearing to the parties ought to have passed the order in relation to the competing claims with regard to the grant of mining lease. Learned counsel highlights that originally the appellant had obtained the prospecting licence for the area in dispute between 17th October, 1962 and 16th October, 1963. However, while the appellant's application for mining lease was pending, the State Government made the area available for re-grant under Rule 58 [now Rule 59(1)] of the Rules, as they stood in 1965. Six persons including the appellant and Late Dr. Sarojini Pradhan applied for the grant of mining lease on the same date, i.e. 10th September, 1965, thus triggering the application of the proviso to Section 11(2) read with the merit based criteria in Section 11(3) of the MMDR Act. As four of the contenders dropped out over the next four decades, only appellant and respondent No. 10, i.e., the legal heirs of the Late Dr. Pradhan were the only contesting parties for the mining lease at the relevant time. Repeatedly, the orders passed in favour of Dr. Sarojini Pradhan for the grant of mining lease has been set aside by the High Court on the ground of being in violation of the rules of natural justice. On 31st August, 2007, the Division Bench rejected the preliminary issue raised by the appellant to the effect that the application made by Dr. Pradhan for a mining lease abates on her death, in 1987. Although the High Court held that legal heirs of Dr. Pradhan can be substituted in her place, the writ petition was kept pending for final disposal on the

issue of as to whether the orders granting the lease in favour of her legal heirs had been passed in violation of rules of natural justice.

38. The High Court in the impugned judgment took note of the submissions made by Dr. Devi Pal, learned senior counsel appearing for the appellant. The main thrust of the argument of Dr. Pal was that the matter had been heard by Mr. S.P. Gupta, Joint Secretary on 28th August, 2001 and 13th September, 2001, but has been decided by Dr. R.K. Khatri, Deputy Secretary of the Government of India, Ministry of Coal Mines vide order dated 27th September, 2001, and the said order had been communicated by Mr. O.P. Kathuria, Under Secretary to the Government of India. The submissions made in the High Court have been reiterated before us by Mr. Krishnan Venugopal. He submits that the approval granted in favour of legal heirs of Dr. Sarojini Pradhan causes adverse civil consequences to the appellant. Such an order could only have been passed by the officer, who had heard the parties. The order, however, has been passed by a different officer, Dr. R.K. Khatri, on the basis of the notes recorded by Mr. S.P. Gupta in the relevant file. In support of the submission, the learned counsel has relied on the judgment of this Court in Gullapalli Nageswara Rao Ors. Vs. Andhra Pradesh State Road Transport Corporation Anr.[16]

39. Learned counsel then submitted that even if, for the sake of argument, it is accepted that approval under the proviso to Section 5(1) of the MMDR Act is to be treated as administrative in character, the impugned order dated 27th September, 2001 still deserves to be set aside because it is neither expressed nor can it be deemed to be expressed in the name of the President of India, as required by Article 77 of the Constitution of India and the Conduct of Business Rules. In support of this submission, the learned counsel relies upon the judgment of this Court in Bachhittar Singh Vs. State of Punjab Anr.[17] On the basis of the aforesaid judgment, Mr. Krishnan Venugopal submits that the impugned order, not having been passed by the concerned Minister of the Central Government, can not be deemed to be in the name of the President. He further emphasised that there is no material on the record to show that, under the Rule of Business, the power to pass the order on behalf of the Central Government under proviso to Section 5(1) of the MMDR Act was delegated to the Deputy Secretary. He further pointed out that even if the order is administrative in character, it would still be non est and void, having been passed in violation of rules of natural justice and causes serious civil consequences to the appellant. For this proposition, he relies on the judgment of this Court in Automotive Tyre Manufacturers Association Vs. Designated Authority Ors.[18] Mr. Krishan further submitted that the Central Government's

order is vitiated because it is based mainly on the report of the Indian Bureau of Mines comparing the Iron Ore production of the appellant with that of the legal heirs of Late Dr. Sarojini Pradhan for 1999-2000 and 2000-2001, which is a period after the State Government's recommendation dated 5th February, 1999. The relevant period prior to 5th February, 1999 has been wholly ignored by the Central Government in passing the order dated 27th September, 2001. He further submitted that the comparative merit of the parties had to be judged on the criteria specified under Section 11(3) of the MMDR Act. The criteria under the aforesaid section include :- (a) special knowledge or experience in prospecting operations or mining operations; (b) the financial resources of the applicants, (c) nature and quality of technical staff employed or to be employed by the applicant, (d) the investment which the applicant proposes to make in the mines. Even though the written statements submitted by the parties about their financial and technical capabilities were sent to the State Government for verification, a separate report was sought from the Indian Bureau of Mines which was confined only to two years: 1999-2000 and 2000-2001. The impugned order dated 27th September, 2001 has been passed primarily based on the report of the Indian Bureau of Mines for the aforesaid two years. The order is clearly vitiated as it is based on extraneous considerations. In support of this, the learned senior counsel relies on Commissioner of Income Tax, Bombay Ors. Vs. Mahindra and Mahindra Limited Ors.[19] The order passed by the Central Government is contrary to the directions issued by the High Court on 2nd July, 2001 by which the matter had been remanded to the Central Government with a direction to place the recommendation dated 5th February, 1999 of the State Government before the parties, to hear them, and to pass a speaking order with reasons. The High Court did not authorise the Central Government to conduct its own investigations and elicit fresh materials outside the scope of the State Government recommendation. In support of this submission, the learned counsel relies on a judgment of this Court in Sandur Manganese and Iron Ores Limited Vs. State of Karnataka Ors.[20] The learned counsel further pointed out that the State Government can not grant a mining lease without the previous approval of the Central Government under the proviso to Section 5(1) of the Act. Therefore, the power of the Central Government is confined to the grant of the previous approval on the basis of the material submitted by the State Government for seeking such a previous approval. In support of this submission, the learned counsel relied on the judgments of this Court in Lord Krishna Textile Mills Vs. Workmen[21], Ashok Kumar Das Ors. Vs. University of Burdwan Ors.[22], State of Tamil Nadu Vs. Hind Stone Ors.[23] and Kabini Minerals (P) Ltd. Anr. Vs. State of Orissa Ors.[24]

40. Learned counsel further submitted that the impugned order dated 27th September, 2001 is vitiated as it has been obtained by fraud. He submitted that both parties have provided a statement of the respective technical and financial capabilities to the Central Government. In their submissions before the Central Government, the legal heirs of Late Dr. Sarojini Pradhan had categorically stated that one Mr. Nilamani Ojha, a mining engineer, was the number two person in their technical team. This fact was denied by Mr. Ojha in a latter dated 5th November, 2001 written to the Central Government. He further submitted that even technical information submitted by the legal heirs of Late Dr. Pradhan is factually incorrect. Therefore, the decision of the Central Government is vitiated by fraud. Learned counsel relies on Regional Manager, Central Bank of India Vs. Madhulika Guruprasad Dahir Ors.[25] and State of Orissa Ors. Vs. Harapriya Bisoi[26].

41. Mr. Ashok K. Gupta, learned senior counsel appearing for the legal heirs of respondent No. 10, had made detailed submissions controverting the submissions made on behalf of the appellant.

42. It is submitted that the submissions made by the appellant that the Central Government's order is not in consonance with Article 77, is wholly unfounded and devoid of merits. This ground was not even pleaded in the writ petition before the High Court. In fact, no such submission was made at the hearing of the writ petition by the High Court. No grievance is made in the SLP that such a submission was made before the High Court and that it was not considered. The submissions raised by the appellant at this stage being a mixed question of law in fact ought not to be permitted to be raised in the present proceedings. This apart, he submits that the judgment in the case of Bachhittar Singh (supra) was rendered on the basis of its own facts. Furthermore, in that case, the order signed by the Minister was not communicated to the parties and therefore, it was held that there was no effective order. In the present case, the order was passed on the basis of the approval granted and conveyed in the manner prescribed under law. With regard to the order being vitiated as it was passed on consideration of the material subsequent to the date of recommendation of the State Government viz. 5th February, 1999, he submits that the appellant cannot even be permitted to raise such an objection, having willingly submitted materials/information subsequent to the date of the recommendation by the State Government. Mr. Gupta further submits that Section 5(2) of the MMDR Act does not prohibit the Central Government to take into account material subsequent to the recommendations made by the State Government. In the present case, it was necessary as the hearing was being conducted 2½ years after the recommendations have been

submitted. Learned counsel further submits that no fraud was played by the legal heirs of respondent No.10, as is sought to be canvassed by the appellant. No such ground of fraud was either pleaded in the writ petition before the High Court nor was any submission made to that effect before the High Court. The letter dated 5th November, 2001 of Mr. Nilamani Ojha has been obtained by the appellant only for the purpose of prejudicing the case of the appellant in this Court. With regard to the main ground relating to breach of rules of natural justice and which is premised on the basis that no hearing was granted by the officer that passed the impugned order, it is submitted that the submission is contrary to the material on the record. The matter was heard by Mr. S. P. Gupta, and it was his note running into 47 paragraphs, which was approved by the Secretary and the Minister, as per the rules of the business. The hearing was to be given by the Central Government and not by a particular individual. Therefore, it was clearly a case of institutional hearing and it was not necessary that Mr. Gupta should have passed the order. In this context, he relies on a judgment of the House of Lords in Local Government Board Vs. Arlidge[27]. According to the learned counsel, this principle is also recognized by this Court in Automotive Tyre Manufacturers Association (supra) and Ossein and Gelatine Manufacturers' Association of India Vs. Modi Alkalies and Chemicals Limited Anr.[28] and Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court[29].

43. We have considered the submissions made by the learned counsel for the parties.

44. It is by now well settled that judicial review of the administrative action/quasi judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be re-appreciated by the court in exercise of its powers of judicial review. The court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the court would be justified to interfere in the decision. The scope of judicial review is limited to the decision making process and not to the decision itself, even if the same appears to be erroneous. This Court in the case of Tata Cellular Vs. Union of India[30] upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles :

"70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

……. …… …… ….. ….. ….. … …. ……. …… …… ….. ….. …..

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers ?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

ii) Irrationality, namely, Wednesbury unreasonableness.

iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time…… ……..

…….. …… …… …….. ……. ….”

45. The aforesaid judgment has been followed again and again. It was clearly observed in the said judgment that where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court can not function as an appellate authority substituting the judgment for that of the administrator. Applying the aforesaid principles, the High Court has examined the entire record and has concluded that the decision making process is not flawed in any manner, as canvassed by the appellant. The High Court noticed that the record was duly produced by Mr. J.K. Mishra, learned Assistant Solicitor General. It was also noticed that throughout the proceedings, no reference has been made to any particular officer or post or any designation. The order dated 11th July, 2001 passed by the High Court merely directed that they shall appear before the Central Government on 18th July, 2001. Order dated 14th August, 2001 clearly indicates that the matter was being heard in view of the directions given by the High Court in OJC No. 11537 of 1999 and secondly, notice was issued for hearing on 28th August, 2001. The record further indicated that the matter was heard by Mr. S. P. Gupta, Joint Secretary for two days i.e. on 28th August, 2001 and 13th September, 2001. Both the parties had been given opportunity to place on the record any documents and written submissions in support of their claim. It was also apparent that particulars submitted were made available to all the parties. On 13th September, 2001, Mr. S. P. Gupta, Joint Secretary made a note as under:

“Thus, all the documents available with the Central Government are also available with both the parties.”

46. The High Court also took note of the fact that independently of all the material supplied by the State Government along with the recommendation and the material made available by the parties, the Central Government had also asked Indian Bureau of Mines to furnish certain reports in support of both the parties. These reports were, in turn, made available to the rival parties. The High Court further

noticed that after complying with all the formalities required, the issues were finally adjudicated. Upon conclusions of the arguments by the parties, Mr. S. P. Gupta, Joint Secretary who had heard the parties prepared the note running into 19 pages (from pages 30 – 49) containing 47 paragraphs of original record. The note has been duly signed by Mr. S.P. Gupta, Joint Secretary on 17th September, 2001. The High Court further noticed that in fact this is the report which had been duly approved by the Secretary on 18th September, 2001 and by the Central Government Minister on 25th September, 2001. While making the endorsement of the approval, the Secretary has written as under:-

> "I endorse fully the above note of the Joint Secretary. This is a very old case in which the parties have repeatedly recourse to the courts. As such (sic) even now near litigation may follow. Therefore the decision of the Central Government has to be in terms of a speaking order which is backed by facts and law."

47. The High Court further notices that the impugned order dated 27th September, 2001 is, in fact, a verbatim copy of the report/note prepared by Mr. S.P. Gupta, Joint Secretary. Upon examination of the entire matter, the High Court has concluded that the order has been signed by Mr. R.P. Khatri merely to communicate the approval of the Central Government to the parties.

48. We are of the considered opinion that the conclusions reached by the High Court cannot be said to be contrary to the established principles and parameters for exercise of the power of judicial review by the courts. At this stage, we may also make a reference to a submission made by Mr. Krishnan that the High Court did not give due consideration to the grievance of the appellant raised in the writ petition with respect to the merits because it assumed that the appellant had attempted to bye-pass the alternative remedy of revision available to it under Section 30 of MMDR Act read with Rules 54 and 55 of the Rules. We are of the considered opinion that the aforesaid submission of the learned counsel is wholly misplaced. The High Court merely noticed that the matter had been referred back to the Central Government on a limited issue. Therefore, it was not open to the Central Government to re-open the entire controversy. It has been observed by the High Court that such a power would only be available to the Central Government in exercise of its Revisional Powers under Section 30 read with Rules 54 and 55 of the Rules. We also do not find much substance in the submission made by Mr. Krishnan that the order dated 27th September, 2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an

institutional hearing. The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing. The legality of institutional hearing has been accepted in England since the case of Local Government Board Vs. Arlidge (supra). The aforesaid judgment was quoted with approval by this Court in Pradyat Kumar Bose (supra). This Court approved the following passage from the speech of Lord Chancellor in the aforesaid case:

> "My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its enquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary, to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

> In view of the aforesaid settled position of law, it is difficult to accept the submissions of Mr. Krishnan that the order dated 27th September, 2001 suffers from any legal or procedural infirmity. In our opinion, the conclusions reached by the High Court are in accordance with the settled principles of law. Although a large number of cases have been cited by the learned counsel for the parties on either side, but it is not necessary to consider all of them individually as the principles with regard to observance of natural justice are well entrenched in our jurisprudence. Undoubtedly, any decision, even if it is administrative in nature, which causes adverse civil consequences must be passed upon hearing the concerned parties. In our opinion, the Central Government has fully complied with the aforesaid principle in passing the order dated 27th September, 2001.

49. In view of the above, we find no merit either in Civil Appeal No. 1013 of 2013 arising out of SLP (C)No. 23141 of 2007 or Civil Appeal No. 1014 of 2013 arising out of SLP (C) No. 5130 of 2009. Both the appeals are, therefore, dismissed with no order as to costs.

[1] (2003) 7 SCC 689
[2] (1973) 9 DLT 510 Para 6
[3] AIR 1929 Cal 689 Para 38
[4] (1981) 4 SCC 8 Paras 55 and 78
[5] (1970) 1 SCC 613
[6] (1995) 6 SCC 614 para 17
[7] (1990) 1 SCC 193 para 26
[8] (2000) 6 SCC 359
[9] (2001) 2 SCC 549 Para 18
[10] (1972) 1 SCC 734 Para 14
[11] (1999) 5 SCC 703
[12] (2000) 9 SCC 252
[13] 1963 Supp (2) SCR 542
[14] 1953 SCR 377
[15] AIR 1960 SC 941
[16] AIR 1959 SC 308
[17] AIR 1963 SC 395
[18] (2011} 2 SCC 258
[19] (1983) 4 SCC 392
[20] (2010) 13 SCC 1
[21] AIR 1961 SC 860
[22] (2010) 3 SCC 616
[23] (1981) 2 SCC 205
[24] (2006) 1 SCC 54
[25] (2008) 13 SCC 170
[26] (2009) 12 SCC 378.
[27] (1915) AC 120
[28] 1989 (4) SCC 264
[29] 1955 (2) SCR 1331
[30] (1994) 6 SCC 651