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National Mineral Development Corporation Vs. Government of India and Ors. Decided On: 18.02.2008

IN THE HIGH COURT OF DELHI

W.P. (C) 8004/2007

Appellants: **National Mineral Development Corporation Vs.** Respondent: **Government of India and Ors. Decided On: 18.02.2008**

Hon'ble Judges:

S. Ravindra Bhat, J.

Acts/Rules/Orders:

Mines and Mineral (Development and Regulation) Act, 1957 - Sections 4, 5, 5(1), 10, 11(2), 11(5) and 18; Mines and Mineral (Development and Regulation) (Amendment) Act, 1987; Mines and Mineral (Development and Regulation) (Amendment) Act, 1994; Forest Conservation Act, 1980 - Sections 2 and 3; Forest (Conservation) Ordinance, 1980; Forest Conservation (Amendment) Act, 1988; Right to Information Act, 2005; Mineral Concession Rules, 1960 - Rules 9, 11, 14, 14(3), 15, 15(2), 24B and 54; Forest (Conservation) Rule 2003 - Rules 2, 6, 6(1), 6(3) 7, 8 and 24; Forest Conservation Rules, 1981 - Rules 4, 5 and 6; Constitution of India - Articles 14 and 226

Disposition:

Petition allowed

JUDGMENT

S. Ravindra Bhat, J.

1. In the present proceeding, under Article 226 of the Constitution of India, the Petitioner challenges the validity of the approval of the Union Government (hereafter "the Union"), Ministry of Mines, given under Section 5(1) of Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter the "MMDR Act"), for granting a prospecting license for iron ore over an area of 2500 hectares in Deposit No. 1 of Bailadila Reserve Forest, Tahsil Dantewada, District South Bastar Dantewada, Chattisgarh in favour of M/s. Tata Iron and Steel Company Ltd., the third Respondent, for 2 years by invoking provisions of Section 11(5) of the MMDR Act, through letter dated 14th February 2007.

2. The Petitioner, the National Mineral Development Corporation, is a Government of India owned Public Sector enterprise engaged in mining operations throughout India. On 25th April 1991, it applied for prospecting license (hereafter referred to as "PL") for Iron ore in Bailadila Deposit No. 1 in Form B over an area of 1130 hectares (ha) in the area reserved for public sector undertakings, Bailadila range in Bastar District, Madhya Pradesh (now Dantewada District, Chattisgarh). The State Government of Madhya Pradesh had not notified the area in the Gazette for prospecting and mining and it is averred that there were no other previous applications for Deposit No. 1 filed earlier to that lodged by the petitioner. In June 2002 the Petitioner submitted an application for permission to undertake mineral exploration on payment of necessary fees; inspection was carried out in February 2003. The Chief Conservator of Forests and survey, Chattisgarh forwarded that application for permission to enter into the forest for exploration, to the Ministry Environment and Forests, New

Delhi. On 10th November 2006, the Government of Chattisgarh, (the state) recommended PL over an area of 2500 ha to third Respondent, on the ground that the later proposed to construct a Steel Plant in Chattisgarh. The area so recommended overlapped by 1130 ha in relation to the area applied the Petitioner.

3. Aggrieved by the decision of the state, the Petitioner filed a Revision Application on 17th January 2007 under Rule 54 of Mineral Concession Rules, 1960 framed under the MMDR Act, before the Mines Tribunal requesting it to set aside the impugned proceeding. The same is pending before the Tribunal. By letter dated 14th February 2007, i.e. the impugned order, the Central Government conveyed approval under Section 5(1) of the MMDR Act, 1957 for grant of a prospecting license for iron ore concerning an area of 2500 ha in Deposit No. 1 of Bailadila Reserve Forest, Tahsil Dantewada, Dist South Bastar Dantewada, Chattisgarh, in favour of the third Respondent for a period of 2 years, under Section 11(5) of the MMDR Act, 1957, subject to the outcome of the revision application. The grant of this approval is impugned in the present proceeding.

4. While granting its approval, the Central Government waived the special condition imposed by the state upon the third Respondent, i.e, setting up a Steel Plant in Chattisgarh and also directed the state to comply with the provisions of the Forest Conservation Act, 1980 (hereafter referred to as the "Forest act"). The relevant portions of the letter dated 14th February 2007 is extracted below:

I am directed to refer to your letter No. 3-99/2003/12 dated 10.11.2006 on the above mentioned subject and to convey the approval of the Central Government under Section 5(1) of the Mines and mineral (Development and Regulation) Act, 1957 to the grant of prospecting licence for iron ore over an area of 2500 hect om Deposit No. 1 (Group) of Bailadila Reserve Forest, Tahsil Dantewada, Distt. South Bastar Dantewada, Chattisgarh in favour of M/s Tata Iron & Steel Ltd for a period of 2 (two) years by invoking the provisions of Sec. 11 (5) of the said Act subject to the outcome of the revision application pending against the proposal.

2. The special condition proposed by the State Government for imposition under Rule 14(3) of the Mineral Concession Rules, 1960 in the above mentioned prospecting licence is not agreed to because imposition of such restrictive condition may not be in the interest of mineral development.

3 . Before allowing grant of prospecting licence, the State Government may kindly ensure the compliance of the amended provisions of the Act and Rules, and other applicable Acts and Rules including Forest (Conservation) Act, 1980 and environmental notification dated 27.01.1994 as issued and amended by Ministry of Environment and Forests.

5. The Petitioner alleges that the issuance of the impugned order was kept secret, and under wraps until it applied for a copy of the same under the Right to Information Act, 2005 on 15th May 2007 and the same was furnished only on 28th May 2007. Thereafter, the Petitioner filed an application before Committee on Disputes for grant of clearance to challenge the impugned order, which was given on 31st July 2007 and communicated to it on 21st August 2007.

6. The Petitioner alleges that the impugned order gives away the state largesse in a highly arbitrary manner and contrary to statutory procedures, which is a clear violation of the constitutional mandate under Article 14 of the Constitution. It avers that the Union had no jurisdiction to issue the impugned order in the absence of compliance with the mandatory provision in Section 2 of the Forest Act. It alleges that the power, authority and jurisdiction to accord approval would accrue upon the Union under provisions of the MMDR Act, only in the event of strict compliance of the provisions of Forest Act. Further, in terms of the impugned order itself, the provisions of Forest Act are yet to be complied with, and therefore the impugned order is improper, without any authority besides inherent lack of power. Therefore, the Petitioner submits that no rights or obligations can ipso-facto flow from the

impugned order. It alleges that condition imposed in the impugned order, with respect to the compliance under the Forest Act is nothing but an attempt to circumvent the mandatory legislative provisions.

7. It further avers that the impugned order is contrary to the law laid down by the Supreme Court in *T.N. Godavarman Tirumalkpad v. Union of India*. Additionally, the impugned order is also violative of Section 11(2) of the MMDR Act, since it ignored the preferential right of the Petitioner. It is also submitted that the third Respondent is not entitled to the grant of the licence, since the special condition for ignoring the preferential right of the Petitioner was waived by the state.

8. Mr. Soli Sorabjee, Senior counsel appearing for the Petitioner submitted that the provisions of the Forest Act 1980 were enacted in public interest for preservation and protection of the environment and to ensure sustainable development. He submits that these provisions should be strictly construed and that any interpretation, indirectly permitting or leading to its circumvention or evasion should not be accepted. He argued that prior approval of the Central Government under Section 2 of the Forest Act is a mandatory pre-condition before any order or direction relating to any of the matters mentioned in Sub-clauses (i) to (iv) can be passed. He drew the attention of the Court to the opening clause of the Section 2 and emphasized that it has an overriding effect over all other laws for the time being in force. He submitted that under the proviso to Section 5 of the MMDR Act no PL shall be granted except with the previous approval of the Central Government. Apart from this, he urged that a further mandatory prerequisite is that before the actual or proposed grant or an order of approval/direction for grant of a PL, there must be prior approval of the Central Government under Section 2 of the Forest Act. The approval under the proviso to Section 5 must be preceded by the approval of the Central government under Section 2 of the 1980 Act. Consequently the approval for grant of a PL is without jurisdiction in the absence of prior approval under Section 2 of the 1980 Act.

9. The learned Counsel further submitted that the impugned order grants approval for a licence, which is in breach of Section 2(iii) of the Forest Act. Relying on the affidavit of the Respondents, he submitted that the impugned order has been construed as "an approval for grant of prospecting licence". Furthermore, he submitted that the impugned order amounts to a direction that any forestland or any portion thereof may be used for any non-forest purpose. He submitted that the expression "other authority" in Section 2 would cover any department of the Central Government, and would also include the Ministry of Mines, Government of India. In this regard, he referred to Rules 6 and 24 of the Forest (Conservation) Rule 2003. He submitted that the definition of "user agency" makes it clear that even a department of the Central government can seek approval under Section 2 of the 1980 Act, under Rule 6 for using forestland for non-forest purposes. Rebutting the contention of the Respondent that the Central Government is well within its powers to pass an order under Section 11(5) of MMDR Act, he pointed out to the fact that the order was passed under the proviso to Section 5 of MMDR Act.

10. In support of the contention that prior approval under Section 2 of the Forest Act is mandatory for any non-forest activity, the Petitioner placed reliance on *Vishnu Kumar Khattar v. State of Bihar* wherein the Court relying upon the decisions of the Supreme Court in *Ambica Quarry Works v. State of Gujarat* and *Rural Litigation and Entitlement Kendras v. State of UP AIR 1998 SC 2187*, held that approval of the Central Government is a sine qua non before the land can be put to non-forest use, whether it be an fresh application or a renewal. The Petitioner also placed reliance on the decision of the Madras High Court in *Golden Granites v. Shanmugam AIR 1998 Mad 150*.

11. In response to the issues raised by the Petitioner, the Respondents averred that the occasion for compliance of Section 2 of the Forest Act is yet to occur and as such allegations of violation of Section 2 are baseless and misplaced. Relying on the Guidelines for Diversion of Forest Land for Non-

forest Purposes under the Forest Conservation Act, 1980, they contend that permission under the Forest Act is required for prospecting operations carried out under the PL granted under the MMDR Act and therefore, the approval under Section 2 of the Forest Act is required only when the PL is actually granted and prospecting operations actually begin. They submit that the impugned order is nothing but an approval for grant of prospecting license and is not the grant of a prospecting license, subject explicitly to compliance with the Forest Act and other relevant laws. They aver that pursuant to the impugned order, the state wrote a letter to the third Respondent directing them to obtain necessary approvals under the Forest Act and produce the same in order to obtain a PL. They submit that the occasion to comply with the requirements of Section 2 of the Forest Act arose only after impugned order. The respondents also object to maintainability of the present writ Petition as being an abuse of the judicial process. It is alleged that the Petitioner has sought the quashing of the order by the State Government, recommending grant of PL made in November, 2006. The pendency of that Petition has not been disclosed.

12. Mr. Arun Jaitley, Senior counsel appearing on behalf of the third Respondent submitted that the order of the Central Government can be invalidated only if there is clear proof of infringement of statutory law of mandatory character, which in the present case, according to the petitioner is occasioned by non compliance of Section 2 of the Forest Act, which mandates that no order directing use of forest land for non forest purposes should be granted without the prior approval of the Central Government. He urges that the order permitting forest land be put to non-forest use is yet to be given by the State Government while granting the prospecting license. He contends that it cannot be argued that the approval of the Central Government under the proviso to Section 5(1) of the MMDR Act is an "order directing" that forest land be put to non-forest use. Further, it also cannot be argued that the recommendation of the State Government for grant of prospecting license in favour of an applicant is an order contemplated under Section 2 of the Forest Act, which would require prior approval of the Central Government.

13. He submits that it is only the State Government which has the power to grant a PL and the Central Government under Section 5 of the MMDR Act is merely an approving authority, but the license is required to be issued only by the State Government under Section 10 MMDR Act read with Rule 15 of the Mineral Concession Rules, which becomes effective from the date of issuance under Rule 15(2). He submits that the third Respondent will acquire the right to undertake prospecting operation only thereafter as per Section 4 of the MMDR Act. However, he submits that the user agency cannot commence the prospecting operations without being granted prior approval of the Central Government under Section 2 of the Forest Act. Further, he submits that terminology employed in Section 2 of the Forest Act "other authority", and that the Central Government cannot be said to be the "other authority", as such an interpretation would lead to absurdity, where the Central Government will have to take approval from itself.

14. Mr. Ravinder Srivastav, Senior counsel, also appearing on behalf of the Respondents submitted that the for the grant of approval under Section 2 of the Forest Act, the land proposed to be put to non forest use has to be determined. According to him, such determination can occur only once the approval under Section 5 of the MMDR Act is granted by the Central Government. He further submits that under Forms A and B of the Forest Conservation Rules, under which the Section 2 application is to be made, the user agency/proposed licensee must furnish details of the forest land, including a map showing the required forest land and the purpose wise breakup of the total forest land required. It is submitted, that these details can be furnished only when approval under Section 5 of the MMDR Act is granted by the Central Government. He also placed reliance on the "Guidelines for Diversion of Forest Land for Non-Forest purposes under the Forest Conservation Act, 1980", issued by the Government of Chattisgarh. which states that permission under the Forest Act is required for

Government of Chhattisgarh, which states that permission under the Forest Act is required for prospecting operations carried out under the MMDR Act, and therefore, he submits that approval under the Forest Act is required only when the license is granted under the MMDR Act. He also relied on the judgment of the Andhra Pradesh High Court in Hyderabad Abrasives and Minerals v. Government of A.P. where the Court held as follows:

What is material for the purpose of the Forest Conservation Act, 1980 is not the date on which the lease is granted but the date on which the State Government or other authority permits the breaking up, or the clearing of the forest land, or any portion thereof.

15. Before entering the discussion on merits, it would be not inappropriate to deal with some of the concerns raised by the Respondents in the course of their arguments, as to the maintainability of the present writ petition. The Petitioner had preferred a revision against the 10th November 2006 order of the state, recommending the grant of PL to the third Respondent, before the Mines Tribunal which is still pending. The Petitioner also filed a petition (CW No. 2127/2007) in the Chhattisgarh High Court on 17th March 2007 for quashing of the recommendatory order of the state (the State) or for directing the Revisional Authority to grant stay until the proceedings were completed. Additionally, it also sought that the third Respondent should be directed not to take any action pursuant to the order of the State.

16. The Petitioner's submission is that when the third Respondent impleaded itself in the revisional proceedings on the 16th April 2007 and produced the impugned order did it become aware of the existence of the impugned order. It therefore, submits that the stay application (before the Chhattisgarh High Court) had become infructuous and therefore was not pressed on 27th April 2007 when it was taken up for hearing. Therefore, it filed the present writ for quashing the order of the Union, after obtaining the necessary clearance from the Committee (of Secretaries) on Disputes.

17. The objections to maintainability seem attractive, at the outset. It is settled law that a petitioner who approaches the writ court for an equitable order should make full disclosure of all facts. The question is whether the writ petitioner can be faulted for proceeding, piece meal, as it were, and not disclosing about pendency of the writ petition in Chhattisgarh. The subject matter of that writ petition was the legality of the recommendation by the state government. The writ petitioner had premised its challenge on the ground that there being a prior reservation, under Section 11 the state could not have recommended the prospecting license to a non-PSU. However, the petitioner did not question jurisdiction of the State to recommend the area for non-forest purposes. That issue did not arise in the proceeding. Here, however, the petitioner questions the basic jurisdiction of the State to make any recommendation; the impugned order of the Central Government has therefore been challenged as without authority of law. Indeed that writ petition, as urged before the court here, was preferred in ignorance of the impugned order of the Central Government. The petitioner claims to have become aware of the impugned order, after its disclosure in the revisional proceedings by the state; it sought for a copy from the Union Ministry of Mines, under the Right to Information Act on 15-5-2007. A copy was made available on 28-5-2007; being a Public Sector Undertaking, the petitioner was obliged to secure necessary approval of the Committee of Secretaries (of the Union) to challenge the impugned order. The application was made on 11-5-2007 on the basis of a copy of the order; it was granted on 20th August 2007. The present writ petition was thereafter preferred. These facts (brought out in the petitioner's affidavit dated 21-11-2007) have not been disputed.

18. Speaking of exercise of discretion in refusing to entertain a writ petition on the ground of a litigant availing an alternative remedy and not disclosing those facts, the Supreme Court, in S.J.S. Business Enterprises v. State of Bihar held that though existence of or even availing an alternative or parallel remedy may be a factor, the not the predominating one, while exercising discretion to

entertain a writ petition. Here, the parallel proceeding concerned is the Chhatisgarh writ petition. In that, the writ petitioner sought quashing of the state government's recommendation and also for a direction to the revisional authority to hear and dispose of its revision. At that stage, the petitioner was in the dark about the existence of the order dated 14-2-2007. The circumstances whereby it gained knowledge and the surrounding factors which constrained it to challenge the order, by securing the approval of the Committee of Secretaries (being a Union PSU, it could not have acted otherwise) show that there was no intention to abuse the judicial process by filing the present writ petition. Moreover, the questions raised here involve the jurisdiction of statutory authorities, in view of provisions of the Forest Act.

19. In *Narendra Kumar Maheshwari v Union of India and Ors.* 1990 (Suppl) SCC the Supreme Court dealt with comity of courts in a federal structure. The court held that:

Before we conclude, we must note that good deal of argument was adduced that these applications in different High Courts in civil suits were not genuine and properly motivated, but were mala fide. Even though these might not have been to feed fat an innocent object, it was apparent that it was to feed fat a grudge in respect of a competitive project by a competitor. Anyway, in the view we have taken, it is not necessary to decide the bona fides or mala fides of the applicants. Shri Nariman, when he moved the application initially, had suggested that we should lay down certain norms as to how the courts in different parts of the country should grant injunction or entertain applications affecting an all-India issue or having ramifications all over the country.

Except that before the courts grant any injunction, they should have regard to the principles of comity of courts in a federal structure and have regard to self-restraint and circumspection, we do not at this stage lay down any more definite norms. We may also perhaps add that it may be impossible to lay down hard and fast rules of general application because of the diverse situations which give rise to problems of this nature. Each case has its own special facts and complications and it will be a disadvantage, rather than an advantage, to attempt and apply any stereotyped formula to all cases. Perhaps in this sphere, the High Courts themselves might be able to introduce a certain amount of discipline having regard to the principles of comity of courts administering the same general laws applicable all over the country in respect of granting interim orders which will have repercussion or effect beyond the jurisdiction of the particular courts. Such an exercise will be useful contribution in evolving good conventions in the federal judicial system.

20. In *Hartford Fire Ins. Co. v. Cal.* 509 U.S. 764, it was observed that the comity of courts refers to a situation where judges decline to exercise jurisdiction over matters more appropriately adjudged elsewhere. In *Parsi v. Davidson* 405 U.S. 34, it was observed that under accepted principles of comity, a court should stay its hand only if the relief the petitioner seeks would also be available to him with reasonable promptness and certainty through the alternative machinery. This court would have to undoubtedly keep these principles in mind in the present case. The issue therefore is whether it can be said that this Court should decline to exercise jurisdiction in respect of the subject matter of this petition because it can be more appropriately be adjudicated at Raipur. The order of the Central Government impugned in this Petition no doubt confirms the recommendation of the State Government, yet, the scope and discretion of the Central Government under provisions of the MMDR Act are equally circumscribed by other provisions of law. Moreover, it does not act invariably as a confirming authority; the Union Government has to independently assess the proposal of the State and issue orders. Thus, its order dated 14.2.2007 was to be seen on its merits. In the overall conspectus of the facts, and attendant circumstances, this Court is of opinion that since the issues involved and urged concern the legality and jurisdiction of statutory authorities under the Forest Act and also since the order dated 14-2-2007 was made by the Central Government, the pendency of

proceedings before Chhatisgarh cannot be construed as a bar and principles of comity do not inhibit this Court from hearing and deciding the present petition.

Relevant Provisions of the MMDR Act

21. Under Section 4 of the MMDR Act, prospecting or mining operations have to be under license or lease. The provision begins with a prohibition ("No person shall undertake"). Under Section 4(3), a State Government may, after prior consultation with the Central Government and in accordance with the rules under Section 18 undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State not already held under any reconnaissance permit, prospecting licence or mining lease. Section 5 prescribes the eligibility for grant of inter alia, prospecting licenses by the state; the proviso to Section 5(1) enacts that in respect of minerals specified in the First Schedule, no reconnaissance permit, prospecting license or mining lease can be awarded without prior consultation with the Central Government. Section 11 deals with the preferential rights of applicants to one or other class of concessions/licenses/grants under the MMDR Act. Section 17 deals with special powers of Central Government to undertake prospecting or mining operations in certain lands.

22. Section 17(2) provides that notwithstanding anything contained in the Act, the Central Government, after consultation with the State Government, can undertake reconnaissance, prospecting or mining operations in any area not already held under any reconnaissance permit, prospecting license or mining lease and where it proposes to do so, it shall, (by notification in the Official Gazette) specify the boundaries of such area; state whether reconnaissance, prospecting or mining operations will be carried out in the area; and specify the mineral or minerals in respect of which such operations will be carried out. Section 17-A empowers the Central Government, with a view to conserving any mineral and after consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, by notifying the area in the Official Gazette. Section 18 of the Act obligates the Central Government to take all steps necessary for the systematic development and conservation of minerals. This provision was amended in 1988; the other consideration which the Union has to keep in mind, while discharging its duties, while taking such steps is protection of environment by preventing or controlling any pollution which may be caused by mining or prospecting operations.

23. Rules 9 and 11 of the Mineral Concession Rules, 1960 (hereafter "the Concession Rules") deal with the procedure and documents required for applications to secure prospecting license, and its renewal. Rule 14 provides for the conditions which each prospecting license has to contain. Rule 15 states, inter alia, that where an order has been made for the grant of a prospecting licence, a deed granting such licence shall be executed within ninety days of the date of the communication of the order. Form B has to be applied for by any one desirous of securing a prospecting license.

Provisions of the Forest Conservation Act, 1980 and the Forest Conservation Rules, 2003

24. Section 2 of the Forest Act, reads as follows:

2. RESTRICTION ON THE PRESERVATION OF FORESTS OR USE OF FOREST LAND FOR NON-FOREST PURPOSE.

Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) That any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof. shall cease to be reserved.

(ii) That any forest land or any portion thereof may be used for any non-forest purpose.

(iii) That any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) That any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.

Explanation : For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) The cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) Any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

25. Section 3 provides for the constitution of an advisory committee for advising the Central Government regarding proposals for prior approval, under Section 2. Rule 6 of the Forest Conservation Rules, 2003 prescribes for submission of proposals by the user agency (defined in Rule 2 as a company, department or organization) for use of any forest area for non-forest purposes. Rules 7 and 8 provide as follows:

Committee to advise on proposals received by the Central Government.-

(1) The Central Government shall refer every proposal, complete in all respects, received by it under Sub-rule (3) of Rule 6 including site inspection report, wherever required, to the Committee for its advice thereon.

(2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under Sub-rule (1), namely:

[a]. Whether the forests land proposed to be used for non-forest purpose forms part of a nature reserve, national park wildlife sanctuary, biosphere reserve or forms part of the habitat or any endangered or threatened species offlora and fauna or of an area lying in severely eroded catchment

[b]. Whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project;

[c]. Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and

[d]. Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.

(3) While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose, which in its opinion, would minimise adverse environmental impact.

8. Action of the Central Government on the advice of the Committee.-

The Central Government shall, after considering the advice of the Committee tendered under Rule 7

and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same within sixty days of its receipt.

Discussion and Findings

26. The question which arises for consideration is whether the impugned order has violated the mandate of Section 2 of the Forest Act, as it was not preceded by prior approval of the Central Government, or whether the stage for securing the approval has not arisen.

27. The factual narrative shows that the State Government approved and recommended the third respondent's proposal for a prospecting license on 10-11-2006. Intriguingly, the special condition of the third respondent having to set up a steel plant in Chhatisgarh, was removed. By virtue of Section 5 of the MMR Act, no prospecting license or mining lease can be awarded without prior consultation with the Central Government. For this reason, the recommendation for grant of prospecting license was forwarded to the Central Government. The latter proceeded to issue the impugned order, accepting the proposal.

28. The Statement of Objects and reasons for enactment of the Forest Act reads as follows:

Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern. Deforestation causes ecological imbalance and leads to environmental deterioration. Deforestation had been taking place on a large scale in the country and it had caused widespread concern.

2. With a view to checking further deforestation, the President promulgated on the 25th October, 1980 the Forest (Conservation) Ordinance, 1980. The Ordinance made the prior approval of the Central Government necessary for de-reservation of reserved forest and for use of forest land for non-forest purposes. Ordinance also provided for the constitution of an advisory Committee to advise the Central Government with regard to grant of such approval.

29. Although the Forest Act was brought into force when the collective human consciousness was yet to evolve standards of environmental ethics for people and nations, it was remarkably prescient in the mode chosen for conservation. Though it did not define or rely on any concept, its provisions seem to approximate what has now been widely accepted as the "precautionary principle" in environmental law. The principle was described in *A.P. Pollution Control Board v. Prof. M.V. Nayadu*, as follows:

34. The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (Justified) concern or risk potential.

30. Every action of humans, collectivities and nations which concern the environment acutely and vitally affect it, and all those who are a part of the web of life. Contemporary history has revealed that mankind is apparently bent on exhausting the seemingly inexhaustible; destroying what is precious and also apparently oblivious to the dangers which threaten its existence and the fragile conditions which sustain life. It is not enough that individuals and collectives engage themselves in building awareness of these; the state too has an obligation to evolve mechanisms that would address these concerns. The Forest Act is precisely one such.

31. In *Ambica Quarry Works v. State of Gujarat*, the Supreme Court while interpreting its provisions, held as follows (at p. 1076 of AIR):

The rules deal with a situation prior to the coming into operation of 1980 Act, 1980 Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menace and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980. Therefore, the concept that "power" coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals.

The decision was followed in its later decisions in Rural Litigation and Entitlement Kendras v. State of U.P. reported in, where it was held that:

In view of the provision of the Conservation Act and the opinion expressed in Ambica Quarry Works case (supra) with which we are in agreement, the decrees also would not be sustainable where prior approval of the Central Government has not been obtained. We agree with Brother Mukherjee that whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of Section 2 of the Conservation Act is necessary as a condition precedent.

32. Again, in T.N. Godavarman Thirumalpad v. Union of India the Court held, while construing the interplay between the Forest Act, Rules framed under it and the Mineral Concession Rules, that:

So far as the effect of Rule 24-B of the Concession Rules is concerned, it is to be noted that Section 2(ii) of the Conservation Act rules out non-forest activities. The section begins with a non obstante clause providing that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government any order of the nature enumerated in the provision. Section 3 of the Conservation Act deals with constitution of an Advisory Committee and Section 4 deals with the power to make rules. Rules 4, 5 and 6 of the Forest Conservation Rules, 1981 (in short "the Conservation Rules") are relevant. Rule 4 deals with the procedure to make proposal by a State Government or their authority. Rule 5 deals with the powers of the Committee to advise on proposals received by the Central Government. The Committee referred to therein is the one constituted under Section 3 of the Act. Rule 6 deals with action of the Central Government on the advice of the Committee. Admittedly, the Central Government has not accorded the approval for use of any forest land or any portion thereof for being used for any non-forest purpose. That being so, Rule 24-B of the Concession Rules cannot be of any assistance to the Company. So far as the order dated 14-11-2000 in WP No. 337 of 2000 is concerned, it is clear therefrom that de-reservation of forests, sanctuaries and national parks was prohibited. Therefore, exclusion of the Company's land in terms of the notification under Section 35(4) of the Act, though the same was being used for mining by the Company, was not in order to that extent.

In an earlier decision, i.e. Tarun Bharat Sangh, Alwar v. Union of India 1993 AIR SCW 1308 it was held that:

Once an area is declared as protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land within the meaning of Section 2. The effect of this position is that no non-forest activity can be carried on in the said Area except with the prior approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior approval. That the mining activity amounts to non-forest purpose is beyond dispute. Thus, the grant of mining lease/licences and their renewal by the State Government, without obtaining the Prior approval of the Central Government, in respect of the mines situated within the Protected Forest, after January, 1, 1975 is contrary to law.

33. In Vishnu Kumar Khattar's case (supra) a Full Bench of the Patna High Court turned down the plea that the refusal for renewal of a mining lease without prior approval under the Forest Act was justified. The court relied on the decisions of the Supreme Court in *Ambica Quarry and Rural Entitlement Kendra*. The decision in *Golden Granites*, by a Division Bench of the Madras High Court, held that the quarry lease in question granted before securing prior approval under the Forest Act was not in accordance with law. A condition in the order granting lease had, like in the present case, expressly stipulated that commencement of quarrying operations could be done only after obtaining concurrence of the Central Government, Ministry of Environment and Forests. The High Court held that such a condition rendered the mandate of Section 2 of the Forest Act (of obtaining "prior approval") into a surplage, making it a "post approval". The court held that the "special condition" imposed of having to obtain approval under the Forest Act as a "pretended one". Such conditions were held to be attempts to short circuit the mandate of Section 2; the order was declared as an abuse of power.

34. Counsel for the third respondent in their submission perhaps had the contextual setting of a quarrying grant in *Golden Granites*, and were also apparently inspired by the decision in *Hyderabad Abrasives and Minerals* (supra). The construction favored by the Andhra Pradesh High Court, in that case, was that Section 2 of the Forest Act operates not on the date on which the lease is granted but the date on which the State Government or other authority permits the breaking up, or the clearing of the forest land, or any portion of it. Such a construction seems reasonable, even practicable. Yet it ignores the inexorable mandate of the Forest Act, and injects an air of insidious inevitability about the nature of approval. The injunction under Section 2 of the Forest Act is against any order permitting use of a forest for non-purpose. Clearly, mining or prospecting for mines, is a non-forest purpose. If so, the nature of the order, whether a grant, prospecting license, order leading to grant, or order which may be a prelude to a prospecting license is immaterial. The procedure prescribed under Rule 6 of the 2003 and the considerations which weigh with the advisory board reveal that the impact of the project is one consideration; what is vital is the impact of the proposed clearance of the forest upon the rest of the forest and the eco-system within it.

35. One cannot lose sight of the fact that the perspective of authorities under the MMDR Act are entirely different from the authorities under the Forest Act. While under the former enactment, the predominant considerations are efficient exploitation of minerals, the considerations are conservation of the forest, in the case of the Forest Act. So long as the areas of concern of these enactments do not converge, in the sense that the mining proposed is outside a forest area, there is no scope of any potential conflict. However, the moment any kind of mining activity is proposed in a forest area, the latent potential of competing objectives becomes obvious.

36. If the interpretation suggested by the third respondent were to be accepted, the State government would be free to take all the steps save the last order authorizing the entry into the forest and its destruction, and obtain all manner of approvals under the MMDR Act; after having secured them, including the "prior approval" of the Central Government under Section 5 of the MMDR Act, it has then to seek the approval under Section 2 of the Forest Act. This construction, seemingly pragmatic, undercuts the imperative nature of Section 2. What cannot be forgotten is that Section 2 is cast in non-obstante terms; it overrides all other laws, including though not limited to the MMDR Act. Thus, mining being one species of non-forest activity, Parliament did not intend to curtail the width of the injunction under Section 2 to its application at the penultimate step in any kind of proposed non-forest activity. Today, we see one legislative model, when the MMDR Act is before us. However, myriad legislative models exist in the country within different legal regimes; they may deal with land, housing, electricity, roads, highway, townships and a clutch of laws dealing with

development. Parliamentary intention, in enacting the prohibition against non-forest activity without previous approval, was not to subsume or subordinate that injunction to the individual considerations of those laws and legislative purposes. It was clearly to override it and enact the obligation of a prior approval. This intent has been discerned in all judgments of the Supreme Court on the Forest Act. Therefore, the only way of giving effect to Section 2 would be to hold that whenever the State (and after the State, the Central Government, as a superior authority in the hierarchy of statutory basis as in this case) is asked to divert any forest land for a non-forest purpose, it has to, before taking other steps, seek prior approval under the Forest Act, and Rules. The rules cast an obligation to decide such application within 60 days. This interpretation furthers the objects of the Forest Act; it also compels the state not to take any step towards, including granting or even recommending other statutory clearances or approvals, concerning diversion of forest lands, till the approval under Section 2 is granted. The State, being aware of the nature of resources and extent of its forests, would also be spared the effort of having to consider proposals, grant approvals, obtain approval of the Central Government wherever required, under other laws and then approach under the Forest Act. In such eventuality, the entire effort of such previous clearance/ approval could be wasted, if the clearance under the Forest Act were denied. On the other hand, placing the Forest Act approval in the forefront of the sequence of statutory approvals and scrutiny would be logical; the impact assessment by the Forest Act authorities would be uncluttered by the consideration of approvals having been granted under other laws. This would in turn assure that no "critical mass" is developed by way of the agency or company concerned, being armed with such approvals, letters of confirmation, or orders that are prelude to actions permitting non-forest activities under other laws or would exist on the record.

37. Apart from the above reason, one more compelling rationale for such conclusion is that Parliament amended the MMDR Act in 1987 and 1994. Yet, it deliberately did not seek to override provisions of the Forest Act, or incorporate any legislative device in aimed at diluting the prior approval mandate under Section 2. The non obstante clause has been allowed to exist, without change. On the other hand, the importance of Section 2 was underlined by amending the Forest Act, in 1988, and creating offences for not securing prior approval before beginning non-forest activity.

38. With unprecedented growth in population, unmatched technological innovation and ever growing needs of people to be clothed, fed, sheltered, and transported, societies the world over are grappling competing claims to address human problems and an equally compelling critical need to preserve and protect the environment. The years to come will perhaps change and even redefine the way life would survive and exist upon this planet. Caught amidst this complex debate, none should forget our commitment to preserving that in nature which has come down the ages, because its destruction or depletion would be depriving unknown generations of their right to a fair share of the environment. Section 2 of the Forest Act provides precisely the type of framework which enables this choice to be made having regard to the needs of the environment, the kind of flora and fauna in the forest area concerned, the existence of endangered species and all other considerations. The authorities also look at the environmental cost-benefit analysis, before recommending approval (i.e. consent) or declining it. Thus, every step towards any non-forest activity, in a forest whether in the form of a license, permit, authorization or even any stage removed from it, can take place only after the approval under Section 2 is granted. This in fact circumscribes the jurisdiction of every authority proposing such non-forest activity; it cannot act further to other powers till the consent under Section 2 is obtained.

39. In view of the above reasons, this writ petition has to succeed. The impugned order 14-2-2007 issued by the Central Government and all the proceedings under the MMDR Act leading upto it are hereby quashed as being issued without jurisdiction, and contrary to law. The writ petition and pending applications are allowed in the above terms. In the circumstances of the case, parties are

left to bear their costs.

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