

CASE DETAILS

STATE OF WEST BENGAL AND ANOTHER

v.

M/S. CHIRANJILAL (MINERAL) INDUSTRIES OF BAGANDIH
AND ANOTHER

(Civil Appeal No. 8238 of 2022)

SEPTEMBER 12, 2023

[SANJIV KHANNA AND ARAVIND KUMAR, JJ.]

HEADNOTES

Issue for consideration: Intra-court appeal preferred by the State of West Bengal before the High Court was dismissed with the direction to the Appellant No. 2 – Joint Secretary, Department of Industries, Commerce and Enterprises, West Bengal or any authorised officer to execute a mining lease in favour of the Respondent No. 2, sole proprietor of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih.

Mines and Minerals (Development and Regulation) Act, 1957 – s. 10-A – Mines and Minerals (Development and Regulation) Amendment Act, 2015 – Concession Rules, 2016 – r.61 and Proviso – Directions issued to the government of West Bengal to execute a mining lease in favour of respondent no.1-M/s. Chiranjilal (Mineral) Industries of Bagandih:

Held: It is the stand of the appellants – State of West Bengal, that they are owners of 20.87 acres of the land in question and to this extent, they have no difficulty in executing the mining lease – This being the stated stand, which has also been affirmed, there should be no difficulty in granting of mining lease for the said area to the Respondent No. 1-M/s. Chiranjilal (Mineral) Industries of Bagandih – So, it is directed that the government of West Bengal will execute a mining lease for 20.87 acres of land in favour of the Respondent No. 1 – The claim of the Respondent No. 1 towards the balance area for the grant of mining lease will be treated as rejected and dismissed. [Paras 20 and 22]

Mines and Minerals (Development and Regulation) Act, 1957 – sub-section (1) to Section 10-A Mines and Minerals (Development and

Regulation) Amendment Act, 2015 – Object and purpose of amendment – Application of exceptions or the saving clauses in three kinds of situations:

Held: The object and purpose of the Amendment Act, 2015 is to ensure that allocation of mineral resources is done through auctioning – This is the reason why sub-section (1) to Section 10-A of the MMDR Act, 1957 mandates that all applications received prior to 12.01.2015 shall become ineligible – The exceptions or the saving clause applies to three kinds of situations specified in sub-section (2) to Section 10-A of the MMDR Act, 1957 – The first category is where an application has been received u/s. 11-A of the MMDR Act, 1957 – The second category is where a reconnaissance permit or a prospecting licence has been granted the permit holder or the licensee has the right to obtain a prospecting licence followed by a mining lease and the State Government is satisfied that the permit holder or the licensee has complied with the requirements specified in sub-clauses (i) to (iv) of clause (b) of sub-section (2) to Section 10-A of the MMDR Act, 1957 – The reason for protecting this class of cases is on account of the fact that they had altered their position by spending money on reconnaissance operations or prospecting operations – Accordingly, the principle of legitimate expectation is applied – The third category is where the Central Government had already communicated their previous approval or the State Government had issued Letter of Intent for grant of mining lease before coming into force of the Amendment Act 2015 – The raison d'être, it is observed therein, is that certain rights had accrued to these applicants inasmuch as all necessary procedures and formalities had been complied with and only formal lease remains to be executed. [Para 14]

Mines and Minerals (Development and Regulation) Act, 1957 – Mines and Minerals (Development and Regulation) Amendment Act, 2015 – A Grant Order dated 16.07.2015 was issued by the Deputy Secretary, Commerce and Industries Department, West Bengal for Dolomite mining in favour of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih in respect of 76 acres of land, subject to certain conditions – Whether approval of the Central Government required or not:

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Held: Though in the present case, post notification No. S.O. 423(E) dated 10.02.2015, Dolomite was notified as a minor mineral and hence, the approval of the Central Government was not required for the reason that the Grant Order dated 16.07.2015 was hedged with pre-conditions, including the requirement to submit consent letters of the owners of the land in question (Raiyats) before the execution of the lease deed, or there was to be a stipulation that a condition to this effect would be incorporated in the draft lease – Therefore, the Grant Order dated 16.07.2015 is provisional, and is subject to fulfilment of the conditions therein. [Para 16]

West Bengal Land Reforms Act, 1955 – sub-section (10) to section 2 and sub-section (2A) to section 4 – Raiyat Land – Meaning – Rights of Raiyat in respect of land:

Held: Raiyat land is to be used for cultivation, etc., and not for mining – Once the mining activity is undertaken, the Raiyats will not be able to use the land – In terms of sub-section (10) to Section 2 of the WBLR Act, 1955, a Raiyat means a person or an institution holding land for any purpose whatsoever – However, the rights of Raiyat in respect of the land in terms of sub-section (2A) to Section 4 of the WBLR Act, 1955 does not permit any other person to quarry sand from his holding, dig or use, or permit any person to dig or use, earth or clay of his holding for the manufacture of bricks or tiles except with previous permission in writing of the State Government – In case of breach of the condition, the prescribed authority may, after giving notice and opportunity to a Raiyat to show cause, can levy a monetary penalty. [Para 17]

West Bengal Land Reforms Act, 1955 – s. 4B – Preservation of character of land:

Held: Section 4-B of the WBLR Act, 1955 stipulates that every Raiyat holding any land shall maintain and preserve such land in a manner that the area is not diminished or its character is not changed or the land is not converted for any purpose other than the purpose for which it was settled or previously held except with the previous permission of the Collector in writing. [Para 17]

Mines and Minerals (Development and Regulation) Act, 1957 – West Bengal Land Reforms Act, 1955 – s. 14 Y – A Grant Order

dated 16.07.2015 was issued by the Deputy Secretary, Commerce and Industries Department, West Bengal for Dolomite mining in favour of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih in respect of 76 acres of land, subject to certain conditions, including the requirement to submit consent letters of owners of the land in question (Raiyats) – Another stipulation mentioned therein was the need for permission u/s. 14-Y of the WBLR Act, 1955 for holding the required land and furnishing of Conversion Certificate for plots of land from the appropriate authority in terms of s.4-C of the WBLR Act, 1955:

Held: The controversy relating to Section 4-C of the WBLR Act, 1955, cannot simply be decided on the basis of Memo No. V/RTI/775/15 dated 06.03.2017 issued by the Deputy District Land and Land Reforms Officer, Purulia, that as per the revenue records the land was recorded as ‘Dungri’ – The reason is that Raiyat land is not for mining – Thus, a contradiction arises, as the grant of Raiyat land and the classification of the same land as ‘Dungri’ is contradictory – Further, whether the consent letter of the owners of the land in question (Raiyats) obtained by the Respondent No. 1 still hold good, would be relevant as there could be a change of hands on account of transfer, inheritance, etc – Connected with this are the legal issues – First, whether the Respondent No. 1 had altered its position post the issue of the Grant Order dated 16.07.2015, but before enforcement of the Concession Rules, 2016, to get the benefit of Rule 61 of the Concessions Rules, 2016? – It is necessary to ascertain the facts and then alone one can adjudicate and decide the question whether the Respondent No. 1 is entitled to the benefit of the proviso to Rule 61 of the Concession Rules, 2016 – This has not been verified and ascertained – An issue would arise on whether the application filed by the Respondent No. 1 way back in 1998 would still hold good as at the time, when the application was filed, approval of the Central Government was required – Another difficulty is that WBMDTCL has not been impleaded as a party, though it was always contesting the claim made by the Respondent No. 1 – However, these issues are not being examined in the light of the directions issued – Further, that the remand order cannot be passed at this distinct point of time. [Paras 18 and 19]

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LIST OF CITATIONS AND OTHER REFERENCES

Bhushan Power and Steel Limited v. S.L. Seal, Additional Secretary (Steel and Mines), State of Odisha and Others, (2017) 2 SCC 125:[2016] 11 SCR 149; Bhushan Power and Steel Limited and Others v. State of Orissa and Another, (2012) 4 SCC 246:[2012] 5 SCR 16; Sandur Manganese and Iron Ores Ltd. v. State of Karnataka, (2010) 13 SCC 1:[2010] 11 SCR 240; Bhushan Power and Steel Limited v. Rajesh Verma, (2014) 5 SCC 551:[2014] 5 SCR 493; Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and Others, (2015) 13 SCC 233:[2014] 5 SCR 411; Rajasthan Cooperative Dairy Federation Limited v. Maha Laxmi Mingrate Marketing Service Private Limited and Others, (1996) 10 SCC 405:[1996] 6 Suppl. SCR 368; Thressiamma Jacob and Others v. Geologist, Department of Mining and Geology and Others, (2013) 9 SCC 725:[2013] 7 SCR 863 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL NO.8238
OF 2022

[From the Judgment and Order dated 04.10.2018 of the High Court at Calcutta in FMA No.1458 of 2017]

Appearances:

Anand Grover, Sr. Adv., Ms. Mantika Haryani, Shreyas Awasthi, Ms. Astha Sharma, Advs. for the Appellants.

Respondent in Person.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

SANJIV KHANNA, J.

This appeal, by way of special leave, takes exception to the judgment of the division bench of the High Court of Calcutta, whereby the intra-court appeal preferred by the State of West Bengal and Others in F.M.A. No. 1458

of 2017 with CAN No. 6596 of 2017 has been dismissed with the direction to the Appellant No. 2 – Joint Secretary, Department of Industries, Commerce and Enterprises, West Bengal or any authorised officer to execute a mining lease in favour of the Respondent No. 2 – Dinesh Agarwal, sole proprietor of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih.

2. The facts are rather chequered, *albeit* are required to be noticed in detail. On 07.08.1985, West Bengal Mineral Development and Trading Corporation Limited¹ had filed an application for grant of long term mining lease for Dolomite, Limestone and Quartzite at the plots in Mouza - Khariduara, Kumari and Boch. An application was also filed by WBMDTCL for grant of long term mining lease for Iron Ore, Manganese and Fireclay at the plots in Mouza - Khariduara, Kumari, Boch and Kangametya. Grant Order dated 07.04.1986 was issued in favour of WBMDTCL by the Assistant Secretary, Commerce and Industries Department, Mines Branch, West Bengal.

2.1 On 06.03.1998, Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. had filed an application before the Mining Officer-in-charge, Purulia Zone, Directorate of Mines and Minerals, West Bengal, for the grant of a mining lease for the purpose of extracting Dolomite at Mouza - Khariduara, Kumari and Boch, in 76 acres of land.

2.2 The Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih filed Writ Petition No. 7808 (W) of 2001 before the High Court of Calcutta, seeking disposal of their application for grant of mining lease. The High Court *vide* order dated 13.06.2001, directed the State authorities to dispose of the application of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih at an early date and in accordance with law.

2.3. The Joint Secretary, Commerce and Industries Department, West Bengal, *vide* order dated 13.03.2003, rejected the application of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih, on the ground of non-availability of land in view of the previous application of WBMDTCL. By another order dated 26.03.2003, the Joint Secretary, Commerce and Industries Department, West Bengal reiterated that the mining application

1 For Short, 'WBMDTCL'.

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of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih overlaps with the area applied for in the previous application by WBMDTCL. The application of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih was accordingly rejected.

2.4 Aggrieved, the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih had filed Writ Petition No. 7505 (W) of 2003 in the High Court of Calcutta challenging the orders passed by the Joint Secretary, Commerce and Industries Department, West Bengal, dated 13.03.2003 and 26.03.2003. During the pendency of the said Writ Petition, the Joint Secretary, Commerce and Industries Department, West Bengal, reviewed the aforesaid orders and passed a fresh order dated 13.10.2006 for apportionment of land between WBMDTCL and the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. This order states that two hearings were held on 24.05.2006 and 19.06.2006 to review the matter, and thereupon at the hearing dated 19.06.2006, in the presence of the representatives of WBMDTCL and the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih, it was agreed that Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih will be granted the whole of the mining area of 76 acres, and the lease for the rest of the area will be granted in favour of WBMDTCL. No other reason has been stated and indicated in the said order. Thus, the orders dated 13.03.2003 and 26.03.2003 rejecting the application of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih were recalled. Consequently, the Letter of Intent dated 26.10.2006 was issued in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih for an area of 76 acres of land subject to fulfilling/submission of various documents, including approval of the Mining Plan duly approved by the Chief Mining Officer, Asansol and Clearance Certificate from the Ministry of Environment and Forests, Government of India.

2.5 However, the order dated 13.10.2006 was cancelled or revoked *vide* order dated 03.12.2010 by the Joint Secretary, Commerce and Industries Department, Mines Branch, West Bengal, *inter alia*, recording that this order was passed without ascertaining the exact position of the land and in ignorance of the fact that the rejection orders dated 13.03.2003 and 26.03.2003 had already been challenged before the High Court in Writ Petition No. 7505 (W) of 2003. The authorities had not ascertained the status

of the case. The order of cancellation or revocation dated 03.12.2010 was not challenged by the respondents.

2.6. This order dated 03.12.2010 was also not brought to the notice of the High Court, when the Writ Petition No. 7505 (W) of 2003 was disposed of *ex-parte vide* order dated 25.03.2014 by relying upon the supplementary affidavit filed by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih, which had referred to the recalled order dated 13.10.2006. This order of the High Court states that a decision as to whether a lease or licence to be granted in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih shall be taken within a period of eight weeks and Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih would be accordingly informed. It was made clear that the decision as to the grant will be on the basis of the law and the rules applicable at the time of consideration.

2.7. By the order dated 09.07.2014 passed by the Joint Secretary, Commerce and Industries Department, West Bengal, the application filed by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih was rejected *inter alia* relying upon the earlier application filed by WBMDTCL. Significantly, this order mentions that the two rejection orders dated 13.03.2003 and 26.03.2003 were recalled by the Joint Secretary *vide* his order dated 13.10.2006. This order also refers to the factum that the Grant Order dated 07.04.1986 to WBMDTCL for Iron Ore, Manganese and Fireclay in the plots in question had been revoked and the application for Long-Term Mining Lease filed by WBMDTCL for Dolomite and Limestone was rejected by a common order dated 24.09.2009. The order dated 24.09.2009 has not been placed on record, though it is necessary to ascertain and know the reasons for cancellation and rejection in favour of WBMDTCL. WBMDTCL had applied earlier in point of time, and is a government of West Bengal undertaking. The order dated 09.07.2014 does indicate that the cancellation and rejection against WBMDTCL had something to do with the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih, and possibly the order dated 13.10.2006 in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. This is reflected from the reason given in the order dated 09.07.2014, which states that since the recall order dated 13.10.2006 was cancelled or revoked *vide* order dated

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03.12.2010, the rejection orders dated 13.03.2003 and 26.03.2003 were still valid and the application for mining lease dated 07.08.1985 for Dolomite and Limestone by WBMDTCL still subsists. Thereupon, reference in the order dated 09.07.2014 is made to sub-section (2) to Section 11² of the Mines

2 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;
- (c) has not become ineligible under the provision of this Act; and
- (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.

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have a preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this subsection.

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following:-

- (a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;
- (b) the financial resources of the applicant;
- (c) the nature and quality of the technical staff employed or to be employed by the applicant;
- (d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;
- (e) such other matters as may be prescribed.

and Minerals (Development and Regulation) Act, 1957³, which states that in cases where the State Government has not notified in the Official Gazette an area for grant of reconnaissance permit, prospecting licence for mining lease, and two or more persons had applied for the permit, licence or mining lease, the person whose application received earlier in point of time shall have preferential right for grant of permit, licence or lease over the person whose application was received later. The order states that WBMDTCL is very much interested in mining Dolomite and Limestone in the area and has confirmed the said fact in writing *vide* letter dated 05.06.2014.

2.8. The Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih challenged the order dated 09.07.2014 passed by the Joint Secretary, Commerce and Industries Department, West Bengal in Writ Petition No. 21358 (W) of 2014 before the High Court of Calcutta. This petition was disposed of *vide* order dated 10.09.2014 observing that the Joint Secretary, who had passed the order dated 09.07.2014 had failed to exercise jurisdiction vested in him as the applications filed by WBMDTCL had been rejected *vide* common order dated 24.09.2009 and were therefore not pending. Direction was issued by the High Court to grant a long term lease in respect of 76 acres of land to the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih by observing that the respondent had a *Rayati* status and that the remaining land can be given to WBMDTCL. It may be relevant to note here that this order records that the files relating to the

(4) Subject to the provisions of sub-section(1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section(3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or a mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section.

3 For short, 'MMDR Act, 1957'

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application of WBMDTCL were untraceable. WBMDTCL was not made a party to the said writ petition. Notably, the application filed by WBMDTCL, being earlier in point of time in terms of the applicable rules was to be given preference, whereas the application filed by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih was rejected *vide* orders dated 13.03.2003 and 26.03.2003. However, the rejection orders were recalled *vide* order dated 13.10.2006 and the Letter of Intent dated 26.10.2006 was issued in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. Subsequently, the Grant Order dated 13.10.2006 in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih was cancelled and recalled *vide* order dated 13.12.2010. This order dated 13.12.2010 was never challenged and has attained finality. It is during the period between the order dated 13.10.2006 and the order dated 13.12.2010 that the request/application of WBMDTCL was rejected and the mining lease cancelled *vide* order dated 24.09.2009.

2.9. On 10.02.2015, *vide* notification No. S.O. 423 (E), Dolomite was notified as a minor mineral, and accordingly henceforth, fell under the legislative and administrative jurisdiction of the State Government.

2.10. A Grant Order dated 16.07.2015 was issued by the Deputy Secretary, Commerce and Industries Department, West Bengal for Dolomite mining in favour of Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih in respect of 76 acres of land, subject to certain conditions, including the requirement to submit consent letters of owners of the land in question (*Raiyats*) before the execution of the lease deed, or a condition to this effect would be incorporated in the draft lease. Another stipulation mentioned therein is the need for permission under Section 14-Y⁴ of the West

⁴ **14-Y. Limitation on future acquisition of land by a raiyat.**—If at any time, after the commencement of the provisions of this Chapter, the total area of land owned by a *raiyat* exceeds the ceiling area applicable to him under Section 14-M, on account of transfer, inheritance or otherwise, the area of land which is in excess of the ceiling area shall vest in the State and all the provisions of this Chapter relating to ceiling area shall apply to such land:

Provided that a person intending to establish a tea garden, mill, factory or workshop, livestock breeding farm, poultry farm, or dairy, or township in accordance with the provisions of the West Bengal Town and Country (Planning and Development) Act, 1979, may, with the previous permission, in writing, of the State Government and on such terms

Bengal Land Reforms Act, 1955⁵ for holding the required land and furnishing of Conversion Certificate for plots of land from the appropriate authority in terms of Section 4-C⁶ of the WBLR Act, 1955. It is also stipulated that the Grant Order and the subsequent execution of the lease deed are subject to the No Objection Certificate to be obtained from the Central Government since Dolomite was a major mineral at the time of the order dated 10.09.2014 passed by the High Court.

2.11. Aggrieved by the conditions and the requirements stipulated in the Grant Order dated 16.07.2015, the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih filed two Contempt Petitions in W.P.

and conditions and in such manner as the State Government may by rules prescribe, acquire and hold land in excess of the ceiling area applicable to him under Section 14-M:

Provided further that if such person, having been permitted by the State Government, does not utilise within two years of the date of such permission such land for the purpose for which he has been so permitted by the State Government to acquire and hold it, then, all the provisions of this Chapter relating to ceiling area shall apply to the area of land which is held in excess of the ceiling area applicable to him under Section 14-M.

Explanation.—For the purpose of this section, “person” includes an individual, a firm, a company, an institution, or an association or body of individuals, whether incorporated or not.

5 For short, ‘WBLR Act, 1955’.

6 **4-C. Permission for change of area, character or use of land.**—(1) A *raiyat* holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land.

(2) On receipt of such application, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or alteration, as the case may be, on such terms and conditions as may be prescribed.

(3) Every order under sub-section (2) directing change, conversion or alteration shall specify the date from which such change, conversion or alteration shall take effect.

(4) A copy of the order passed by the Collector directing change, conversion or alteration, if any, under sub-section (2), or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in Section 50 or Section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effected by such order and revise the record-of-rights in accordance with such order.

(5) If the Collector is satisfied that any land is being convened for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alteration in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the *raiyat* from such Act.

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21358 (W) of 2014. These contempt petitions were disposed of, *inter alia*, observing that the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih was required to fulfil the conditions, including furnishing of the Conversion Certificate under Section 4-C of the WBLR Act, 1955 and No Objection Certificate from the Government of India. The court, therefore, found that there was no wilful, or contumacious violation of the order dated 10.09.2014. However, liberty was granted to the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih to question the Grant Order dated 16.07.2015.

2.12. The Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih thereupon preferred Writ Petition No. 20309 (W) of 2016 before the High Court of Calcutta. However, WBMDTCL was not a party to this writ petition. In the meanwhile, a clarification was sought by the Deputy Secretary, Commerce and Industries Department, West Bengal and *vide* clarification dated 26.08.2016 issued by the Government of India, Ministry of Mines, it was clarified that even prior to 10.02.2015, Dolomite was a Non-Scheduled major mineral, for which prior approval of the Central Government was not required under sub-section (1) to Section 5 of the MMDR Act, 1957.

2.13. This Writ Petition No. 20309 (W) of 2016 *vide* judgment and order dated 12.04.2017 has been allowed *inter alia* observing that Dolomite had become a minor mineral with effect from 10.02.2015 and hence prior approval of the Central Government is not required under Section 5(1) of the MMDR Act, 1957. On the question of requirements under Section 14-Y and 4-C of the WBLR Act, 1955, it is observed that the land in question is recorded as '*Dungri*' as per information provided by the Deputy District Land and Land Reforms Officer, Purulia *vide* Memo No. V/RTI/775/15 dated 06.03.2017 and that the land classified as '*Dungri*' is only used for the purpose of mining lease and thus, there is no need for a conversion certificate under Section 4-C of the WBLR, Act, 1955. The clarification dated 07.04.2016 was issued by the Additional District Magistrate and District Land and Land Reforms Officer, Purulia, stating that the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih had procured a No Objection Certificate in respect of the major portion of *Raiyati* land from different owners and that the State Government itself was the owner of

20.87 acres of land, thus Section 14-Y of the WBLR Act, 1955 would not be applicable as the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih has not acquired land in excess ceiling limit prescribed under Section 14-M of the WBLR Act, 1955.

2.14. This judgment was challenged by the State of West Bengal in an intra-court appeal being F.M.A. No. 1458 of 2017 with CAN No. 6596 of 2017 which has been dismissed *vide* the impugned judgment dated 04.10.2018. Agreeing with the findings recorded by the Single Judge, the division bench has held that the provisions of the West Bengal Minor Minerals Concession Rules, 2016⁷ will not be applicable as the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih had made the application in March 1998, and more so as the Joint Secretary, Government of West Bengal had passed the order dated 13.10.2006 to grant mining lease. The High Court's direction given in Writ Petition No. 21358 (W) of 2014 *vide* judgment dated 10.09.2014 are prior to the enforcement of the Concession Rules, 2016.

3. We have heard the learned Senior Advocate appearing for the State of West Bengal and the Respondent No. 2 – Dinesh Agarwal, who has appeared in-person. They have also submitted their written submissions.

4. We begin our discussion by first referring to Rule 61 of the Concession Rules, 2016, which reads as under:

“61.Declaration of ineligibility of the pending minor mineral applications for mining lease including the applications of reclassified major minerals.- All applications for mining lease of minor minerals including the reclassified minor minerals vide SO No-423 (E) dated 12th February,2015 received prior to the giving-effect to this rules irrespective of its duration of pendency shall become ineligible.

Provided that if the applicant has been issued a Grant Order or Letter of Intent (LoI) or any other Government Order requiring the alteration of applicant's position then his mining lease application may be considered after due compliance of the all the necessary conditions”

⁷ For short, ‘Concession Rules, 2016’.

5. An almost corresponding amendment was made to the MMDR Act, 1957 by incorporating Section 10-A *vide* Mines and Minerals (Development and Regulation) Amendment Act, 2015⁸, which reads as under:

10-A. Rights of existing concession holders and applicants.—(1)

All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015—

(a) applications received under Section 11-A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

8 For short, ‘Amendment Act, 2015’.

(c) where the Central Government has communicated previous approval as required under sub-section (1) of Section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government.

6. Rule 61 of the Concession Rules, 2016 states that all applications for mining lease of minor minerals including reclassified minor minerals *vide* S.O. No. 423 (E) dated 12.02.2015 received prior to giving effect to the Concession Rules, 2016⁹, irrespective of its duration of pendency shall become ineligible. In other words, these applications are not to be considered. The *proviso* makes an exception and states that if an applicant, who had made an application prior to 29.07.2016, had been issued a Grant Order or a Letter of Intent, or any other order requiring alteration of the applicant's position, his application for mining lease may be considered after due compliance of all necessary conditions. The question is whether the respondents' case is covered by the exception in terms of the *proviso* to Rule 61 of the Concession Rules, 2016. We have already referred to the reasoning given by the division bench of the High Court dealing with the Concession Rules, 2016, and would like to quote the findings which hold that the *proviso* would not be applicable to the facts of the present case. These observations read:

"25.Neither such recent policy nor can the provisions of the West Bengal Minor Minerals Concession Rules, 2016 can apply to the application of the writ petitioners made in March, 1998 and more so as the order of the Joint Secretary to grant lease is dated 13th October,

⁹ The Concession Rules, 2016 came into effect on 29.07.2016

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2006 and that of this Court directing grant of long term lease is dated 10th September, 2014 are prior to such policy and prior to the said Rules came into operation. It further appears that necessary mining plan taking into account the environmental aspect has been submitted by the writ petitioners and the appellant/State has raised no grievance in respect thereof.”

7. The policy referred to in the aforesaid paragraph is in terms of the letter dated 02.02.2018 issued by the Principal Secretary, State of West Bengal, wherein it is specified that obtaining a Conversion Certificate is a mandatory condition for the purpose of a mining lease. Reference in the impugned judgment to the order dated 13.10.2006, or for that matter, the Letter of Intent dated 26.10.2006 is inconsequential as the said orders were recalled and revoked on 03.12.2010. The orders did not survive and continue to operate thereafter. Writ Petition No. 7505 (W) of 2003 was disposed of *ex parte*, without noticing that the order dated 13.10.2006 had been recalled or cancelled, *albeit* the judgment had directed that the application for grant of lease would be considered in accordance with law and the rules applicable at the time of consideration. The order dated 03.12.2010 was never challenged by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih and has attained finality. At best, the case of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih is that the application dated 06.03.1998 should be considered in accordance with law.

8. The Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih has relied upon judgment of this Court in *Bhushan Power and Steel Limited v. S.L. Seal, Additional Secretary (Steel and Mines), State of Odisha and Others*¹⁰. In the said case, the predecessor-in-interest of the petitioner therein had made an application for grant of lease before the State of Odisha for mining of Iron Ore in an area measuring 1250 acres. The application was in view of the proposal to set up a steel plant in the district of Sambalpur, Odisha. The rejection for the grant of the mining lease to M/s. Bhushan Power and Steel Limited was challenged in a Writ Petition in the High Court, which was dismissed, but the appeal preferred before this Court was allowed *vide* judgment dated 14.03.2012 in *Bhushan Power and Steel*

Limited and Others v. State of Orissa and Another¹¹, setting aside the order of the State Government dated 09.02.2016, with the following directions:

“41. In the light of the above, the High Court erred in holding that it could not interfere with the decision of the State Government calling upon the appellants to sign a fresh MoU with the Government, during subsistence of the earlier MoU. Since the State Government has already made allotments in favour of others in relaxation of the Mineral Concession Rules, 1960, under Rule 59(2) thereof, no cogent ground had been made out on behalf of the State to deny the said privilege to the appellants as well. Accordingly, we allow the appeal and set aside the judgment and order of the High Court of Orissa and also the decision of the State Government dated 9-2-2006, rejecting the appellants’ claim for grant of mining lease.

42. During the course of hearing, we have been informed that Thakurani Block A has large reserves of iron ore, in which the appellants can also be accommodated. We, accordingly, direct the State of Orissa to take appropriate steps to act in terms of the MoU dated 15-5-2002, as also its earlier commitments to recommend the case of the appellants to the Central Government for grant of adequate iron ore reserves to meet the requirements of the appellants in their steel plant at Lapanga.”

9. The State of Odisha thereafter filed an application for review of the judgment in **Bhushan Power and Steel Limited and Others v. State of Orissa and Another¹²** (supra) which was rejected *vide* order dated 11.09.2012.

10. Alleging non-compliance and in-action of the judgment dated 14.03.2012, a contempt petition was filed by M/s Bhushan Power and Steel Limited. The contempt petition was contested by the State of Odisha on several grounds, including that the judgment dated 14.03.2012 is incapable of enforcement, for which reliance was placed on a subsequent judgment of this Court in **Sandur Manganese and Iron Ores Ltd. v. State of Karnataka¹³**. This stand did not find favour with this Court and the officers of the State Government were found to be in contempt of the judgment dated 14.03.2012

11 (2012) 4 SCC 246.

12 (2012) 4 SCC 246.

13 (2010) 13 SCC 1.

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vide judgment dated 22.04.2014 in ***Bhushan Power and Steel Limited v. Rajesh Verma***¹⁴. Under these circumstances, the judgment dated 22.04.2014 had given one more opportunity to the State Government to send requisite recommendation to the Central Government *inter alia* observing that this Court cannot lose sight of the fact that there is a judgment *inter se* the parties, which has become final. Accordingly, the contention that the judgment of this Court in ***Sandur Manganese and Iron Ores Limited*** (supra) will not undo the directions given in the judgment dated 14.03.2012 was rejected. The relevant observations in the judgment dated 22.04.2014 read as under:

"21. We cannot lose sight of the fact that there is a judgment, inter partes, which has become final. Even when the civil appeal was being heard, certain other parties claiming their interest in these very lands had moved intervention applications which were dismissed. At that time also it was mentioned that there are 195 applicants. However, notwithstanding the same, this Court issued firm directions to the State Government to recommend the case of the petitioners for mining lease in both the areas. In view of such categorical and unambiguous directions given in the judgment which has attained finality, merely because another judgment has been delivered by this Court in *Sandur Manganese case*, cannot be a ground to undo the directions contained in the judgment dated 14-3-2012. *Insofar as law laid down in Sandur Manganese is concerned, that may be applied and followed by the State Government in respect of other applications which are still pending. However, that cannot be pressed into service qua the petitioner whose rights have been crystallised by the judgment rendered in its favour.* It cannot be reopened, that too at the stage of implementation of the said judgment.

22. Once we hold that the respondents are bound to implement the direction contained in the judgment dated 14-3-2012, insofar as the State Government is concerned, it is obliged to comply therewith and such matters, along with other relevant considerations, can be left to the wisdom of the Central Government while taking a decision on the recommendation of the State Government.

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24. However, we are giving one final opportunity to them to purge the contempt by transmitting requisite recommendations to the Central Government. *It would be for the Central Government to consider the said recommendations on its own merits and in accordance with law.* In case the recommendation is sent within one month from the date of copy of receipt of this order, we propose not to take any further action and the respondents/contemnors shall stand discharged from this contempt petition. However, in case the respondents do not purge in the manner mentioned above, it would be open to the petitioners to point out the same to this Court by moving appropriate application and in that event the contemnors shall be proceeded against.”

(emphasis supplied)

11. Consequent to the directions dated 22.04.2014, the State Government had sent the requisite recommendation to the Central Government for grant of mining lease of the area in question. The Central Government, however, took the stand that having regard to the amendments in the MMDR Act, 1957, *vide* the Amendment Act, 2015 introducing Section 10-A, the request made by M/s Bhushan Power and Steel Limited stands invalidated. In view of the aforesaid stand, the Central Government had written letters to the State Government, with a copy sent to M/s Bhushan Power and Steel Limited. In the letter dated 13.05.2015, the Central Government had stated that the proposal for according the prior approval for grant of mineral concession was ineligible in terms of sub-section (1) to Section 10-A of the MMDR Act, 1957 and, therefore, should be treated as closed. However, the State Government might ascertain whether the proposal was safe from ineligibility under Section 10-A of the MMDR Act, 1957 and thereupon the State Government could take action accordingly. Similar view was also expressed by the Central Government in the letter dated 29.05.2015 therein. Consequent to these communications, the State government *vide* letter dated 09.07.2015 had informed M/s Bhushan Power and Steel Limited that their applications for grant of mining lease had become ineligible as per sub-section (1) to Section 10-A of the MMDR Act, 1957.

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12. This Court in *M/s Bhushan Steel and Power Limited*¹⁵ (supra), specifically examined the contention whether in the facts of the said case, clause (c) to sub-section (2) to Section 10-A of the MMDR Act, 1957 could be invoked in view of the contention raised by M/s Bhushan Steel and Power Limited that the Letter of Intent was issued by the State Government for grant of mining lease and, therefore, their application stands protected. The submission was that the recommendation dated 24.05.2014, given by the State Government should be treated as a Letter of Intent by “whatever name called”, as it signifies the intention to grant mining lease insofar as the State Government is concerned. It was also argued that under the new regime contained under Section 10-A of the MMDR Act, 1957, approval of the Central Government was not even required and the State Government could have proceeded further and granted the lease.

13. The aforesaid arguments did not find favour of this Court in the case of *M/s Bhushan Steel and Power Limited* (supra) in spite of the earlier judgment of this Court dated 14.03.2012 and the order passed in the contempt petition dated 22.04.2014 with the observations therein that there was failure of the State Government to comply with the directions. This Court rejected the submissions in *M/s Bhushan Steel and Power Limited* (supra) and held as under:

“17. Undoubtedly, as per sub-section (1) of Section 10-A, all applications received prior to coming into force of the Amendment Act, 2015, become ineligible. Reason for interpreting such a provision is not far to seek. Before the passing of the Amendment Act, 2015, it was the Central Government which had the ultimate control over the grant of licences insofar as mining of major minerals is concerned. As per the procedure then existing, the State Government could recommend the application submitted by any applicant for grant of mining lease to the Central Government and the Central Government was given the power to grant or refuse to grant the approval. Thus, “*previous approval*” from the Central Government was essential for grant of lease, without which the State Government could not enter

into any such lease agreement with the applicant. Shortcomings of this procedure were noticed by this Court in its judgment rendered in *Centre for Public Interest Litigation v. Union of India* [(2012) 3 SCC 1] (for short “*CPIL case*”) and also in *Natural Resources Allocation, In re, Special Reference No. 1 of 2012 [Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1]*. In these judgments, this Court expressed that allocation of natural resources should normally be by auction. Judgment in *CPIL case* had a direct relevance to the grant of mineral concessions as the Government found that it was resulting in multipurpose litigation which was becoming counterproductive. Mining Ordinance, 2015 was passed on 12-1-2015 which was ultimately replaced when Parliament enacted the Amendment Act, 2015.

18. The exhaustive Statement of Objects and Reasons reveals that the extensive amendment in the Act were effected after extensive consultations and intensive scrutiny by the Standing Committee on Coal and Steel, who gave their Report in May 2013. As is evident from the Statement that difficulties were experienced because the existing Act does not permit the auctioning of mineral concessions. It was observed that with auctioning of mineral concessions, transparency in allocation will improve; the Government will get an increased share of the value of mineral resources; and that it will alleviate the procedural delay, which in turn would check slowdown which adversely affected the growth of mining sector.

19. The Amendment Act, 2015, as is evident from the objects, aims at: (i) eliminating discretion; (ii) improving transparency in the allocation of mineral resources; (iii) simplifying procedures; (iv) eliminating delay on administration, so as to enable expeditious and optimum development of the mineral resources of the country; (v) obtaining for the Government an enhanced share of the value of the mineral resources; and (vi) attracting private investment and the latest technology.

20. The Amendment Act, 2015 ushered in the amendment of Sections 3, 4, 4-A, 5, 6, 13, 15, 21 and First Schedule; substitution of new sections for Sections 8, 11 and 13; and, insertion of new Sections 8-A, 9-B,

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9-C, 10-A, 10-C, 11-B, 11-C, 12-A, 15-A, 17-A, 20-A, 30-B, 30-C and Fourth Schedule.

21. These amendments brought in vogue: (i) auction to be the sole method of allotment; (ii) extension of tenure of existing lease from the date of their last renewal to 31-3-2030 (in the case of captive mines) and till 31-3-2020 (for the merchant miners) or till the completion of renewal already granted, if any, or a period of 50 years from the date of grant of such lease; (iii) establishment of District Mineral Foundation for safeguarding interest of persons affected by mining related activities; (iv) setting up of a National Mineral Exploration Trust created out of contributions from the mining lease-holders, in order to have a dedicated fund for encouraging exploration and investment; (v) removal of the provisions requiring "*previous approval*" from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese, etc. thereby making the process simpler and quicker; (vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to Rs 5 lakhs per hectare and imprisonment up to 5 years; and (vii) further empowering the State Government to set up Special Courts for trial of offences under the Act."

14. Thus, the object and purpose of the Amendment Act, 2015 is to ensure that allocation of mineral resources is done through auctioning. This is the reason why sub-section (1) to Section 10-A of the MMDR Act, 1957 mandates that all applications received prior to 12.01.2015 shall become ineligible. The exceptions or the saving clause applies to three kinds of situations specified in sub-section (2) to Section 10-A of the MMDR Act. 1957. The first category is where an application has been received under Section 11-A of the MMDR Act, 1957. The second category is where a reconnaissance permit or a prospecting licence has been granted the permit holder or the licensee has the right to obtain a prospecting licence followed by a mining lease and the State Government is satisfied that the permit holder or the licensee has complied with the requirements specified in sub-clauses (i) to (iv) of clause (b) of sub-section (2) to Section 10-A of the MMDR Act, 1957. The reason for protecting this class of cases is on account of the fact that they had altered their position by spending money

on reconnaissance operations or prospecting operations. Accordingly, the principle of legitimate expectation is applied. The third category is where the Central Government had already communicated their previous approval or the State Government had issued Letter of Intent for grant of mining lease before coming into force of the Amendment Act 2015. The *raison d'être*, it is observed therein, is that certain rights had accrued to these applicants inasmuch as all necessary procedures and formalities had been complied with and only formal lease remains to be executed.

15. Delving on the question of whether the letter for approval dated 22.05.2014 granted by the State Government can be treated as a Letter of Intent predicated on the words by whatever name, which expression, it was submitted, should be given a broad interpretation in view of the words 'by whatever name called' was examined in-depth and in detail. Reference was made to the legal dictionary for the meaning of the term 'Letter of Intent' as a preliminary understanding between the parties who intend to make a contract or join together for further action. Reference was also made to decisions of this Court in *Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and Others*¹⁶ and *Rajasthan Cooperative Dairy Federation Limited v. Maha Laxmi Mingrate Marketing Service Private Limited and Others*¹⁷. However, the said contention was rejected *inter alia* holding as under:

"26. Applying the aforesaid meaning, can it be said that Letter dated 24-5-2014 of the State Government would constitute a letter of intent? We are afraid, answer has to be in the negative. Reason is simple. As mentioned above, in order to enable the State Government to enter into any lease agreement/contract with the prospecting licensee, "*previous approval*" of the Central Government was essential. Unless such approval came, the State Government could not communicate to the prospecting licensee/lessee its intention to enter into any contract as the prerequisite prior approval would be lacking. Therefore, no promise could be held by the State Government to any applicant showing its intention to enter into a contract in the future. Position would have

16 (2015) 13 SCC 233.

17 (1996) 10 SCC 405.

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been different had Letter dated 24-5-2014 been issued after receiving previous approval of the Central Government. However, that is not so. This letter to the Central Government was only recommendatory in nature and ultimate decision rested with the Central Government. It is a different thing if the Central Government refuses to give its approval on any extraneous reasons or mala fides or does not take into consideration relevant factors/material while rejecting the application, which may form a different cause of action and may become a reason to challenge the action of the Central Government rejecting the application on the grounds that are available in law to seek judicial review of such an action. However, we are not dealing with that situation in the instant case. Our discussion is confined to the plea raised before us viz. whether Letter dated 24-5-2014 can be termed as “letter of intent”. For the reasons stated above, we are of the view that it was not a letter of intent. The application of the petitioner, therefore, would not be covered by clause (c) of Section 10-A of the Act.

27. We are conscious of the fact that the petitioner herein had originally succeeded in the appeal inasmuch as judgment dated 14-3-2012 was rendered giving direction to the State Government to recommend the case of the petitioner, in terms of the MoU entered into between the parties, to the Central Government. This was not done and the decision was reiterated in orders dated 22-4-2014 passed in *Bhushan Power and Steel Ltd. v. Rajesh Verma* [. It is possible that had the State Government acted promptly and sent the recommendations earlier, the Central Government might have accorded its approval. However, whether it could have done so or not would be in the realm of conjectures. Insofar as the Central Government is concerned, no direction was ever given by this Court. On the contrary, it was categorically observed in the order dated 22-4-2014 in *Bhushan Power and Steel Ltd. v. Rajesh Verma* that it would be for the Central Government to consider the recommendations of the State Government on its own merits and in accordance with law. If that has not been done by the Central Government, it cannot be the subject-matter of present contempt petition.”

16. The aforesaid judgment is relevant for our purpose, though in the present case, post notification No. S.O. 423(E) dated 10.02.2015, Dolomite

was notified as a minor mineral and hence, the approval of the Central Government was not required for the reason that the Grant Order dated 16.07.2015 was hedged with pre-conditions, including the requirement to submit consent letters of the owners of the land in question (*Raiyats*) before the execution of the lease deed, or there was to be a stipulation that a condition to this effect would be incorporated in the draft lease. Therefore, in our opinion, the Grant Order dated 16.07.2015 is provisional, and is subject to fulfilment of the conditions therein. This is clear from the terms of the Grant Order dated 16.07.2015, which are reproduced below:

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- (a) You have to furnish a Draft Mining Lease Deed in the model form K us prescribed in the Mineral Concession Rules, 1960, as amended upto date (1 rule 31 of MC Rules, 1960),
- (b) The Draft Mining Lease Deed should be prepared in durable papers neatly and sufficient space should be kept in between two lines in order to permit, if necessary, correction therein,
- (c) The Deed of Lease, after execution, shall be registered by you at your own cost and no mining operation should be started before registration of the Deed,
- (d) You shall have to furnish the approved Mining Plan, if not submitted rules 22(4) and 22A of MC Rules, 1960,
- (e) You shall have to furnish the Environment Clearance (EC), if not submitted from the M1EF Environment of Protection Act, 1986,
- (f) You shall have to furnish Consent to Establish and Consent to Operate from the WBPCB before execution of Deed of Lease [Section 25 and 26 of Water Act ,1974 and Section 21 of Air Act, 1981],
- (g) You shall have to raise annually a minimum quantity of minerals as stipulated in the approved Mine Plan [rules 22A and 45(ia) of MC Rules, 1960],
- (h) You shall have to deposit Rs. 10,000/ (Rupees ten thousand) only as Security for due observance of the terms and conditions of the lease,

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under appropriate Head of Account which shall be refundable to you after expiry of the period of Lease, unless the whole or a part of it is withheld or forfeited by the Government for any default on your part including default in payment of amount due to the Government [rule 32 of MC Rules, 1960],

- (i) You shall have to submit consent letter(s) of the owner(s) of the land under consideration before execution of the Lease Deed (Consent of the Raiyats) or a condition to that effect should be incorporated in the Draft Deed (rule 22(3)(i)(1t)),
- (j) You shall have to furnish the N.O.C., of the Forest Authority in proper format in case the applied area falls in the forest area as notified by the Appropriate Authority, alongwith the Draft Lease Deed or a condition to that effect should be incorporated in the Draft Deed [Section 2 of Forest Conservation Act, 1980],
- (k) For actual operation of quarrying or digging, ten (10) yards clear margin shall be kept from the outer boundary of the adjacent 1 plot or plots and maintain throughout the operation and you shall have to give a written undertaking to that effect or corporate a condition in the Draft Lease Deed,
- (l) You shall have to incorporate all the conditions as mentioned in the M.C. Rules, 1960 in the Draft Lease Deed,
- (m) You shall have to furnish up to date Royalty Clearance, Income Tax Clearance and VAT Clearance certificates before execution of the Deed,
- (n) You shall have to submit, along with the Draft Deed, a Geo-Reference Map duly vetted by the DL&LRO and DMM, West Bengal, if not submitted,
- (o) You shall have obtained the permission under Section 14Y of WBLR Act, 1955 for holding the required land,
- (p) You have to furnish the Conversion Certificate for plots of land from the Appropriate Authority (Section 4C of WBLR Act, 1955),
- (q) You have to furnish the current Land Availability Report (LAR) from the Appropriate Authority.

(r) In the event of non-execution of the deed within the stipulated period on compliance with the above mentioned conditions the order sanctioning the lease shall be liable to be revoked,

(s) You shall have to comply with all the statutory requirements before presenting the Deed of Lease of execution to this Department,

(t) This Grant Order and subsequent execution of Lease Deed are subject to the No Objection Certificate (NOC) to be obtained by this Department from the Govt. of India since the applicant prayed for mining lease on the ground that the Letter of Intent (LoI) was issued for the mineral Dolomite which was a major mineral at the time of order dated 10.09.2014 of the Hon'ble High Court.

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17. *Raiyat* land is to be used for cultivation, etc., and not for mining. Once the mining activity is undertaken, the *Raiyats* will not be able to use the land. In terms of sub-section (10) to Section 2 of the WBLR Act, 1955, a *Raiyat* means a person or an institution holding land for any purpose whatsoever. However, the rights of *Raiyat* in respect of the land in terms of sub-section (2A) to Section 4 of the WBLR Act, 1955 does not permit any other person to quarry sand from his holding, dig or use, or permit any person to dig or use, earth or clay of his holding for the manufacture of bricks or tiles except with previous permission in writing of the State Government. In case of breach of the condition, the prescribed authority may, after giving notice and opportunity to a *Raiyat* to show cause, can levy a monetary penalty. Further, on an order being passed, the land shall vest in the State free from all encumbrances. Section 4-B of the WBLR Act, 1955 stipulates that every *Raiyat* holding any land shall maintain and preserve such land in a manner that the area is not diminished or its character is not changed or the land is not converted for any purpose other than the purpose for which it was settled or previously held except with the previous permission of the Collector in writing. Equally significant for our purpose is Section 3A of the WBLR Act, 1955, which states that the rights and interests of all non-agricultural tenants and under-tenants shall vest in the State free from all encumbrances and provisions of Section 5 and 5A of the West Bengal Estates Acquisition Act, 1953 shall apply. An exception is carved out by sub-section

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(2) to Section 3A of the WBLR Act, 1955, where a non-agricultural tenant or under-tenant is holding *khas* possession of any land, in which case he is entitled to retain the land as *Raiyat*. There are also provisions relating to the transferability of land by the *Raiyat*. If cultivation was not being undertaken at the land in question, the classification requires a change.

18. The controversy relating to Section 4-C of the WBLR Act, 1955, cannot simply be decided on the basis of Memo No. V/RTI/775/15 dated 06.03.2017 issued by the Deputy District Land and Land Reforms Officer, Purulia, that as per the revenue records the land was recorded as '*Dungri*'. The reason is that *Raiyat* land is not for mining. Thus, a contradiction arises, as the grant of *Raiyat* land and the classification of the same land as '*Dungri*' is contradictory.

19. Further, whether the consent letter of the owners of the land in question (*Raiyats*) obtained by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih still hold good, would be relevant as there could be a change of hands on account of transfer, inheritance, etc. Connected with this are the legal issues. First, whether the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih had altered its position post the issue of the Grant Order dated 16.07.2015, but before enforcement of the Concession Rules, 2016, to get the benefit of Rule 61 of the Concessions Rules, 2016? It is necessary to ascertain the facts and then alone one can adjudicate and decide the question whether the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih is entitled to the benefit of the *proviso* to Rule 61 of the Concession Rules, 2016. This has not been verified and ascertained. An issue would arise on whether the application filed by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih way back in 1998 would still hold good as at the time, when the application was filed, approval of the Central Government was required. Another difficulty is that WBMDTCL has not been impleaded as a party, though it was always contesting the claim made by the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. On the question of cancellation or rejection of the application made by WBMDTCL, we have made observations supra. However, we need not examine these issues in light of the order and directions we are issuing. Further, we feel that the remand order should not be passed at this distinct point of time.

20. Having said so, it is the stand of the appellants – State of West Bengal, that they are owners of 20.87 acres of the land in question and to this extent, they have no difficulty in executing the mining lease. This being the stated stand, which has also been affirmed before us, there should be no difficulty in granting of mining lease for the said area to the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih.

21. During the course of arguments before us, reference was made by the appellants to the provisions of the WBLR Act, 1955 and the judgment of this Court in *Thressiamma Jacob and Others v. Geologist, Department of Mining and Geology and Others*¹⁸. We have not examined the said aspects which are left open and not adjudicated upon. However, we deem it appropriate to observe that the judgment of this Court in *Thressiamma Jacob and Others* (supra) is prior to the enforcement of the Amendment Act, 2015 and the Concession Rules, 2016. The amendments made by the Amendment Act, 2015 were not subject matter of decision in the said case and would have to be considered by the courts and the authorities as a judgment's binding ratio depends upon the legal provisions considered, interpreted and applied in a given judgment. When the law changes by an amendment in the legislation, the amended legal provisions have to be considered, interpreted and applied.

Accordingly, and for the reasons stated, we partly allow the present appeal and set aside the impugned judgment with a direction that the government of West Bengal will execute a mining lease for 20.87 acres of land in favour of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih. The Writ Petition No. 20309 (W) of 2016 will be treated as allowed to the extent as indicated above. The claim of the Respondent No. 1 - M/s. Chiranjilal (Mineral) Industries of Bagandih towards the balance area for the grant of mining lease will be treated as rejected and dismissed. In the facts of the present case, there will be no order as to costs.

Headnotes prepared by:
Ankit Gyan

Appeal partly allowed.