SUPREME COURT OF INDIA

Geomysore Services (I) Pvt. Ltd.

Vs.

Hutti Goldmines Co.Ltd.

C.A.No.2537 of 2017

(Madan B.Lokur and Deepak Gupta,JJ.,)

08.05.2018

JUDGMENT

Deepak Gupta,J.,

1. What is the role and power of the Central Government while dealing with the request of a State Government for reservation of lands for government companies or corporations owned and controlled by the State Government under section 17A (2) of the Mines and Minerals (Development and Regulations) Act, 1957 (hereinafter referred to as "the Act"), is the main issue involved in this case.

THE FACTUAL BACKGROUND

2. This case has a long and chequered history. There are gold mines in the State of Karnataka and parties are litigating in respect of their rights to exploit those mines. We have two appellants before us, M/s. Geomysore Services (India) Pvt. Ltd., Appellant No.1 (hereinafter referred to as "Geomysore") and Deccan Gold Exploration Services Pvt. Ltd., Appellant No. 2 (hereinafter referred to as "Deccan").

3. On 01.04.2000 Geomysore applied for grant of Reconnaissance Permit (for short 'RP') for 315 sq. kms. of land in Hutti South Belt Gold Mines area. After approval by the Central Government, the State Government granted RP on 03.11.2000 for a period of 3 years. Similarly, Deccan was granted RP in Northern part of Hutti Gold Mines for an area measuring 501.48 sq. kms. for a period of 3 years on 09.01.2003 after completing all formalities. The respondent no. 1 i.e. M/s Hutti Gold Mines Co. Ltd. (hereinafter referred to as "HGML") did not file any application for grant of RP for either of the two areas.

4. Geomysore conducted the reconnaissance and submitted a consolidated report on 30.11.2003. Deccan submitted its consolidated report on 21.04.2006. Both the Companies found evidence to suggest the existence of gold deposits and need to carry out further prospecting in certain areas. On the basis of the results of the reconnaissance, Geomysore filed 4 applications for grant of Prospecting Licence (for short 'PL') under Section 11(1) of

the Act. Deccan filed 7 applications for grant of PL with regard to the area where it had conducted reconnaissance.

5. On 28.11.2006, HGML sent a letter to the Commissioner, Geological Resources Development and Director, Department of Mines and Geology, Bangalore praying for reservation of area for the purpose of conservation exclusively for public sector undertakings under Section 17A(2) of the Act. It was stated that HGML was keen to continue prospecting investigations in the area in question. It was submitted that grant of Mining Lease (for short 'ML') to different organizations would create severe problems including safety hazards and as such it was prayed that the entire area, including the area for which RP had been granted to Geomysore and Deccan, be reserved under Section 17A(2) of the Act. It appears that Geomysore came to know about this proposal and it sent a letter on 28.11.2006 itself to the Government of India and opposed the contemplated action of the State of Karnataka to forward a proposal to the Ministry of Mines for reservation of the mining area.

6. In the meantime, two other developments took place. The Ministry of Mines published the National Mineral Policy, 2008 (for short 'the NMP 2008') and the Government of Karnataka released the Karnataka Mineral Policy, 2008 (for short 'the KMP, 2008) in consonance with NMP, 2008 to which we shall advert later.

7. On 27.12.2008, the Government of Karnataka wrote to Government of India for reservation of area in favour of HGML and recommended that 161 sq. kms. of land be allocated to HGML for mining. This covered the areas for which RPs had been granted to Geomysore and Deccan and, therefore, Geomysore and Deccan filed revision petitions before the Central Government. The main challenge to the decision of the State Government was that the appellants were entitled to preference while considering their application for grant of PL and also their PL applications have been filed earlier in time. It was also urged that in terms of the NMP, 2008 and the KMP, 2008 reservation could not be made. The Central Government allowed the revision petitions and directed the State of Karnataka to consider the PL applications filed by Geomysore as well as Deccan.

8. Thereafter, HGML filed a writ petition in the Karnataka High Court. The High Court held that the reservation of the area had not yet taken place and since the Central Government was still to take a decision on the request of the State Government, it was not necessary to determine whether the preferential right claimed by Geomysore and Deccan under Section 11 of the Act could defeat the right of the State Government to seek reservation of the area under Section 17A(2) of the Act. The High Court, after considering the judgment of this Court in the case of *Indian Charge Chrome Ltd. & Anr. v. Union of India & Ors.*[1] held as follows:

> "10. Having held so, the Hon'ble Court has further held that the power under Section 17A(2) is the statutory power and normally there could be no estoppel against the exercise of statutory power and upheld the recommendation of the State Government seeking for approval of the Central Government. It is clear that, in the instant case, the undisputed fact is that the contesting respondents in any event have not been granted

the prospecting licence or mining lease and as such the area in question is not the one which is already held under a prospecting licence or mining lease. Therefore, if the above decision is kept in view, the State Government was well within its powers to seek approval of the Central Government to reserve the area in question. In any event, the Central Government before granting its approval would have to consider all these aspects of the matter and any such consideration by the Central Government could not have been stifled by the contesting respondents in the form of revision application and the revision authority was also not justified in interfering. The preferential right claimed by the contesting respondents cannot be accepted at this stage and a direction could not have been issued to consider the applications of the contesting respondents by setting aside the communication dated 27.12.2008. The appropriate procedure would be to allow the Central Government to take a decision on the approval sought by the State Government by its communication dated 27.12.2008. Thereafter, the consideration or otherwise of the applications for prospecting licence by any other person including the contesting respondents would arise depending on the result of such consideration by the Central Government. If for any reason, the Central Government does not accede to the proposal of the State Government and in such situation if the applications remain open for consideration, then and only then the question of preferential right would arise for consideration."

9. Consequently, the orders passed by the Central Government were set aside and the matter was remanded to the Central Government to take decision on the recommendation made by the State Government with a direction to dispose of the same in accordance with law. The Central Government examined the matter and rejected the proposal of the State Government for reservation of land under Section 17A(2) of the Act for Government undertakings. The order notes that Geomysore and Deccan had already filed PL applications after completing reconnaissance pursuant to the RPs granted to them. Instead of dealing with the PL applications of Geomysore and Deccan, the State Government suddenly decided to make a request to the Central Government to reserve the land. The Central Government held that the action of the State Government is against the stated purpose of Para 3.3 of the NMP, 2008 which provides that there should a regulatory environment conducive to private investment; that the procedure for grant of concession should be transparent and seamless transition shall be guaranteed to the concessionaires; that the action of the State Government was not transparent or fair; that land could only be reserved where private players are not holding the land or have not applied for exploration or mining unless security considerations or specific public interests are involved; that since Geomysore and Deccan had completed their RPs and applied for seamless transition to PL, the proposal of the State Government to reserve the land in favour of HGML was neither in public interest nor in terms of the NMP, 2008 and, therefore, proposal of the State Government to reserve land was rejected and again a direction was issued that the request of Geomysore and Deccan for grant of PL be considered expeditiously.

10. HGML then filed another writ petition challenging the order of the Central Government dated 31.05.2011. Geomysore and Deccan filed a joint reply in the writ petition and the High

Court allowed the writ petition vide the impugned judgment, which is under challenge before us.

11. The main factor which weighed with the High Court in allowing the writ petition was that whereas under Section 11 of the Act, a party which had carried out reconnaissance pursuant to RP, was entitled to preference at the time of granting PL, under Section 17A(2) of the Act, the words "reconnaissance permit" do not find mention. The Court further held that in its earlier judgment dated 18.02.2011, it had been held that while taking a decision under section 17A(2) of the Act, the preferential right under Section 11 of the Act had no role to play and, therefore, the claim of the State Government could not be defeated on this ground. Since the judgment had attained finality, the matter should not be reopened. It further held that the NMP, 2008 cannot overrule the provisions of Section 17A of the Act. The Court further held that the policy has to give way to the statutory provisions. It was held that the second order passed by the Central Government contains the same flaws which were there in the earlier order and hence the writ petition was allowed and the order of the Central Government refusing to reserve the land was quashed.

THE LEGAL PROVISIONS

12. At the outset, we may point out that as far as this case is concerned, we are dealing with the Act prior to its amendment in the year 2015. Sub-sections (ha) and (hb) of Section 3 of the Act were introduced w.e.f. 18.12.1999 and define 'reconnaissance operations' and 'reconnaissance permit' respectively. The same read as follows:

> "(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;
>
> (hb) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations;"

13. A reconnaissance permit allows the permit holder to carry out reconnaissance operations. A reconnaissance permit holder carries out operations to determine whether the area is fit for mining only by way of non-invasive techniques, except for some minimal drilling. Normally, reconnaissance permits are granted for huge areas of land.

14. Sub-sections (g) and (h) of Section 3 of the Act define 'prospecting licence' and 'prospecting operations' respectively. The same read as follows:

"(g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;

(h)“prospecting operations” means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;”

15. Normally, after reconnaissance is done, a party would determine which is the best part of the huge area fit for prospecting to determine with greater exactitude the location of mineral deposits. Thus, PL is granted for an area which is much less than that of the RP area. During prospecting, invasive methods can be used to the extent allowed under law for determining the extant mineral deposits and whether they can be exploited commercially.

16. After prospecting is done, comes the stage of grant of mining lease. ‘Mining lease’ and ‘mining operations’ are defined in sub-sections (c) and (d) of Section 3 of the Act respectively. The same read as under:

> “(c) “mining lease” means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> (d) “mining operations” means any operations undertaken for the purpose of winning any mineral;”

17. Investments during reconnaissance or prospecting are very large. These are not small investments. Therefore, a person who had conducted reconnaissance is given preference for grant of PL and a person who had conducted prospecting is given preference while being considered for grant of ML. In this behalf we may refer to Section 11 (1) of the Act which reads as follows:

> “11. Preferential right of certain persons.- (1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person: Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,-
>
> (a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;
>
> (b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;
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> (c) has not become ineligible under the provisions of this Act; and
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> (d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period as may be extended by the said Government.”

18. The purpose of the aforesaid Section is that in view of the money, effort and time spent in undertaking reconnaissance or prospecting operations and preparation of detailed reports of the mineral discoverable or likely to be discovered pursuant to such operations, such RP or PL holder would get a preferential right for undertaking the next stage of operations.

19. Section17A of the Act reads as follows:

> "17A. Reservation of area for purposes of conservation.- (1) The Central Government, with a view to conserving any mineral and after consultation with the State Government, may reserve any area not already held under any prospecting licence or mining lease and, where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.
>
> (1A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.]
>
> (2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved.
>
> (3) Where in exercise of the powers conferred by sub-section (1A) or sub-section (2) the Central Government or the State Government, as the case may be, undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable, to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence or mining lease."

20. Though, in this case we are dealing mainly with Section 17A(2), we feel that it would be appropriate to analyze the provisions of the various parts of Section 17A of the Act. Under Section 17A(1), the Central Government has the power to reserve any area to conserve any mineral. The Central Government has to exercise this power after consultation with the State Government. There is, however, one caveat, which is, that if a PL or ML for the said area is held by any person then the Central Government cannot reserve the area. Under sub-section (1A) of Section 17A, the Central Government has similar power to reserve areas for undertaking prospecting or mining operations through Government companies, but again, such areas should not have been held under any PL or ML. As far as Section 17(2) is

concerned, this provision gives power to the State Government to reserve an area not held under a PL or ML for prospecting or mining by State Government owned companies. However, this can be done only with the approval of the Central Government and the area so reserved should be notified in the official gazette along with the mineral and minerals for which the area has been reserved. Though we are not directly concerned with sub-section (3) of Section 17A of the Act in this case, the said sub-section provides that where the Central Government or the State Government, as the case may be, undertakes prospecting or mining operations in any area in which mineral vests in the private person, then the Central Government or the State Government concerned shall be liable to pay prospecting fee, royalty, surface rent, dead rent etc..

21. We may also, at this stage, refer to Section 2 of the Act, which reads as follows:

> "2. Declaration as to the expediency of Union control. - It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

CONTENTIONS

22. Mr. Maninder Singh, learned Additional Solicitor General appearing for the Union of India, submitted that Section 17A(2) of the Act empowers the State Government to reserve any area not held under PL or ML for any State Government undertaking. However, this is subject to the prior approval of the Central Government. It is his contention that the State Government cannot reserve an area (not held under a PL or ML) without obtaining the prior approval of the Central Government. He further submits that the Central Government, while considering the request of the State Government, has to apply its mind independently and while dealing with the request, it can take into consideration the mineral policy. Therefore, according to him, the High Court erred in holding that the Union could not take into consideration the parameters set out in the mineral policy. According to him, the absence of the words 'reconnaissance permit' from Section 17A(2) of the Act only indicates that whereas for those areas for which PL or ML has been granted, there is an absolute bar, but where only RP is granted, there is no bar and the State Government can, with the approval of the Central Government, reserve that area.

23. Ms. Meenakshi Arora, learned senior counsel appearing for the appellants adopted the arguments of Mr. Maninder Singh, but she also urged that in view of the huge investments required to be made by the RP holder, it is his legitimate expectation under Section 11 of the Act that he would get the PL. She further submits that HGML had not submitted any application for grant of RP or PL. Therefore, the applications of Geomysore and Deccan being prior in time, should have been considered. She has referred to various provisions of the Act both prior to and after its amendment in the year 2015 to emphasize that the intention of the Government is to encourage private investment in the industry and to ensure that such private investors are not left in lurch after investing huge amount and there is seamless transition from the stage of reconnaissance to prospecting and then to mining.

24. Mr. Basava Prabhu S. Patil, learned senior counsel appearing for the State of Karnataka, submitted that it is the State which is the owner of the minerals and keeping in view the federal structure of our country, the Union cannot override the power of the State. According to him, Section 2 of the Act does not empower the Union to reject the claim of the State Government on grounds which are not provided for in the statute itself. He also submits that the judgment rendered by the Karnataka High Court in the first Writ Petition No.39969/39970 of 2010 decided the issues between the parties and that will operate as res-judicata. He submits that in the earlier judgment the High Court had clearly held that the preferential right claimed by Geomysore and Deccan cannot override the power of the State Government under Section 17A(2) of the Act. He submits that the grounds taken in both the orders passed by the Central Government are virtually identical. According to him, since the words 'reconnaissance permit' have been omitted from Section 17A(2) of the Act, the Central Government could not have rejected the claim of the State Government on grounds which are directly related to the fact that Geomysore and Deccan had carried out reconnaissance in furtherance of such reconnaissance permit. He further submits that the NMP, 2008 was not binding and has made reference to clause 3.2 of the NMP, 2008, which indicates that what is set out in the policy are the goals and that the Act, the Mineral Concessions Rules and the Mineral Concessions Development Rules will be amended in line with the policy. He submits that these amendments took place in the year 2015 and, therefore, the policy could not have been resorted to by the Central Government to reject the claim of the State.

25. Mr. C.U. Singh and Mr. Jaideep Gupta, learned senior counsel, appearing on behalf of HGML, submit that before Geomysore and Deccan were granted RP, HGML had already done a lot of work in the area. According to them, after the amendment of the Act, now these mines can only be auctioned. Reliance has been placed on Para 160 of *Monnet Ispat & Energy Ltd.. v. Union of India & Ors*[2]. case. It was urged that the factors taken into consideration by the Central Government while rejecting the proposal of the State Government were not relevant factors. According to them, the right of the State to reserve area under Section 17A(2) flows from the paramount right of the State as owner of the land and minerals.

THE ISSUES

26. There are four main questions which need to be answered:

(i) Whether the State Government being the owner of land and minerals can claim that its proposal to reserve such land for exploitation of minerals by its undertakings is virtually binding on the Central Government?

(ii) What are the considerations which can weigh with the Central Government while dealing with a request of the State Government for reservation of land under Section 17A(2) of the Act?

(iii) Whether Section 11(1) and Section 17A(2) of the Act operate in totally separate spheres and what is the effect of the right of preference granted to RP holder in terms of Section 11(1) of the Act while dealing with a matter under Section 17A(2) of the Act?

(iv) Whether, in the present case, the Central Government is justified in rejecting the proposal of the State of Karnataka?

27. The Act was initially enacted as the Mines and Minerals (Regulation and Development) Act (for short 'the MMRD Act'). At that time, there was no Section 17A in the MMRD Act, which was later introduced w.e.f. 10.02.1987. Section 17 of the MMRD Act dealt with those lands in which minerals vested with the State Government. Under sub-section (2), the Central Government was empowered to carry out prospecting or mining operations in any area not already held under any PL or ML. This could, however, be done only after consultation with the State Government concerned. Therefore, Section 17 of the MMRD Act empowered the Central Government to undertake prospecting operations. Vide Act 38 of 1999 the name of the MMRD Act was changed from 'The Mines and Minerals (Regulation and Development) Act' to 'The Mines and Minerals (Development and Regulation) Act' w.e.f. 18.12.1999. By the same Act, in Section 17 of the Act, the words 'reconnaissance' and 'reconnaissance permit' were introduced w.e.f. 18.12.1999. Prior to that, there was no concept of reconnaissance. Under the provisions of the Act, prior to the introduction of Section 17A, there was no statutory provision which empowered the State Government to reserve any land. However, under the Mineral Concession Rules, 1960, (hereinafter referred to as the 'Rules') there was a provision in Rule 58, empowering the State Government to reserve such lands. After Section 17A was introduced on 10.02.1987, Rule 58 was omitted on 13.04.1988. We are pointing out these facts because some of the judgments cited, being prior to introduction of Section 17A, have to be read in the context of Rule 58 of the Rules.

28. In *Amritlal Nathubhai Shah and Others v. Union Government of India and Another* [3], this Court held that the State being the owner of the land, was entitled to reserve the land and, therefore, was justified in rejecting the applications of the private parties. This judgment was delivered in the context of Rule 58 of the Rules, as it existed at that time.

29. In *State of T.N. v. M/s Hind Stone and Others* [4], the State of Tamil Nadu formulated the Tamil Nadu Minor Mineral Concession Rules. Under Rule 8-C, the right to quarry black granite, a minor mineral, was reserved in favour of the State Government and its Corporations etc.. The validity of this Rule was challenged on various grounds including the ground that the MMRD Act, 1957 did not empower the State Government to make such a reservation. This Court rejected this submission on the ground that the State was the owner of the land and minerals and also that minor minerals vest in the State Government. The Court held as follows:

"6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop

and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear signposts to lead and guide the subordinate legislating authority in the matter of the making of rules. Viewed in the light shed by the other provisions of the Act, particularly Sections 4-A, 17 and 18, it cannot be said that the rule making authority under Section 15 has exceeded its powers in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government "

It would be pertinent to point out that in this very case this Court, in the opening para, held as follows:

" It is now common ground between the parties that as a result of the declaration made by Parliament, by Section 2 of the Act, the State legislatures are denuded of the whole of their legislative power with respect to regulation of mines and mineral development and that the entire legislative field has been taken over by Parliament "

30. It would also be pertinent to point out that both Amritlal Nathubai Shah (supra) and Hind Stone (supra) were decided before the introduction of Section 17A in the Act.

31. In *Indian Metals and Ferro Alloys Ltd. v. Union of India & Ors*[5]. , this Court was dealing with Section 17A of the Act. Following observations are pertinent:

"46. Before leaving this point, we may only refer to the position after 1986. Central Act 37 of 1986 inserted sub-section (2) which empowers the State Government to reserve areas for exploitation in the public sector.

This provision differs from that in Rule 58 in some important respects—

(i) the reservation requires the approval of the C.G.;

(ii) the reservation can only be of areas not actually held under a PL or ML;

(iii) the reservation can only be for exploitation by a government company or a public sector corporation (owned or controlled by the S.G. or C.G.) but not for exploitation by the government as such. Obviously, Section 17-A (2) and Rule 58

could not stand together as Section 17-A empowers the S.G. to reserve only with the approval of the C.G. while Rule 58 contained no such restriction. There was also a slight difference in their wording "

32. In *State of T.N. v. M.P.P. Kavery Chetty*[6], dealing with Section 17A(2) of the Act, this Court held as follows:

"15 Section 17-A(2) applies when an area is sought to be reserved by the State Government for undertaking mining operations exclusively through a Government company or corporation. When such area is notified the mineral or minerals in respect of which it is notified must also be stated. Such reservation cannot be made without the approval of the Central Government "

33. The High Court has placed reliance on a judgment of this Court delivered by a three-Judge Bench in Indian Charge Chrome (supra). Dealing with the interplay between Section 11 and Section 17A of the Act, this Court held as follows:

"16. As we see it, the power under Section 17-A is an independent power. It is not related to the power available under Section 11 of the Act. It is open to the Central Government to reserve an area in terms of Section 17-A(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 17-A, 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-section (3). Again, the exercise of power by the State Government under sub-section (2) of Section 17-A has no reference to the entertaining of applications under Section 11 or the preferences available thereunder "

34. In Indian Charge Chrome (supra), an area of 1812.993 hectares of land was granted to Tata Iron and Steel Company Ltd. (TISCO) for mining of chromite ore. Initially, lease was granted in 1952, which was renewed in 1972. However, at the time of renewal, the area was reduced to 1261.476 hectares. In 1991, TISCO again applied for renewal of lease but the renewal was granted only in respect of 650 hectares. TISCO challenged the said reduction in its area. In the meantime, various private companies challenged renewal of lease in favour of TISCO. The High Court allowed the writ petition and directed reconsideration of the matter. Appeal filed by TISCO in this Court was dismissed. The Union Government, on reconsideration, renewed lease in favour of TISCO for 406 hectares and directed that the balance area of 855.476 hectares be distributed by way of lease amongst other claimants. Subsequently, the State Government made a recommendation to the Union Government that half of the area of 855.476 hectares be reserved under Section 17A(2) of the Act and the

remaining half could be allotted to the 4 applicants who had filed writ petitions in the Court. Thereafter, some other parties filed writ petitions in the High Court claiming that they should also be given mining rights. The Orissa Government then decided to grant the balance land to the extent to 436.295 hectares on lease to the State public sector undertaking i.e.,Orissa Mining Corporation Ltd. (hereinafter referred to as "OMC"). This action of the State Government was set aside by the High Court. This Court in Indian Charge Chrome (supra) was dealing with the appeals filed by those applicants other than the 4 who had been granted mining leases and also the appeal filed by OMC and the State Government. This Court came to the conclusion that the Central Government had not taken a decision on the request of the State Government to reserve the area under Section 17A(2) and finally directed the Central Government to first consider the request of the State Government for reservation of land and held that this contingency of the private applicants being granted mining leases would only arise in case the Central Government does not grant approval to the request of the State Government under Section 17A(2) of the Act. This Court held as follows :-

> "32 This contingencymay arise only if the Central Government does not grant approval to the request of the State Government under Section 17-A(2) of the Act "

35. This clearly envisages that this Court held that the State Government could not make a reservation without approval of the Central Government. It would be pertinent to mention here that this Court directed the State Government to make a fresh request to the Central Government and further directed that prior directions of this Court or the High Court cannot and do not stand in the way of the Central Government in applying its mind to exercise its power under Section 17A(2) of the Act and in taking an independent decision.

36. In the case of *Sandur Manganese and Iron Ores Ltd. v. State of Karnataka & Ors.*[7], dealing with the powers of the State, this Court held that in view of Section 2 of the Act, the State is denuded of its accepted power with regard to the matters which fall within the domain of the Central Government. It further held that the State Government has to act and justify its actions only in accordance with the Act and the Rules, and the State Government cannot be permitted to justify its actions on criteria de hors the Act and the Rules. Dealing with Section 11 of the Act, the Court held that an RP holder or PL holder will have a preferential right to get a PL or ML as the case may be. The following observations of the Court are relevant:

> "80. It is clear that the State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of Section 11(3) of the Act, hence it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the MMDR Act in the grant of mining leases. Furthermore, Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. As a matter of fact, the respondents have not been able to point out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments. As rightly pointed out, the State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event

that the person makes investment in any project. Assuming that the State Government had made any such commitment, it could not be possible for it to take an inconsistent position and proceed to notify a particular area. Further, having notified the area, the State Government certainly could not thereafter honour an alleged commitment by ousting other applicants even if they are more deserving on the merit criteria as provided in Section 11(3)."

37. In Monnet Ispat (supra), Justice Lodha, in his leading judgment held that Section 2 of the Act does not affect the State's ownership of mines and minerals within its territory although the regulation of mines and development of minerals have been taken under the control of the Union. It was held that the Central Government may have taken over the power to regulate the mines and development of minerals but the State could not be denuded of its rights and followed the decision of this Court in the case of Amritlal Nathubhai Shah (supra) wherein it was held that "the authority to order reservation flows from the fact that the State is the owner of the mines and minerals within its territory". Dealing with Section 17A of the Act, it was held that this section would have prospective operation only and, therefore, it could not affect the earlier notifications. Thereafter, this Court in Para 160 of the judgment held as follows:

> "160. The types of reservation under Section 17-A and their scope have been considered by this Court in Indian Metals and Ferro Alloys Ltd. in paras 45 and 46 (pp. 136-39) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17-A(2) requires prior approval of the Central Government before reservation of any area by the State Government for the public sector undertaking. The argument is founded on an incorrect reading of Section 17-A(2). This provision does not use the expression, "prior approval" which has been used in Section 11. On the other hand, Section 17-A(2) uses the words, "with the approval of the Central Government". These words in Section 17-A(2) cannot be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17-A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. The approval by the Central Government contemplated in Section 17-A(2) may be express or implied. In a case such as the present one where the Central Government has relied upon the 2006 Notification while rejecting the appellants' application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by the State Government in the 2006 Notification otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in the 2006 Notification."

38. In *State of Kerala and Ors. v. Kerala Rare Earth & Minerals Ltd. & Ors.*[8], a three-Judge Bench of this Court again dealt with the scope of Section 17A of the Act and per majority held as follows:

> "15. There is no gainsaying that the State Government can reserve any area not already held under any prospecting licence or mining lease for undertaking

prospecting or mining operations through a government company or corporation owned or controlled by it, but, in terms of sub-section (2) of Section 17-A (supra) where the Government 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. Three distinct requirements emerge from Section 17-A(2) for a valid reservation viz.:

(i) the reservation can only be with the approval of the Central Government and must confine to areas not already held under any prospecting licence or mining lease;

(ii) the reservation must be made by a notification in the Official Gazette; and

(iii) the notification must specify the boundaries of such areas and the mineral or minerals in respect of which such areas will be reserved.

"19. The upshot of the above discussion then is that while the State Government is the owner of the mineral deposits in the lands which vest in the Government as is the position in the case at hand, Parliament has by reason of the declaration made in Section 2 of the 1957 Act acquired complete dominion over the legislative field covered by the said legislation. The Act does not denude the State of the ownership of the minerals situate within its territories but there is no manner of doubt that it regulates to the extent set out in the provisions of the Act the development of mines and minerals in the country. It follows that if the State Government proposes to reserve any area for exploitation by the State-owned corporation or company, it must resort to making of such reservation in terms of Section 17-A with the approval of the Central Government and by a notification specifying boundaries of the area and mineral or minerals in respect of which such areas will be reserved. Inasmuch as the State Government has not so far issued any notification in terms of Section 17-A, the Industrial Policy, 2007 of the Kerala State Government does not have the effect of making a valid reservation within the comprehension of Section 17-A. The High Court was, therefore, justified in holding that there is no valid reservation as at present no matter the Government can make such a reservation if so advised in the manner prescribed by law. In other words, the dismissal of this appeal shall not prevent the State from invoking its right under Section 17-A(2) of the Act by issuing notification in respect of the mineral deposits in question "

39. On a careful perusal of the judgments aforesaid, it would be more than apparent that this Court has consistently held that the State is the owner of the land and minerals. However, the control and regulation of mines and development of minerals are in the domain of the Union Government. The State Government is denuded of its legislative power to make any law in respect of regulation of mines and mineral development in so far as that field is covered by the provisions of the Act. It is only if the field is vacant that the State can exercise its legislative powers. Otherwise, it has to exercise its power strictly in accordance with the powers specifically conferred on the State Government by the Act and the Rules. It is also a well settled position of law that while exercising the powers of reservation vested in Section

17A(2) of the Act, the State Government has to take approval of the Central Government. In this case, we are not required to deal with the question of prior approval as there is no approval and, in fact, the request of the State has been rejected by the Central Government.

40. In the light of what has been said in the aforesaid judgments, we have examined the facts of the instant case. The State Government made a request to the Central Government for reservation. In the first round of litigation, the High Court directed the Central Government to first consider the request before considering the applications of Geomysore and Deccan. The Central Government rejected the proposal of the State Government on various grounds including the grounds enumerated earlier, which flow from the NMP, 2008. Arguments have been addressed to suggest that the Central Government can only take into consideration issues of national interest and security and cannot look into the other aspects. We are not in agreement with this submission. Section 17A(2) of the Act clearly provides that the State Government can reserve any area for undertaking prospecting or mining operations through a Government company or corporation with the approval of the Central Government. The Act does not lay down the parameters which the Central Government is required to follow. In our view, the Central Government can take all factors which are relevant for the purpose of deciding whether reservation should be made or not. The NMP, 2008 being a policy of the country, can definitely be taken into consideration while considering such a request.

41. We may note that the policy of the Government can sometimes be binding on the Government if the principles of promissory estoppel or legitimate expectation come into play. We may make it clear that in this case neither the principle of promissory estoppel nor the principle of legitimate expectation is attracted. We are only making reference to these principles to emphasize that a policy of a Government is an important document. It cannot be brushed aside. The Central Government, while considering the request of the State Government, can take into consideration various factors which may include economic factors, the factors reflecting the image of the country internationally to the global world community and also other factors of national security etc.. These are just illustrative and each case has to be decided on its own facts. Therefore, we are not in agreement with the Karnataka High Court that only those factors can be taken into consideration, which flow from the Act or the Rules.

42. Another important aspect of the matter is that under Section 11(1) of the Act, an RP holder, who has carried out reconnaissance, is entitled for preference when his case is being considered for grant of PL. However, in Section 17A(2) of the Act, the bar to reservation is only in those cases where the land is held under a PL or ML. When any land is held under PL or ML, then the said land cannot even be considered for reservation. If the land sought to be reserved is not under PL or ML, then the State can make a proposal to reserve the land. If the land sought to be reserved is covered by an RP there is no bar to reserve the land for exploitation by State Government undertakings. This, however, does not mean that while dealing with the proposal of the State, the Central Government must make the reservation. The Central Government while granting approval, has to independently apply its mind and while doing so, there is nothing which debars the Central Government from taking into consideration the fact that some entity was granted RP and the effect thereof. No doubt, the

Central Government cannot reject the proposal only on the ground that RP was issued since that would run counter to the provisions of Section 17A(2) of the Act. However, this is a fact which along with other facts can be taken into consideration while deciding the issue of reservation of land.

43. As far as the present case is concerned, the Central Government took into consideration various factors and notes that PL applications had already been filed by Geomysore and Deccan pursuant to RPs. It virtually held that the request of the State Government was at a belated stage and was against the provisions of the NMP, 2008, the emphasis in which was to provide a regulatory environment which is conducive to private investment. It may be true that the Central Government was influenced by the fact that Geomysore and Deccan, pursuant to the RPs, had completed the reconnaissance and submitted their consolidated reports, but there were other relevant factors also which were taken into consideration such as that Geomysore and Deccan had already applied for grant of PL and no security consideration or public interest was involved in making reservation for HGML. In our view, the factors taken into consideration by the Central Government are relevant and germane to the issues and cannot be said to be such factors which are extraneous or could not have been taken into consideration.

44. We may also add that as far as the present case is concerned, when on 27.12.2008, the Government of Karnataka recommended that 161 sq. kms. land be allotted to HGML, no reservation had taken place because approval of the Central Government had not come. In fact, the State of Karnataka had not even notified the area, which was sought to be reserved nor it identified the minerals for which reservation was sought.

45. Section 17A(2) of the Act envisages following four conditions:

(a) The land is not held under prospecting licence or mining lease;

(b) there is approval by the Central Government;

(c) a notification is issued in the Official Gazette specifying the boundaries of such area; and

(d) such notification should identify the mineral or minerals in respect of which such areas are sought to be reserved. Only the first condition was fulfilled. None of the other conditions were satisfied. Therefore, the State of Karnataka could not have issued recommendation in favour of HGML on 27.12.2008. The cart could not have been put before the horse. Unless reservation takes place, a private company stands on the same footing as a Government company and in that eventuality, Section 11 of the Act would be applicable and Geomysore and Deccan being the RP holders and also being earlier PL applicants, had to be given preference.

CONCLUSION

46. In view of the above discussion, our answers to the four questions are as follows:

(i) The State Government being the owner of the land and minerals, has a right to make a proposal to the Central Government to reserve lands not held under a prospecting licence or mining lease for exploitation by the State Government companies or undertakings but approval of the Central Government is necessary;

(ii) The Central Government cannot be bound by any specific parameters. Each case has to be decided on its own merits. However, as indicated by us above, the Central Government can not only take into consideration factors of national security or public interest but also economic factors, the policy of the Government and all such other factors which are relevant to decide the issue whether the land should be reserved for exploitation only by State Government Undertakings;

(iii) Section 11(1) and Section 17A(2) of the Act have no connection with each other. Section 11(1) of the Act deals with preference to be given to RP holder and PL holder while considering their case for grant of PL and ML respectively. This has nothing to do with reservation of land under Section 17A(2) of the Act. The only connection, if it can be called that, is that if a land is held under a PL or ML, then action under Section 17A(2) of the Act cannot even be initiated;

(iv) In view of the discussion held above, we feel that the Central Government was justified in rejecting the request of the State of Karnataka in reserving the land in question.

47. Before parting with the case, we may note that arguments were addressed before us on the effect of the amendments made in 2015 to the MMDR Act especially with regard to Section 10A and Section 10B. We are not dealing with these issues, as decision on them is not necessary to decide the present case.

48. In view of the above discussion, we are clearly of the view that the Karnataka High Court erred in allowing the writ petition. Accordingly, the judgment of the High Court passed in W.P. No.25899 of 2011 on 03.04.2012 is set aside and the decision of the Central Government dated 31.05.2011 is upheld and the State of Karnataka is directed to consider the case of Geomysore and Deccan for grant of PL in accordance with the provisions of the Act as they now stand amended in the year 2015.

49.The appeals are allowed in the aforesaid terms with no order as to costs. Pending application(s), if any, stand(s) disposed of.

Judgment Referred.

[1]*(2006) 12 SCC 0331*
[2]*(2012) 11 SCC 0001*
[3]*(1976) 4 SCC 0108*

[4]*(1981) 2 SCC 0205*
[5]*(1992) Supp.1 SCC 0091*
[6]*(1995) 2 SCC 0402*
[7]*(2010) 13 SCC 0001*
[8]*2016 INSC 0279*