Indian Metals And Ferro Alloys Ltd vs Union Of India And Ors on 21 September, 1990

Equivalent citations: 1991 AIR 818, 1990 SCR SUPL. (2) 27, AIR 1991 SUPREME COURT 818, (1991) 5 JT 236 (SC) 1992 (1) SCC(SUPP) 91, 1992 (1) SCC(SUPP) 91

Author: M. Fathima Beevi

Bench: M. Fathima Beevi

PETITIONER:
INDIAN METALS AND FERRO ALLOYS LTD.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT21/09/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
FATHIMA BEEVI, M. (J)

CITATION:
1991 AIR 818 1990 SCR Supl. (2) 27
1992 SCC Supl. (1) 91 JT 1991 (5) 236
1990 SCALE (2)634

ACT:
Mines and Minerals (Development and Regulation) Act, 1957--Sections 3(f) 5A, 10, 11, 17A & First and Second Schedules--'Minor Mineral'--Chrome ore--Grant of mining lease--Reservation in favour of Public Sector Undertakings--Whether obligatory--Consideration of applications--Directions issued to Government--Appropriate statutory amendments suggested.

HEADNOTE:
In these matters, the petitioners viz., four companies in the private sector, two public sector corporations owned substantially by a State Government, and a private individual sought clarifications and directions in relation to the

orders passed by this Hon'ble Court on 30.4.87 and 6.10.87 on the Writ Petition. All these petitions arose out of applications for grant of right for the mining of chrome ore or chromite in the State of Orissa. Since chrome ore is one of the minerals specified in the first and second schedules to, and not a 'minor mineral' within the meaning of Section 3(f) of the Mines and Minerals (Development and Regulation) Act, 1957, the right to grant the mining right in respect of this mineral is vested in the State Government subject to the control by Union of India, and as such they are respondents in these matters.

While disposing of the matters, this Court referred the entire controversy to the Secretary to Government of India in the Ministry of Mines, viz., Mr. Rao, for a detailed consideration of the claims made by the parties.

Before Mr. Rao, the two public sector undertakings also put forward their claims that the public sector units in the State were entitled to the grant of mining rights in the State to the exclusion of all private parties in as much as there was a reservation in their favour by an appropriate notification issued by the State Government. The other parties raised objection on the ground that the claims were made at a belated stage of the proceedings. On applications made by the Public Sector Undertakings, this Court directed that their claims would also be examined by Rao.

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In his report dated 1.2.1988 Rao accepted the claim of reservation made by the two Public Sector Undertakings, viz., Orissa Mining Corporation (OMC) and Industrial Development Corporation of Orissa Ltd. (IDCOL). He also partially accepted the claims of the three private parties. viz., Indian Metals and Ferro-Alloys Limited (IMFA); Ferro Alloys Corporation Limited (FACOR); and Aikath and rejected the claims of the other two private parties viz., Orissa Cements Ltd. (OCL) and Orissa Industries Ltd. (ORIND). Though he accepted the claim of the two public sector undertakings, he recommended for them leases in respect of only the balance of the lands left, after fulfilling the claim of the others which he had accepted.

The present petitions biter alia sought directions on the report of Rao. It was contended that Rao was nothing more than a Commissioner appointed by this Court to examine the various parties and hence this Court should pass appropriate orders on his report. Various contentions were advanced by the petitioners as well as respondents as regards the legal character of the Rao Report and of giving effect to it either in toto or with modifications in certain respects. Reservation in favour of Public Sector Undertakings was challenged by the private parties. Plea of Promissory Estoppel was also raised on behalf of some of the petitioners.

Disposing of the matters, this Court,

HELD: 1. The statute must lay down clearer guidelines

and procedure. Having regard to the new avenues for vast industrial development in the country, a more workable procedure would be for the State Government to call for applications in respect of specified blocks by a particular date and deal with them together, other later entrants not being permitted in the field. Otherwise only confusion will result, as here. There was a time when the State Government looked to private enterprises for mineral development in its territory. Of late, however, competition has crept in. The State Government has its own public sector corporations and various enterpreneurs are interested in having mining leases for their purposes. It is, therefore, vital that there should be a better and detailed analysis, district-wise and area-wise and that a schedule for consideration of applications in respect of define areas should be drawn up with a strict time frame so that the State is no longer constrained to deal with sporadic applications or make a routine grant of leases in order of priority of applications. These are aspects which call for careful consideration and appropriate amendments to the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder. [72D-G]
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2. Chromite ore is an important major mineral and the importance of its conservation and proper utilisation for our country's development cannot be gainsaid. The State Government rightly decided upon a policy of reservation in 1967 and this was kept up till 1974. In February 1974 the State Government was in favour of free issue of mining leases but gave up this policy in pursuance of the Central Government's letter of 15.5.74. Reservation was, therefore, clamped in 1977 again. Applications could still be considered to see how far a relaxation was permissible having regard to the nature of the applicant's needs, the purpose for which the lease was asked for, the nature of the ore sought to be exploited, the relative needs of the State, the availability of a public undertaking to carry out the mining more efficiently and other relevant considerations. There is no material on record to substantiate the plea that the State Government has been acting arbitrarily or mala fide in its policy formulations in this regard. [82C-E]
Venkataraman v. Union, [1979] 2 SCR 202, referred to.

3. Rao's decision, that the leases that have been granted already in favour of IMFA, FACOR be confirmed, should be upheld. These should be treated as leases legitimately granted to them in exercise of the powers of relaxation under rule 59(2). It is true that the orders granting the leases do not elaborately record the reasons but they were passed in the context of this litigation and have to be considered in the light of the affidavits and counter affidavits filed herein. Rao's decision regarding the grant of a lease to AIKATH (not yet implemented) should also be upheld. In these three cases, the records disclose sufficiently the reasons on the basis of which the leases have been decided

upon and are adequate to justify the mining leases actually granted.]89B-D]

4. The claims of OCL and ORIND have been rejected summarily by Rao without an advertence to the various consideration urged by them. This part of Rao's decision has to be set aside as being too cryptic and unsustainable. Pursuant to this conclusion, it is directed that these claims be considered afresh by the Central Government. It would be more expedient if the claims of OCL and ORIND are restored, for detailed consideration in all their several aspects, before the State Government, as the State Government has had no opportunity to consider the various aspects pointed out and as this course will also provide an opportunity to the claimants to approach the Central Government again, if dissatisfied with the State Government's decision to consider whether, despite the reservation, some relaxation can be made also in

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Favour of these two companies- The State Government has to take into account various factors and aspects before granting a mining lease to an individual concern carving out an exception to its reservation policy. It has done this in respect of IMFA and FACOR for certain special reasons recorded by it. Whether it would do so also in favour of OCL and ORIND is for the State to consider. It would be noticed that the applications of these two companies have not been considered in this light earlier- The applications of OCL and ORIND are restored for the consideration of the State Government. [94B-G]

5. The State Government has rejected ORIND's application, inter alia, on the ground that, in view of the pendency of the Writ Petition before this Court, it could not at that stage pass any order on the application. It would, therefore, be open to ORIND to ask the State Government to reconsider the application in the light of the present order. There is no necessity for insisting on such a formal request and therefore, the State Government is directed to consider ORIND's application afresh in the light of this judgment. [95A-B]

6. So far as OMC and IDCOL are concerned, Rao has recomamended that the areas left after the grants to IMFA and FACOR, be given on lease to OMC. There were huge areas of mineral bearing lands which have been reserved for the public sector. Its interests do not clash or come into conflict with those of private applicants which can only claim a right to the extent the State Government is willing to relax the rule of reservation. This Court does not think OMC or IDCOL have any voice in requiring that the State Government should keep certain extent of land reserved and should not grant any mining lease at all in favour of any private party. The interests of these corporations are safe in the hands of the State Government and the allocation of mining leases to these organisations is a matter of discre-

tion with the State Government strictly speaking, therefore, no question of any application by them for mining lease need arise at all. But, when made, their applications are considered by the State Government and, on revision by the Central Government as a matter of form. To this extent, they have a statutory remedy. [95C-El

7. When the State Government agreed to lease out the areas to MFA and FACOR it was pointed out that this could not be given effect to without the Central Government's approval. This Court thereupon directed that the State Government should seek such approval. The direction to the Central Government is only that its approval should be given within the particular time limit set out therein- It cannot be

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construed, reasonably, as a direction compelling the Central Government to grant approval whether it agreed with the State Government's decision or not. Thus the grant of mining leases to IMFA and FACOR are to be treated as having been made in exercise of the power of relaxation under Rule 59(2). Though there is no specific recording of reasons by the State Government or Central Government inasmuch as these leases came to be granted by way of compromise, it is a fair inference that the compromise proposals were prompted by the, at least partial, acceptance of the claim put forward by these parties. Since the grant of leases to these parties can be attributed to the relaxation of the reservation rule in particular cases, the finding of Rao that these leases may be confirmed deserves acceptance. [90C-F]

8.1 AIKATH is admittedly an individual who discovered chromite ore in the State. He had secured a lease as early as in 1952 though that lease was annulled by the State when it took over. Again, as against a lease of 640 acres which he had once obtained and started operating upon, the State Government has finally approved of a lease in respect of only 140 acres. AIKATH had been actually working some mines from 1.5.53. His original grant had been approved before the areas was reserved on 3.7.62. If the State Government considers these to be weighty considerations and entered into a compromise with him for a lease of 140 acres and this has also been recorded by the High Court, these are no grounds to interfere with that decision of the State Government. [89D-F]

8.2 Though the State Government and AIKATH had entered into a compromise as early as 4.12.1984, no lease has yet been granted in his favour perhaps as the Central Government has had no occasion to consider the matter earlier. However, no useful purpose would be served by remitting the matter and asking the State Government to seek the formal approval of the Central Government therefore. The decision of Rao itself can be taken as containing the approval of the Central Government in this regard and is thus upheld. The State Government is' directed to execute, at as early a date as possible, a mining lease in Favour of AIKATH in respect of

the 140 acres agreed to be leased to him under the compromise dated 4.12.1984. [90G-H; 91A]

9. Although Rao has approved the grants made in favour of IMFA and FACOR by the State Government (which, he remarks, were perhaps based on the observations made by this Court), he has clearly reached his conclusions on these independently. In fact, he has set out a basis for justifying the grants of IMFA and FACOR. It is also clear that
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there were no Court orders that could have influenced his decisions on the claims of the other parties. [87F-G]

10.1 In the context of the scheme of the Act and the importance of a lease being granted to one or more of the better qualified candidates where there are a number of them, it would not be correct to say that, as the State Government's order of 29.10.1973 has been set aside, ORIND's application should be restored for reconsideration on the basis of the situation that prevailed as on 29.10.1973 and that, therefore, it has to be straightaway granted as there was no other application pending on that date before the State Government. In matters ,like this, subsequent applications cannot be ignored and a rule of thumb applied. [74C-E]

10.2 Though S. 11 tries to enunciate a simple general principle of "first come, first served", in practice, priority of an application in point of time does not conclude the issue. In this case itself, for instance, during the period ORIND's application of 1971 has been under consideration before various authorities and in the writ petition filed in the High Court, several other competitors have come into the picture. The statutory provision is not clear as to which of the applications in respect of any particular area, are to be considered together. If ORIND's application of 1971 were to be considered only on the basis of the persons who had made applications at that time or a short time before or after, one result would follow; if, on the other hand, all the applications pending for disposal at the time ORIND's application is to be granted or rejected are to be considered, the result would be totally different. Since the interest of the nation require that no lease for mining rights should be granted without all applicants therefore at any point of time being considered and the best among them chosen or the area distributed among such of them as are most efficient and capable, the latter is the only reasonable and practical procedure. That is why this Court, in its order dated 30.4.87, laid down that all applications pending for consideration as on 30.4.87 should be considered by Rao. [71G-H; 72A-B]

Ferro Alloys Corporation of India v. Union, ILR 1977 Delhi 189 and Mysore Cements Ltd. v. Union, AIR 1972 Mysore 149, distinguished.

11.1 Previously, rule 58 did not enable the State Government to reserve any area in the State for exploitation in the public sector. The existence and validity of such a

power of reservation was upheld by this Court. Rule 58 has been amended in 1980 to confer such a power on the State Government. It is also not in dispute that a notification of reservation was made on 3.8.77. The State Government, OMC and IDCOL are,
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therefore, right in contending that, ex facie, the areas in question are not available for grant to any person other than the State Government or a public sector corporation unless the availability for grant is renotified in accordance with law (rule 59(1)(e) or the Central Government decides to relax the provisions of rule 59(1). [79D-F]

Amritlal Nathubhai Shah and Ors. v. Union of India and Anr. [1977] 1 SCR 372, relied on.

Kotiah Naidu v. State of A.P., AIR 1959 AP 185 and Amritlal Nathubhai Shah v. Union, AIR 1973 Gujarat 117, referred to.

11.2 In the present matters, except for two or three instances. where leases have been granted by the State Government on its own, the State Government has generally and consistently adhered to its stand that the chromite bearing lands are reserved for exploitation in the public sector. The rules permit the Central Government to relax the rigid requirements of reservation in individual cases after recording special reasons. Such exceptional and isolated instances of lease are not sufficient to sustain the plea of the parties that the policy of reservation is merely being raised as a formal defence and has never been seriously implemented by the State Government. [81G-H; 82A-B]

11.3 The conclusion that the areas in question before this Court were all duly reserved for public sector exploitation does not, however, mean that private parties cannot be granted any lease at all in respect of these areas for, as pointed out earlier, it is open to the Central Government to relax the reservation for recorded reasons. Nor does this mean that the public sector undertakings should get the leases asked for by them. This is so for two reasons. In the first place, the reservation is of a general nature and does not directly confer any rights on the Public Sector Undertakings. This reservation is of two types. Under s. 17A(1), inserted in 1986, the Central Government may after consulting the State Government just reserve any area--not covered by a Private Lease or a Mining Lease-with a view to conserving any mineral. Apparently, the idea of such reservations is that the minerals in this area will not be exploited at all, neither by private parties nor in the public sector. The second type of reservation was provided for in rule 58 and such reservation could have been made by the State Government (without any necessity for approval by the Central Government) and was intended to reserve areas for exploitation, broadly speaking, in the public sector. The notification itself might specify the Government Corporation or Company that was to exploit the areas or may be just

general, on the
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lines of the rule itself. Whether such areas are to be leased out to OMC or IDCOL or some other public sector corporation or a Government Company or are to be exploited by the government itself is for the Government to determine de hors the statute and the rules. There is nothing in either of them which gives a right to OMC or IDCOL to insist that the leases should be given only to them and to no one else in the public sector. There are no competitive applications from organisations in the public sector controlled either by the State Government or the Central Government, but even if there were, it would be open to the State Government to decide how far the lands or any portion of them should be exploited by each of such Corporations or by the Central Government or State Government., Both the Corporations are admittedly instrumentalities of the State Government and the decision of the State Government is binding on them. If the State Government decides not to grant a lease in respect of the reserved area to an instrumentality of the State Government, that instrumentality has no right to insist that a Mining Lease should be granted to it. It is open to the State Government to exercise at any time, a choice of the State or any one of the instrumentalities specified in the rule. It is true that if, eventually, the State Government decides to grant a lease to one or other of them in respect of such land, the instrumentality whose application is rejected may be aggrieved by the choice of another for the lease. The question whether OMC or IDCOL can object to the grant to any of the private parties on the ground that a reservation has been made in favour of the public sector, has to be answered in the negative in view of the statutory provisions. For the State Government could always denotify the reservation and make the areas available for grant to private parties. Or, short of actually deserving a notified area, persuade the Central government to relax the restrictions of rule 59(1) in any particular case. It is, therefore, open to the State Government to grant private leases even in respect of areas covered by a notification of the State Government and this cannot be challenged by any instrumentality in the public sector. [82F-H; 83A-H; 84A-C]

12. In these matters, no grounds have been made out which could support a plea of promissory estoppel. The grant of a lease to ORIND had to be approved by the Central Government. The Central Government never approved of it. The mere fact that the State Government, at one stage, recommended the grant cannot stand in the way of their disposing of the application of ORIND in the light of the Central Government's directives. [78E-F]

Kanai Lal Sur v. Paramnidhi Sadhukhan, [1958] 2 SCR 366; M/s
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Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of Uttar

Pradesh and Ors., [1979] 2 SCR 641; Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd., [1983] 3 SCC 379; Surya Narain Yadav & Or,5. v. Bihar State Electricity Board JUDGMENT:

Godfrey Philips India Ltd., [1985] Suppl. 3 SCR 123 and Mahabir Auto Stores & Ors. v. Indian Oil Corporation Ors., [1990] JT I SC 363, referred to.

[This Court directed that it would be open to all the parties to place their claims, or further claims, as the case may be, in regard to the areas applied for by them on or before 30.4.1987, hacked by supporting reasons, before the State Government in the form of representations within four weeks from the date of this order; that the State Government would dispose of these applications within the statutory period failing which the parties will have their remedy under the statute by way of revision to the Central Government; that in arriving at its decisions, it will be open to the State Government to take into account the dis- cussions and findings of the Rao Report in the light of this judgment; that the State Government should also keep in mind that no leases to any of the parties (other than OMC and IDCOL) could be granted unless either the areas so proposed to be leased out are deserved and thrown open to appellants from the public or unless the Central Government, after considering the recommendations of the State Government, for reasons to be recorded in writing considers a relaxation in favour of any of the parties necessary and justified. [96B- E] & CIVIL APPELLATE JURISDICTION: Civil Miscellaneous Peti- tion Nos. 16435-37 of 1987.

IN Writ Petition No. 14116 of 1984.

(Under Article 32 of the Constitution of India). WITH Special Leave Petition (C) Nos. 5163/88 with 8574 of 1989 read with I.A. No. 1/89.

K. Parsaran, Dr. L.M. Singhvi, G. Ramaswamy, V.C. Maha- jan, Harish N. Salve, Rajan Mahapatra, Ms. Lira Goswami, S. Sukumaran, C. Mukhopadhyay, A. Subba Rao, A.D.N. Rao, P.K. Mehta, Ms. Mona Mehta, Girish Chandra, S.C. Patel, T. Sriku- mar, p.

Parmeshwaran, Bishamber Lal Khanna and M.C. Bhandare for the appearing parties.

S.C. Roy, Advocate General and A.K. Panda for the State of Orissa.

The Judgment of the Court was delivered by RANGANATHAN, J. THE "DRAMATIS PERSONAE"

> All these matters are in the nature of off shoots of a basic controversy raised in W.P. No. 14116/84 which was "disposed of" by the orders of this Court dated 30.4.87 and 6.10.87. The parties are now seeking certain clarifications and directions in relation to the orders passed by this Court in the above writ petition. There have been several subsequent developments having an impact on the issue origi- nally brought to this Court in the Writ Petition (W.P.) and, at present, the matter has become very complicated and involves the interests of a large number of parties. To give a cogent narration of the necessary facts, it is best to start with an enumeration of the various

parties with whom we are concerned in the matters which are being disposed of by this judgment.

The writ petition as well as the connected matters arise out of applications for grant of rights for the mining of chrome ore or Chromite in the State of Orissa. Chrome ore is one of the minerals specified in the First and Second Sched- ules to, and not a "minor mineral" within the meaning of s. 3(f) of, the Mines and Minerals (Development and Regulation) Act, 1957. The right to grant mining rights in respect of this mineral is vested in the State Government, subject, as we shall see later, on control by the Union of India. The State of Orissa (S.G.) and the Union of India (C.G.) are, therefore, the primary respondents in this litigation. On the other side are ranged a number o[applicants for the mining rights we have referred to above. These are:

(1) Indian Metals and Ferro-Alloys Limited (IMFA); (2) Ferro Alloys Corporation Limited (FACOR); (3) Orissa Cements Limited (OCL);

(4) Orissa Industries Limited (ORIND);

(5) Orissa Mining Corporation (OMC); (6) Industrial Development Corporation of Orissa Ltd. (IDCOL); and (7) Shri Mantosh Aikath.

Of the above, the first four are companies in the private sector, the next two are public sector corporations owned substantially by the State of Orissa and the last, a private individual.

THE PRESENT CONTROVERSY The principal question for decision before us is as to whether all or any of the various parties referred to above are entitled to obtain leases for the mining of chrome ore (hereinafter referred to as MLs) and, if so, to what extent. In particular, we are concerned with an area consisting of five blocks referred to in para 8 of the W.P. to which reference will be made later. The controversy primarily turns round applications made in respect of these blocks by IMFA, FACOR, AIKAT and OCL. ORIND also lays claim to mining rights in respect of a portion of these blocks. It has filed a special leave petition which is separately numbered as S.L.P. No. 8574 of 1989 and is directed against an order dated 7.4.89 passed by the Orissa Government rejecting an application made by the company on 5th July, 1971. FACOR has also preferred S.L.P. No. 5163 of 1988 from an order of the High Court of Orissa dated 11.11.1987 dismissing a writ petition filed against an order of rejection by the S.G. of an application made by it on 18.7.1977 for grant of a ML which was confirmed by the C.G. As already mentioned, this Court 'disposed' of W.P. No. 14116/ 1984 by its order of 30.4.87. We shall have to con- sider this and several other orders passed by this Court in the course of the hearing more closely but a brief reference may be made here to the resultant effect thereof. When this Court found that there were a large number of applications for MLs over varying extents of land in the areas in ques- tion, this Court decided that the respective merits of the applications' could not be gone into by this Court but that they should be considered by a responsible officer of the C.G. Accordingly, by the orders above referred to, this Court referred the entire controversy to the Secretary to the Government of India in the Ministry of Mines (Shri B.K. Rao, "Rao", for short) for a detailed consideration of the claims of the various parties. When the

matter went to Rao, OMC and IDCOL also put forward claims that the public sector units in the State of Orissa were entitled to the grant of mining rights in the State to the exclusion of all private parties inasmuch as there was a reservation in their favour by an appropriate notification issued by the State Government. The other parties objected to the intervention of the OMC and IDCOL at, what they alleged was, a belated stage of the proceed- ings. However, on applications made by OMC and IDCOL, this Court directed that the claims of these two public sector undertakings would also be examined by Rao. Eventually Rao, after considering the claims of all parties, reduced his conclusions in the form of a report dated 1st February, 1988. in his report, Rao accepted the claim of reservation made on behalf of the OMC and the IDCOL. Nevertheless it appears that, bearing in mind certain interim orders passed by this Court in the various applications made to it during the pendency of the writ petitions, Rao came to the conclu- sion that only three of the parties other than the two public sector undertakings should be granted leases to the extent mentioned by him. Broadly speaking, Rao accepted partially the claims of IMFA, FACOR and AIKATH. He rejected the claims made by ORIND and OCL. He accepted the claim of the public sector undertakings but he recommended for them leases in respect of only the balance of the lands left, after fulfilling the claims of the others which he had accepted.

Applications have now been filed before us which, inter alia, seek directions on Rao's report. There has been a good deal of contest before us as to the precise legal character of the report submitted by Rao. One suggestion is that Rao was nothing more than a commissioner appointed by the Court to examine the claims of the various parties and to submit a detailed report thereon. It is submitted that this report having been received we should pass such orders thereon as we may consider appropriate. A second approach suggested is that the Rao report should be taken to be the decision of the Central Government, which it is now for the State Gov- ernment to implement, leaving it open to any aggrieved party to take such appropriate proceedings as may be available to them in law for successfully challenging the findings reached by Rao. A third line of argument which has been addressed before us, particularly by the State of Orissa, the OMC and the IDCOL, is that Dr. Rao's report suffers from a fundamental defect in that he has completely ignored the reservation made by the State Government in favour of the public sector. According to them, Rao was not right in suggesting the grant of leases to any of the other parties and should have simply left it to the State to exploit the mines in public sector, including inter alia, the OMC and IDCOL. A fourth stance taken up by the State Government may also be men- tioned here, The learned Advocate General for the State made a statement before us that, without prejudice to a conten- tion that the Rao report suffered from the fundamental defect referred to above, the State Government was prepared to abide by the findings of Rao provided this Court decides to accept the same in toto without any modifications. He clarified that this is not because they think the Rao report is' correct. On the other hand they have got several objec- tions to the validity and correctness of Dr. Rao's report. However, having regard to the interim orders passed by this Court and having regard to the fact that what Rao has done is virtually to implement various orders passed by this Court during the pendency of the writ petition, the State Government, without prejudice to its contentions in relation to the Rao report, is prepared to abide by it. However, the learned Advocate General said, the State Government wish to make it clear that if, for some reason, this Court does not accept the Rao Report in toto, then the State Government would like to put forward their contentions against the report of Dr. Rao. In that event the State Government should be given the liberty to attack Dr. Rao's report

and urge all contentions that are open to it in respect of the grant of mining leases relating to chrome ore in the State of Orissa. The above stance understandably, is not acceptable to OCL and ORIND or, indeed, even to OMC and IDCOL who have got nothing at the hands of Rao. IMFA and FACOR are substantial- ly satisfied with the report given by Dr. Rao (except for certain minor contentions which they are prepared to give up for the present, with liberty to make representations to the State Government) but they also wish to make it clear that, in case the Rao report is not to be accepted by this Court, they would also like to put forward all their contentions so that their case may not go by default. In that event, in particular, they would like to attack the reservation plea urged by the S.G., OMC and IDCOL both as belated as well as on merits. AIKATH's submission is that he is a small opera- tor who discovered the mines and that Rao's recommendation for the grant of a ML in his favour in respect of a small extent of land should not be disturbed by us. We have only broadly set out here the attitudes of the various parties to the Rao report and shall discuss their contentions later in detail. In the light of these various contentions, we have to determine the legal character of the Rao report and decide whether the findings of Rao are to be given effect to in toro or are to be modified and, if so, in what respects. Before dealing with these questions and even setting out the details of the claims of the various parties and the material they placed before Rao to substantiate their claims, it will be useful to survey the relevant statutory provisions relating to the grant of mineral concessions of the nature we are concerned with here. This we shall at once proceed to do. THE RELEVANT STATUTORY PROVISIONS

(a) Constitution: Article 297 of the Constitution of India unequivocally declares that 'all lands, minerals and other things of value underlying the ocean ..... shall vest in the Union and be held for the purposes of the Union'. Arti- cle 298 defines the extent of the executive power of the Union and of each State thus:

> "298. Power to carry on trade, etc.--The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose:
>
> Provided that--
>
> (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and
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> (b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

The Union and the States have both been vested with powers to legislate in respect of mining rights under the Seventh Schedule to the Constitution. The respective rights of the Union and the States in this regard are contained in the following entries in the said Schedule:

> List 1, Entry 54 Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in public interest.
>
> List H, Entry 23 Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and develop- ment under the control of the Union.

(b) Act: In exercise of the above powers, the Union legisla-

ture has enacted the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter referred to as 'the Act'). The Act has been substantially amended and several drastic changes introduced in 1986 with a view, inter alia, to prevent unscientific mining, remove bottle-necks and promote speedy development of mineral based industries. We are concerned only with the provisions relating to the grant of mining leases and we may proceed to consider the same. S. 2 of the Act contains the declaration referred to in Entry 54 referred to above. It reads:

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

With this declaration, the Act proceeds to circumscribe the extent to which the regulation of mining rights in the States should be subject to the control of the Union. We may now proceed to refer to the relevant provisions of the Act in relation to minerals like "chrome ore", which may be described, for convenience, as "major minerals". S. 4 of the Act provides as follows:-

> "No person shall undertake any prospecting or mining opera- tion in any area except under and in accordance with the terms and conditions of a prospecting licence or as the case may be, a mining lease granted under this Act and the rules made thereunder.
>
> (2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder."

Sections 10 and 11 outline the procedure for obtaining a prospecting licence (PL) or a mining lease (ML). They read thus:

> "10. Application for prospecting licences or mining leases:
>
> (1) An application for a prospecting licence or a mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government con-

cerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section 1 there shall be sent to applicant an acknowledgement of its form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the licence or lease."

11. Preferential right of certain person: (1)Where a pros- pecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining the mining lease in respect of the said land over any other per- son:

XXX XXX
XXX

(2) Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a prefer- ential right for the grant of the licence or lease as the case may be over an applicant whose application was received later:

> Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in subsection (3), may grant the 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, on experience in, 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) such other matters as may be prescribed. (4) 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 and with the previous approval of the Central Government. grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

We may next to refer to S. 17A which has been inserted in the Act by the 1986 amendment. It reads thus:

S. 17-A: Reservation of area for purposes of conservation

--(1) The Central Government, with a view to conserving any mineral and after consultation with the State Government may reserve any area not already held under any prospecting licence or mining lease and, where it proposes to do so, it shall, by notification in the Official Gazette. specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved. (2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government compa-

ny or corporation owned or controlled by it or by the Cen- tral Government and where it proposes to do so, it shall by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved.

(3) Where in exercise of the powers conferred by subsection (2) the State Government undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence or mining lease.

S. 19 of the Act declares that any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect. S. 30 confers revisional powers on the C.G. It reads:

"The Central Government may, of its own motion or on appli- cation made within the prescribed time by an aggrieved party, revise any order made by the State Government or other authority in exercise of the powers conferred on it by or under this Act."

These are the provisions of the Act relevant for our pur- poses.

(c) Rules: Turning now to the rules framed under the Act which also have a material bearing on the present issues, they are contained in Chapter IV of the Mineral Concessions Rules, 1960 which deals with the grant of mining leases in respect of land the minerals in which vest the Government. Rule 22 outlines the procedure in respect of applications for MLs. It requires the application to be made in a pre- scribed form and accompanied by a fee of Rs.500 and certain documents and particulars. Rules 24 and 26' prescribe the procedure for disposal of such applications. Sub-rules (1) and (3) of rule 24 are relevant for our present purposes and are extracted below:

"24. Disposal of application for mining lease:-(1) An appli- cation for the grant of a mining lease shall be disposed within twelve months from the date of its receipt.

XXX XXX

XXX

(3) If any application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been refused.

XXX XXX
XXX

Under rule 26, the S.G. may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

Rule 31 prescribes that where an order for grant of a lease is made, a lease deed has to be executed within a period of six months of the order or such further period as the S.G. may allow in this behalf. Failure to do this, if attributable to any default on the part of the appellant, could entail the revocation of the lease. The lease shall commence from the date of the lease deed.

We next turn to rule 54 which deals with applications for revision to the C.G. It reads, in so far as is relevant for our purposes:

"54. Application for revision:-(1) Any person aggrieved by any order made by the State Government or other authority in exercise of the powers conferred on it by the Act or these rules may, within three months of the date of communication of the order to him, apply to the Central Government in triplicate in Form N, for revision of the order. The appli- cation should be accompanied by a treasury receipt showing that a fee or' Rs.500 has been paid into a Government treas- ury or in any branch of the State Bank of India doing the treasury business to the credit of Central Government under the head of account '128-Mines and Minerals-Mines Depart- ment-Minerals Concession Fees and Royalty':

Provided that any such application may be entertained after the said period of three months, if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

xxx xxx
xxx

(4) On receipt of the application and the copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (2), speci-

fying a date on or before' which he may make his representa- tions, if any, against the revision application. Explanation:-For the purposes of this rule, where a State Government has failed to dispose of an application for the grant of renewal of a prospecting licence or a mining lease within

the period specified in respect thereof in these rules, the State Government shall be deemed to have made an order refusing the grant or renewal of such licence or lease on the date on which such period expires.

Rule 55 provides that the C.G., after getting the comments of the S.G. and other parties on the application and after giving each of them an opportunity to put forward their comments on the stand taken by the others, "may confirm, modify or set aside the order (of the S.G.) or pass such other order in relation thereto" as it "may deem just and proper". Three more rules need to be set out which deal with the topic of reservation. Rules 58, 59 and 60, before 1980, were in the following terms:

> "58. Availability of areas for regrant to be notified--(1) No area which was previously held or which is being held under prospecting licence or a mining lease so the case may be or in respect of which the order granting licence or lease has been revoked under sub-rule (1) of the rule 15 or sub-rule (1) of rule 31, shall be available for grant un- less-
>
> (a) an entry to the effect is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and
>
> (b) the date from which the area shall be available for grant is notified in the Official Gazette at least thirty days in advance.
>
> (2) The Central Government may, for reasons to be recorded in writing, relax the provision of sub-rule (1) in any special case.

59. Availability of certain areas for grant to be notified--In the case of any land which is otherwise avail- able for the grant of a prospecting licencor a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government, shall, as soon as such land becomes again avail- able for the grant of prospecting licence or mining lease, grant the licence or lease after following the procedure laid down in rule 58.

60. Premature applications--Applications for the grant of a prospecting licence or a mining lease in respect of the areas in which--

(a) no notification has been issued under rule58 or rule59; or

(b) if any such notification has been issued the period specified in the notification has not expired. Shall be deemed to be premature and shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded."

G.S.R. 146 dated 16th January, 1980 substantially amended these rules. After this amendment, Rule 58 reads:

> "58. Reservation of areas for exploitation in the public sector, etc.: The State Government may, by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government company within the meaning of Section 6 17 of the Companies Act, 1956 (1 of 1956)".

Rule 59 is relevant only in part. It reads:

> "59. Availability of area for regrant to be notified: (1) No area--
>
> XXX XXX
> XXX
>
> (e) which has been [reserved by the State Government] Sub-

stituted for the words "reserved by the Government" by G.S.R. 86(E) w.e.f. 10.2.87 under Rule 58, [or u/s 17A) These words were inserted by G.S.R. 146(E) dated 16.1.80 w.e.f. 2.2.80 shall be available for grant unless--

(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of Rule 21 or sub-rule (2) of Rule 40 as the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

> XXX XXX
> XXX

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case.

Rule 60 deals with "premature applications". It reads:

> 60. Premature applications: Applications for the grant of a prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under Rule 59 shall if,-
>
> (a) no notification has been issued under that rule: or
>
> (b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained, and the application fee thereon, if any paid, shall be refunded.

The above are the relevant rules governing application for, and grant of, leases, revision petitions and reservation of areas in the light of which the issues in the present case have to be considered. We shall now proceed to give the details of the various applications for MLs preferred by the parties before us.

ML APPLICATIONS OF THE PARTIES Though it was the IMFA which came to this Court with a writ petition, there were a number of other applications for grant of MLs pending before the State Government. The broad details of these applications are set out below:

1. IMFA

(a) Previous Histor),: IMFA made five applications for grant of mining lease in respect of five blocks of land as per the following details (which are hereinafter referred to as items 1 to 5 respectively):

Area No.	Date of Applica- tion	Area applied for	Village & District
1.	1.7.1981	634.359 hects.	Ghotarangia and other villages 8.7.1981 (Dhankanal Distt.)
2.	23.6.1981	142.000 hects.	Ostapal Village, SukhindaTehsil (Cuttack Distt.)
3.	6.7.1981	108.860 hects.	Kamarada and padar villages (Cuttack Distt.)
4.	9.9.1981	37.008 hects.	Ostapal and Gurjang villages, Sukhinda 10.9.1981 Tehsil (Cuttack Distt.)
5.	24.11. 1981	147.693 hects.	Ostapal and Gurjang villages, Sukhinda Tehsil (Cuttack Distt.) The S.G. did not dispose of these applications within the prescribed period of twelve months. They were, there-

fore, deemed to have been rejected under rule 24(3). IMFA applied to the C.G. for the revision of these deemed rejec- tion orders of the S.G. The C.G. set aside the deemed rejec- tion orders and directed the S.G. to dispose of the matter on merits within a period of 200 days. However, the S.G. did not take any action on the applications of the IMFA within the period of 200 days. IMFA made a representation to the Central Government but the Central Government gave no relief on the ground that it had become functus officio and had no jurisdiction to issue further directions to the State Gov- ernment. Thereupon IMFA filed Writ Petition No.14116 of 1984 in this Court. IMFA alleged, that while its applications were kept pending, the S.G. had granted leases in favour of FACOR and thus discriminated against IMFA. It prayed for the issue of a writ of mandamus to the S.G. to grant leases to IMFA also.

(b) Subsequent developments: This Court, on 27.9.84 passed an order (extracted later) directing the S.G. to consider IMFA's applications by 23.10.84 and restraining it from granting MLS to any one

else in the meanwhile. FACOR moved for a recall of this order. The Court passed an inter- im order on 18.10.84 holding over the implementation of the earlier order in regard to grant of lease to IMFA and call- ing for the records. However, it appears, on 21.11.84, the S.G. had agreed to grant a ML in favour of AIKATH in respect of 140 acres out of 147.69 hectares covered by item No. 5 above. On 26.12.84, the S.G. filed a counter affidavit pointing out: (a) that there was a reservation of the areas for the public sector and (b) that except item 1, the areas covered by the other applications overlapped areas covered by earlier applications of OMC IDCOL and others. Nevertheless, it was stated, on due consideration in the light of the observations of this Court, the S.G. had tenta- tively decided to grant a ML to IMFA in respect of 634.359 hectares in item 1. On 27.11.84, IMFA stated that it was not interested in item 1 which, according to it contained only low grade ore and was not commercially viable unless IMFA was given, at the same time, areas bearing high quality ore which could be blended with the low grade ore. It stated that it was willing to accept M.L. in respect of items 2, 3 and either item 4 or half of item 5. On 2.1.85. the S.G. passed formal orders rejecting IMFA's application in respect of items 2 to 5 of the list. This was on the ground, so far as item 2 was concerned, that the area fell within the reserved areas, that there were prior applications of OMC & FACOR in respect of the areas and that the S.G. had already agreed to lease out item 1 to IMFA. On 15.2.85, the S.G. informed IMFA that, on reconsideration it had recommended grant of MLs to it in respect of 139.37 hectares (out of 142 hectares of item 2) and the entire area of item 3. On 18.2.85, the S.G. submitted in court that it had already agreed to grant 140 acres in item 5 to AIKATH and the rest to FACOR as per compromises in the writ proceedings pending in the Orissa High Court. The compromise with AIKATH had been placed before. and accepted by the Orissa High Court on 4.12.84 but the final terms and conditions were proposed on 18.2.85 and, accepted on 19.2.85. In respect of FACOR also, the compromise agreeing to lease to it 596 acres (out of which 180 acres were covered by item 5 of IMFA's applica- tion) had been filed in the Orissa High Court only on 18.2.85. The validity of these allotments was challenged by IMFA before this Court. Without going into the merits or' this controversy, this Court on 28.2.85. passed an order directing the S.G. to grant a lease to IMFA in respect of item 3 in full and 26.62 hectares in item 4. (This order was objected to by FACOR and on 8.5.85 the Court passed an order directing the grant of a lease to FACOR over 180 acres in item 5). IMFA says that it has not been given physical possession of the areas granted to it except to an extent of a small area of 2 hectares. The net result is that out of the five items applied for by IMFA: (i) item 1 has been given but surrendered, (ii) the S.G. is agreeable to give 139.37 acres out of 142 acres of item 2; (iii) this Court has directed the grant to IMFA of item 3; (iv) in item 4, this Court has directed the grant to IMFA of 26.62 out of 37.008 hectares of item 4: and (v) In item 5, the S.G. has agreed to lease our 140 acres to AIKATH and 180 acres to FACOR.

2. FACOR

(a)Earlier History: FACOR'S applications for mining leases for chrome ore were made on various dates between 1974 and 1978. Relevant particulars in respect of the said applications are set out in the following table:

Sl. Village Extent Date of Date of final Particulars No. appli- final order of of of the pro-

cation disposal of ceedings in revision app- High Court

1. Ostapal 142,000 8.7.74 29/76-12.3.76 OJC 67 of 79 Distt. hects. 315/78- 3.7.78 12.1.79 Cuttack or 359 acres

2. Chingudi- 749.32 8.7.74 21/76-21.4.76 OJC 66 of 79 pal Distt. hects. 278/78-30.5.78 12.1.79

3. Samole 248.447 6.8.74 182/77-29.8.77 OJC 72 of 79 Distt. hects. 15.1.79 Dhankanal (618 acres)

4. Bangur 40.47 22.6.77 432/78-17.8.78 OJC 1309 of Distt. hects. 80 21.1.80 Keonjhar (100 acres)

5. Ostapal & 312.42 7.6.78 528/79-21.9.79 OJC 2036 of Gurjang hects. 579/80-26.9.80 31.8.81 Distt.

Cuttack

6. Kamarda 108 6.10.78 17/80- 1.1.80 OJC 1028 of Distt. hects. 513/82-29.10.82 11.5.83 All the six applications made by FACOR were rejected by the S.G. Against the revision orders of the C.G. affirming the orders of the S.G.. FACOR filed writ petitions in the High Court of Orissa and these writ petitions are pending dispos-

al there [except the one re: item 4 which was dismissed by the High Court on 11.11.87 and is the subject matter of S.L.P. (C) 5163 of 1988 before us. In this sense, the appli- cations of FACOR were alive and awaiting disposal when IMFA filed W. P. 14 116 of 1984 in this Court.

(b) Subsequent developments: As we shall mention later. FACOR had obtained leases over 486 acres at Barua in Keonjhar district and 280 acres at Kathpal over Dhankanal district in 1971-72. The above applications were rejected and the writ petitions filed against the rejections were pending in the Orissa High Court when the writ petition was filed. It has been stated that the S.G. had entered into a compromise with FACOR on 18.2.85 agreeing to grant a mining lease in its favour in respect of 596 acres out of 772 acres applied under item no. 5 above on condition that FACOR gave up its claim in respect of the balance of the area of 702 acres as well as the claim made in the other five applications. It may be added that on 18.5.85 this Court passed an interim order directing that FACOR be given a lease in respect of 180 acres out of the 596 acres covered by the compromise dated 18.2.85. A lease was accordingly executed by the S.G. in favour of FACOR on 16.8.85 after obtaining the approval of the C.G. to the lease under s. 5(2) of the Act (before its amendment in 1986) as well as to the relaxa- tion under rule 59(1) of the Rules. The net result, there- fore. is that, though FACOR made six applications, it had agreed to give up all of them in lieu of a ML for 596 acres out of item 5 out of which a lease in respect of 180 acres has already been obtained and is being exploited by FACOR.

3. MANTOSH AIKATH

(a) Previous History: This gentleman had obtained a lease from the Raja Sri Pitamber Bhupati Harichandan Mohapa- tra, the proprietor of Sukhinda Estate on 17.10.52 (regis- tered on 28.10.52) for a period of 20 years in respect of 640 acres situated in village Gurjang in Cuttack District. On 12.1.53 the State Government (in whom the estate of the former Zamindar had come to vest w.e.f. 27.11.52 under the Orissa Estates Abolition Act) issued a notice terminating the lease. Mr. AIKATH made representations against the termination. It is said that, ultimately, a compromise was reached between him and the S.G. whereunder it was agreed that a lease in respect of half of the area covered by the original lease deed on the southern side could be retained by him. Thereupon, it is said, he filed a formal application on 25.5.54 for a mining lease in respect of 320 acres. But this was rejected on the ground that the S.G. preferred to exploit the area in public sector. A revision petition to the C.G. was rejected on 9.2.72. Mr. AIKATH filed a writ petition in the High Court of Orissa impleading the C.G. and the S.G. as parties. The Orissa High Court on 18.4.1984 set aside the order of the C.G. and directed the C.G. to dispose of Mr. AIKATH'S application afresh. The C.G., in turn, set aside the order of the S.G. on 3.8.78 and directed the S.G. to decide the application of the party afresh, after taking into account the plea of the party that the area could not be reserved for exploitation in the public sector. However, no orders were passed by the S.G. The petitioner, therefore. again filed a revision application before the C.G. which passed orders on 12.12.79 directing the State Government to pass a speaking order and dispose of the application on merits. The S.G. by an order dated 17.1.80, rejected the application. Mr. AIKATH filed a writ petition in the High Court and this was pending when W.P. 14116/84 was filed here by IMFA.

(b) Subsequent Development: On 21.11.84, AIKATH and 'the S.G. entered into a compromise under which the former was to be granted a lease in respect of 140 acres situated on the eastern side of the 320 acres referred to earlier. This compromise was accepted by the High Court of Orissa on 4.12.84. Thereafter the S.G. offered a lease of 140 acres on certain terms and conditions and these were accepted by AIKATH on 19.2.85. This was reported by the S.G. to this Court but no orders were passed by this Court, and no ML has been executed, in favour of AIKATH. It may be mentioned that one of the areas applied for by IMFA on 24.11.81 covered the area which. according to AIKATH, had been in his possession all along.

4. ORISSA INDUSTRIES LIMITED (ORIND)

(a) Previous History.' ORIND made an application for mining lease on 5.7.71. It applied for mining leases over an area of 1129.25 hectares in the villages of Telangi, Patna. Ostapal, and Gurjang in District Cuttack. This application was rejected by the S.G. on 23.10.73 on the ground that the area was reserved for exploitation in the public sector. It is stated that subsequently on a representation made by ORIND on 15.12.73, the S.G. recommended to the C.G. that a lease in favour of ORIND may be granted in respect of 749.82 out of 1129.25 hectares applied for. However. this recommen- dation was withdrawn (as will be discussed later). The C.G., by an order dated 23.2.77, directed the S.G. to pass a speaking order on the application but the S.G. did not comply with this direction. The company, therefore, filed writ petition. O.J.C. 1585/198 1 in the High Court of Oris- sa. This writ petition was pending when W.P. 14116/84 was filed here.

It may be here mentioned that one of the contentions of ORIND before us is that it had also applied on 5.7.71 lot a lease of mining rights in respect of 446.38 hectares in village Sukrangi in Distt. Cuttack. That had been rejected but a revision petition had been filed before the C.G. against the said rejection. The S.G.. it is said. while Lending its comments on 26.2.74 to the C.G. on the ORIND's revision petition. had reiterated that their revision petition may be rejected as S.G. had already decided to grant ORIND a lease of 749.82 out of the area of 1129.25 hectares applied for by it.

(b) Subsequent developments: It is stated that the S.G. has subsequently withdrawn its recommendations for the area of hectares. The S.G. rejected ORIND's application for 1129.25 hectares by an order dated 7.4.89. The contents of the order are discussed later It concludes:

> In view of the above facts and pendency of Writ Petition No. 14116 of 1984 before the Hon'ble Supreme Court of India. it is not possible for the S.G. at this stage to pass any order on the mining lease application dated 5.7. 1971 of ORIND and. accordingly the said application is disposed of. ORIND has preferred S.L.P. No. 8574/89 from this order of the S.G. So far as the other application of ORIND is con- cerned. no information has been given to us as to what orders. if any. the C.G. has passed on ORIND'S revision or as to what steps the applicant has taken subsequently.

5. ORISSA CEMENT LIMITED (OCL)

(a) Previous History:

> The company's grievance is that it has been filing applications for mining rights in respect of chrome ore right from the year 1961 but none of the applications have been considered by the State Government on the plea that the areas applied for had been reserved for exploitation in the public sector. Further applications were made by OCL in respect of following areas:-
>
> SI. Date Area Date of Orders Orders Remarks No. of and Revis- passed passed Appeal Village sion of by the by the appli- State Central cation, Govt. Govt., if any. if any.
>
> 1. 2. 3. 4. 5. 6. 7.
>
> 1. 11.5.70 354,505 3.5.71 5.2.71 3.6.72 This area Hectare, The area was free, Gurjang is reser- previously & Telan- ved by held by gi, P.S. the State Aikath for Sukinda Govt. for 320 Acrs.
>
> Distt. exploita- The State
> Cuttack tion in Govt. has
> public now gran-
> sector. ted i.e.
> in the year
> 1985 as per
> compromise

				petition filed be- fore High Court Ori- ssa. M/s. Aikath-140 Acs. Factor -180 Acs. Same application filed again	
	2. 8.5.74	354,505 Acres Boula & Soso Distt. Keonjher	Deemed 23,277 Hectares Rejec- tion application on 7.6.78 was much after our application they were granted S.G.vide No.6844 dated 24.5.85	Rejected Although M/s.Facor's Gurjang Ostapal was Distt. Cuttack M/L by In fairness S/G should have given us this area.	
	3. 15.5.70	226.22 Acres	1.5.72 same plea, reser- ved for state exploita- tion	10.2.71 Although the Central Govt. passed orders as un- der in 1971-72 over an area of 187.03 hects. against strong opposi- tion by State Govt.: "Whereas the Central Govt. in exercise of the powers conferred by Rule 58(2) of the N.C. Rules 1960 relaxed the provision of rule 58(1)	1.6.72 Ferro Alloys Corpo- ration have no unit in Orissa but have a manufacturing unitin Andhra

As per decision taken by them earlier, 50% of the area should be released to us keeping in view the principles of natural justice, as recommended by State Govt. vide in their letter No17410 dated 26.2.74, to centre for 142 Acrs. to Orissa Cement.

						as a special case for the reason that the appli- cants having establis hed a big fac- tory for manu- facturing Fer- ro Chrome ore, provision has to be made for procurement of raw materials for the proper running of the factory". Based on the said decision a fresh revi- sion petition was filed on 6.4.73 but the C.G. it rejec- ted on30.11.74 although the S.G.recommen- ded: vide letter No.17410-NG dated26.2.1974 for approval for grant of 142 Acrs. to O.C.L.
Same application filed again							
4.	10.4.74	226.22 Hectares Boula	No Orders were	6.6.75	29.8.75 The Central Govt. set		Please see re- marks in Sl(3) 142 Ac. could

Keonjhar passed aside the have been gra-

as re- the deemed nted. This quired rejection application by sta- and reman- was filed pur-

	tute.	ded the matter back to the S.G. for consi- deration.	suant to the Notification issued by the S.G. throwing open for re- grant

					Govt. on 25.9.1975 rejected the appln. on the plea that the area over-laps other lease area. Our earlier appln. dt. 15.3.70 was rejec-ted but was granted to some other party i.e. FerroAlloys Corporation for a redu-ced area.	dated 5.3.74. The State Govt latter changed their decision for working in public sector, contrary to the decision pronounced by Supreme Court as referred to in AIR. 1976 Delhi. Keeping in view principle of justice, 50% of this area should be released to Orissa Cement.
5.	11.5.70	388.498	22.10.70	23.10.70	7.4.72	C.G. rejected the applica-	
					Shrhranqi & Tailangi, P.S. Sukinda. District Cuttack.	tion as above on the plea they did not like to interfere with the decision taken by the S.G. for keep-ing the area reserved for exploitation in public sector.	
					Same application filed again		
6.	8.5.74	388.498 Hectares rej- ection	Deemed delay was explained	23.2.77 was of & 100 Ac. Distt.	3.6.77 The M/s Sirajudin was rej- ected becau- se of delay	holding Sukrangi under Tailangi M.L. for 20 years from cuttack. which expired in 1975.	

Renewal has been refused, Sirajudin being a trader (However M/s Sirajudin & Co., has gone in writ to Orissa High Court, which is still pen-

ding) OMC has been granted lease over 382.709 Hects.

7.	8.5.74	7 Sq. miles	Deemed granted to us	6.6.75	8.6.76 The deemed but M/s.OMS is	This could rejec- tion working which	Central Govt.have been Kala- ran- gista & Ka-

reman- can be taken liapani ded to S.G. out from them Distt. The S.G. to grant the Cuttack. rejected our property to us appln. but OMC was just granted a permitted to free area work on ad hoc of 3 sq.km. basis.

to OMC, who are holding a lease from more than 70 sq Kms. approx.

and hardly sq. Kms. in different ML areas granted to M/s. OMC.

8. 23.10.82 20.072 Dee- 14.11.83 The C.G. set hec- med aside the tares re- order of area jec-

tion Bangura deemed rejec-

				etc.	tion on
				Distt.	23.12.83. No
				Keonjhar	final order
					has been
					passed by the
					S.G.

9. 23.10.82 549,1098 Dee- 14.11.83 29.12.83 as This has Hectares med above been gran-

				Kalia-	rej-
				pani &	ec-
				Gurjang	tion
				etc.	

ted to M/s. OMC.

10. 23.10.82 365.467 Dee- 14.11.82 19.12.83 This area Hecta- med as above pertains res re- to Sl.1&2 Ostopal jec- therefore & Gur- tion the jang, remarks etc. stated Distt. therein Cuttack. stand.

11. 23.10.82 16.087 Dee- 14.11.83 19.12.83 As The S.G. Hecta- med above. rejected res rej- it on Bangu- ec- 27-6-1985 ra, tion. on the P.S. ground Soso that the Distt. area over-

				Keonjhar	laps in
					full with
					the area
					previously
					held by
					Sirajudin
					& Co. Re-
					newal was
					refused by
					StateGovt.
12.	21.1.83	29.477	Deemed	28.3.84	Against
		Hectares	rejec-	The C.G.	this rejec
		of 72.64	tion	remanded	tion we
		Acs.		the mat-	filed re-
		Sajana-		ter back	vision on
		Sgarh P.	.9t85	2	
					before C.G

	Nilgiri Distt. Balascre.	S.G. No orders have been passed.	Therefore it is free. It should be granted to us On similar grounds the S.G. has granted.
13. 28.6.85	558.74 acres or 226.14 hectares- Asurbandha Distt. kanal		No orders passed by S.G. des- pite C.G.'s orders on revision
14. 27.1.86	356.70 hectares in Namla- bhanga in Karma- khya nagar Distt. Dhankanal		No orders passed by S.G. Revi- sion peti- tion filed before C.G. on 18.3.87

The previous history as well as the latter developments are indicated in the above columns. It will be seen, there from that the first seven and the eleventh applications of OCL were duly disposed of before the present litigation started and the party's grievance is that, in respect of some of them, leases have been granted to others like IMFA, FACOR, AIKATH & OMC. The others are pending before the S.G. after a remand by the C.G. or, in revision, before the C.G. The thirteenth and fourteenth applications are pending before the S.G. and C.G. respectively.

6. ORISSA MINING CORPORATION LIMITED (OMC) OMC is a State Government undertaking. It submitted an application for an area of 725.21 hectares in village Chin- gripal on 30.6.82.

Though this area was within the area of 1460 sq. kms. re- served for exploitation of chromium ore in public sector as per the State Government notification dated 3.8.77, its application remained un-disposed of and was deemed to be rejected on the expiry of the statutory period of one year. The C.G., by an order dated 10.10.83, on a revision filed by OMC, directed the S.G. to dispose of the application within 200 days. The S.G., however, did not grant OMC any lease but, instead, granted ML to IMFA on 14.3.85 in respect of 26.62 hectares which was well within the area applied for by OMC. OMC has also made an application for mining rights regarding 108.86 hectares in Kamrarda--Balipada villages and 220.15 hectares in Gurjang village which has not been grant- ed. In the result, the OMC has not been granted by mining lease despite its claim that the area in question has been reserved for exploitation in public sector though IMFA has been given ML in respect of 26.62 acres out of the area covered by these applications. However. from the details given earlier pertaining to OCL, it will be seen that OMC has been permitted to exploit about 382.709 Hectares in one area on an ad hoc basis and has leases over about 70 sq. Kms. and 3 sq. Kms. in other areas.

7. INDUSTRIAL DEVELOPMENT CORPORATION OF ORISSA LIMITED (IDCOL) This company submitted two applications on 11.1.83 before the S.G. for grant of mining leases for chromium ore over an area of 740.67 hectares in village Patna-Chingiripal and 171.73 hectares in village Gurjang. The applications were not disposed of by the S.G. within the specified time. The C.G. set aside the deemed refusal and directed the application to be disposed of but no decision has been taken by the S.G., apparently on the ground that the entire dis- pute regarding grant of mining rights for chromium ore is pending in this Court in W.P. 14116/84.

ORDERS PASSED BY THIS COURT It is now necessary to refer to the various interim orders passed by this Court in this matter because some of the parties have made a grievance that, though their claims for leases were pending at various levels, IMFA and FACOR have been able to obtain from this Court orders directing the grant of leases to them and that this procedure was wholly unjustified. To start with, it must be mentioned, the C.G., the S.G. and certain officers of the C.G. and S.G. were impleaded as respondents 1 to 6 in the Writ Petition with FACOR as the 7th respon-

dent. In the writ petition IMFA referred to its applications in respect of five blocks of land detailed in para 8 of the writ petition and alleged that, while the petitioner's application for a lease in respect of the five blocks re- ferred to earlier remained pending for more than a year for consideration in pursuance of the C.G. 's directions for its disposal, the S.G. had granted mining leases for chrome ore in favour of FACOR which, according to the petitioner, was similarly placed. In view of this allegation, this Court passed a detailed and stiff interim order on 27.9.84 in the following words after hearing the counsel for the petition- ers and the standing counsel to the S.G.:

> "Mr. R.K. Mehta, learned counsel appears on behalf of Respondents Nos. 4 to 6 pursuant to the notice served upon him as Standing Counsel for those respondents, and he asks for time in order to enable him to obtain instructions from those respondents and to file a counter affidavit for these respondents. We would, therefore, adjourn the Writ Petition to 30.10.84. But in the meanwhile we would direct respondents Nos. 4 to 6 not to grant to anyone else other than the petitioners mining lease for chromite ore in re- spect of the areas applied for by the petitioners and form- ing the subject matter of applications made by them as set out in paragraph 8 of the Writ Petition. Since the project which is being set up by the petitioners is a very important export-oriented project for which the necessary permission has already been granted by the Govt. of India and the Consortium of Foreign Banks has already agreed to finance the Project and it is a project which will earn considerable foreign exchange for the country and provide employment to a large number of workmen, we would direct the 4th respondent to consider and decide the application of the petitioners set out in paragraph 8 of the Writ Petition on or before 23. 10.84 after giving an opportunity to the petitioners of being heard in the matter. We have no doubt that the 4th respondent will keep in view the nature and importance of the project and its foreign exchange earning capacity, as also its potential for providing job employment to a large number of workmen in the State of Orissa while considering and deciding the applications of the petitioners. The 4th respondent will also take into account the fact that similar mining leases have been

given to the 7th respondent and prima facie there does not appear to be any reason for denying the same facility to the petitioners, for otherwise the action of the 4th respondent may be liable to be condemned as discriminatory and arbitrary and moreover the 4th respondent cannot over-look the fact that if mining lease as applied for are not granted, the petitioners will have to import chromite and that will be a drain on the foreign exchange resources of the country. There are matters where national interest alone must count. It is indeed surprising that though the Central Govt. directed the 4th respondent to dispose of the application of the petitioners more than a year ago, the 4th respondent has not yet chosen to dispose of the applications. We would direct the 4th respondent to carry out the direction given by us and dis- pose of the applications of I.the.,petitioners in the light of the observations contained in this order on or before 23.10.84. The decision taken by the State Govt. on the application shall contain the reasons and will be communi- cated to the petitioners and also placed before this Court along with the Counter affidavit. The previous order made by us in regard to the production of files will stand and the files shall be produced at the next hearing of the Writ Petition.

The Writ Petition stands adjourned to 30/10/84. On coming to know of this order, FACOR had the matter men- tioned and, after hearing the arguments of its counsel, the Court passed an order on 18.10.84, the material portion of which reads as under:

"On the application of Mr. Kapil Sibbal, learned counsel appearing on behalf of the 7th respondent, we direct that no decision shall be taken on the applications of the petitioner until 30.10.84 unless a decision has already been taken. In the event the decision has already been taken it shall not be implemented until then. The files relating to the applications of the petitioner and the 7th respondent for mining leases in respect of chromite ore shall be sent to the Registry of this Court forthwith in a sealed cover along with a responsible officer of the State Government so as to reach the Registry of this Court by 2 p.m. on Satur- day, 20th October, 1984."

A little later, Mr. Aikath was impleaded as respondent no. 8 and, pending the filing of a counter affidavit by him, the Court passed the following order on 28.2. 1985:

" ..... We would direct the State Government to give to the petitioners within 15 days from today the leases in respect of the areas of item No. 3 and 26.62 hectares area out of item no. 4 set out in para 8 of the writ petition ..... so far as the remaining controversy is concerned, we shall dispose it of on 2.4.85 after hearing the parties."

The State Government will make an application to the Union of India within 5 days from today for the approval of the leases and the Union of India shall grant approval to them within 10 days".

By the next date of hearing viz. 8/5/85, ORIND entered into the fray and was ordered to be made respondent no. 9 in the writ petition. Pending further affidavits by the parties, the Court gave another direction in the following terms:

> " ..... the State Government will give to respondent no. 7 within 3 weeks from today lease in respect of 180 acres in item no. 5set out in paragraph 8 of the writ peti- tion excluding the area which the State Government propose to give to respondent no. 8. This order... is without preju- dice to the rights and contentions of the parties ..... The State will make an application to the Union of India within a week from today for the approval of the lease and the Union of India will grant its approval within a period of 2 weeks from that date".

Then comes the order dated 30.4.87 by which the writ peti- tion was disposed of. It needs to be set out in full:

> "After hearing counsel appearing for the parties we consider that the proper order to be passed is to direct the parties who have applied for grant of mining leases to file representations before the Secretary Ministry of Mines and Steel, Department of Mines, Government of India within ten days from today setting out their claims in respect of the areas covered by their respective applications. We direct that the Secretary; Department of Mines shall consider the claims of the various parties in respect of the areas cov- ered by their application in the light of the observations contained in the orders already passed by the Court; namely; the Order dated 27th September, 1984 and 8th May 1985 after duly taking into consideration the re- quirements of the manufacturing industries concerned and decide about the question of grant of mining leases after giving an opportunity of being heard to the parties con- cerned. Final orders in the matters should be passed by the Secretary within a period of six weeks from today. It is made clear that the memoranda of compromise said to have been filed in the High.Court of Orissa will be treated as not binding either on the parties or on the State Government and the whole question will be treated as being fully open for fresh consideration and determination by the Secretary Department of Mines, Government of India. The status quo as obtaining at present with regard to the carting out of the mining operations over the areas will continue until the representations are disposed of by the Secretary pursuant to this order within six weeks from today. As already indicated the entire matter will be fully open for consideration by the Secretary and the orders passed by this Court should not be treated as final in regard to the allocation of the areas to the different claimants. The fact that certain writ petitions are pending before the High Court of Orissa will not in any way hamper the effective carrying out of this order. It is needless to add that the disposal of the matter by the Secretary should be by a reasoned order. The writ petition is disposed of on the above terms."

Sometime later, IMFA moved an application for clarification of the Court's order dated 30.4.87. On this the following order was passed on 6.10. 1987:

> "There are several claimants for the grant of mining leases in different parts of Orissa. This question has come up from time to time before this Court. The first relevant order was the one dated the 28th February, 1985. Therein a bench consisting

of P.N. Bhagwati, J. (as he then was) and V. Balakrishna Eradi, J. directed the State Govern-

ment to give to the petitioners M/S Indian Metal & Ferro Alloys Ltd. within 15 days from today the leases in respect of the full areas of Item No. 3 and 26.62 hectares area out or' Item No. 4 as set out in paragraph 8 of the Writ Peti- tion. This Court further directed so far as the remaining controversy was concerned that the same shall be disposed of later on by giving certain other consequential directions as the petitioners might seek which it is not necessary to refer' here. It was directed that the State Government was to make an application to the Union of India within 5 days from the date of the order for the approval of the leases by the Union of India and which should grant approval within ten days therefrom.

Thereafter it appears that on 8.5.85 another order was passed by the same bench of this Court wherein it was di- rected that the Orissa Industries Ltd. should be joined as respondent No. 9 in the Writ Petition and respondent No. 9 would file counter affidavit and directions were also given for filing rejoinder, if any. It was directed that "pending hearing and final disposal of the writ petition the State Government would give to the respondent No. 7 within three weeks from today, lease in respect of 180 acres in Item No. 5, set out in paragraph 8 of the writ petition the State excluding the area which the State Government proposed to give to respondent No. 8." It was stated that this order was made without prejudice to the rights and contentions of the parties directions were given for hearing of the writ peti- tions.

Finally the order with which we are directly concerned with is the order dated the 30th April, 1987 which was passed by a bench consisting of Hon'ble V. Balakrishna Eradi, J. and one of us G.L. Oza, J. The said order is set out in paragraph 2 of the C.M.P. Nos. 16435-37/87. It is not necessary to set out in detail the order. It may be noted that the Court directed that the proper order to be passed was to direct the parties who had applied for grant of mining |eases to file representations before the Secretary, Ministry of Mines and Steel, Department of Mines; Government of India within ten days from that date setting out their claims in respect of the areas covered by their respective applications. This Court directed the Secretary Department of Mines to consider the claim of the various parties in respect of the areas covered by their applications in the light of the observations contained in the orders already passed by this Court, namely, the orders dated the 22nd September, 1984 and the 8th May, 1985 after duly taking into consideration the requirements of the manufacturing Indus- tries concer-

ned and decide about the question of grant of Mining Leases after giving an opportunity of being heard to the parties concerned. Thereafter, the present applications have been made by different claimants seeking for directions for being added for consideration by the Secretary subject to their existing rights under the existing leases and grant of future leases. Mr. Kapil Sibbal, counsel appearing for the respondent No. 7 and Dr. Gauri Shankar counsel appearing for the applicant submitted that there are existing leases in their favour which cannot be entertained (sic) by any order passed by the Secretary and they are entitled to work out their full rights. On the other hand the Orissa Mining Corporation as well as Industrial Development Corporation Orissa are also claiming for grant of Mining leases includ- ing respondent No. 8 who is alleged to have found out

the mines. In our opinion the proper order would be to pass order in terms of the order passed by this Court on 30.4.87. The claims of the.different claimants including Mr. Sibal's clients as well as Dr. Gauri Shankar's should be considered in accordance with law by the Secretary in making his con- siderations. The Secretary should bear in mind the previous orders made in their favour and the previous leases and the rights, if any, granted therefrom and their consequences. Similarly the public benefit and public interest involved and proper exploitation of the mines should be borne in mind. Bearing these facts it is directed that the Secretary should arrive at a just, equitable and objective decision and send a report to this Court within three months on receipt of the copy of the order within a fortnight from today. The Secretary should only consider the applications of those who had existing leases applications at the time when the order of 30.4.87 was made and not of those who had no existing leases applications on 30.4.87. The copy of the report to be made shall be supplied to the parties." It is in pursuance of this order Rao has heard the parties and submitted the report which has now been placed before us for further directions.

OTHER PENDING APPLICATIONS It is necessary, to clear the ground, to refer to a number of applications made by the various parties subse- quent to the order of this Court dated 30.5.87:

> (i) By C.M.P. No. 13347/87, FACOR pointed out that a lease in respect of 180 acres (being part of item 5) had been granted to it by the S.G. on 13.8.85 in pursuance of this Court's order dated 8/5/85. It claimed that it had made substantial investments, engaged a huge labour force and started mining in this area. It was disturbed by the fact that OMC and IDCOL had suddenly entered into the picture and claimed before Rao that they were entitled to leases on the basis of reservations. According to the applicant, only the parties to the writ petition could be heard by Rao and OMC and IDCOL should not be permitted to join the proceedings before Rao and allowed to disturb the leases directed to the given to it and IMFA by the orders dated 28.2.85 and 8.5.85.

A second point taken in the application was this:

> "13. That it is submitted that the order dated 30.4.87 does not make it clear as to under what statutory authority the Secretary to the,Government of India shall dispose of the representations made by the various parties to the writ petition. This matter requires to be clarified by this Hon'ble Court".

This application was opposed by the OMC and the IDCOL. The Court, by its order dated 6.10.87, rejected the first re- quest and allowed OMC and IDCOL to participate in the pro- ceedings before Rao; it was directed that the claims of all parties whose applications for lease were subsisting on 30.4.87 should be heard by Rao. It was, however, clarified that in arriving at his conclusions, the Secretary should bear in mind the previous orders made in favour of IMFA and FACOR, the previous leases and rights granted to them and their consequences. The second aspect to which the applica- tion referred was, however, not clarified.

(ii) A second application of FACOR (C.M.P. 22588/77) was directed primarily at the IMFA. It was submitted here that the order dated 28/2/85 needed to be recalled and FACOR allowed to put forward claims in respect of the areas di- rected to be leased out to IMFA as IMFA had not at all been operating its export-oriented unit (EOU) since 1984 and was attempting to divert the ore to its domestic units whereas FACOR was the one that was operating an EOU and needed all the ore it could get. No notice was issued on this applica- tion apparently as all the claims had already been referred to Rao.

(iii) In August 1987, IMFA moved C.M.P. 21578/1987. This was in the nature of a counter to C.M.P. 13347/87 moved by FACOR. This application also prayed that the consideration before the Rao Committee should be confined to the parties to the writ petition. IMFA also took this occasion to request that the area of 180 hectares leased out to FACOR by the order dated 3/5/85 should be treated as provisional and taken into account in the allotment to be decided on by Rao. FACOR tiled a reply. No orders have, however, been passed on the petition. again. apparently since all the claims were before Rao.

(iv)C.MP. 9284/88 was filed by OCL to quash the "order" of 1.2.88 passed by Rao which has totally rejected the claims of OCL. No orders on this petition have been passed so far but this will now have to be disposed of in the light of the conclusions we may reach in regard to OCL's claims on the merits and no separate orders need to be passed thereon.

(v) I.A. 1/89 was filed by ORIND challenging the cor- rectness of Rao's findings and praying that, pending dispos- al of W.P. 14116/84 which according to it stands undisposed of despite the orders dated 30/4/87 and 6/10/87--the S.G., OMC, Tisco. Sirajuddin & Co. and Mysore Minerals (the re- spondents to the application) should be directed to supply to ORIND 3000 M/T of chrome ore per month. No orders have been passed on this application so far but, since the writ petition itself is now being disposed of, no interim orders as prayed for in this application are at all called for.
STATUTORY INADEQUACIES

1) Delay and Ineffectiveness: Now the first thing that strikes one on perusing the course of the proceedings in the case is the extremely unsatisfactory and impractical proce- dure followed under the Act in regard to the grant of mining leases for important minerals like chrome ore. The statute envisages that the application should be made to the S.G. and disposed of by it within a prescribed period. But the course of events in the case and other reported cases show that this time limit is observed more in breach than in observance. Anticipating this possibility, the rules provide that, if an application is not disposed of within the statu- tory period, it shall be deemed to have been refused. So far so good, as at least, the applicant can, on the expiry of the period, have recourse to a higher authority. The remedy provided to the aggrieved applicant is to file a revision application before the C.G. under S. 30 of the Act for revision of the order within three months thereafter. Rule 55 enables the C.G., after hearing all necessary parties, to "confirm, modify or set aside the order or pass such other order in relation to thereto as the Central Government may deem just and proper". A note under rule 55 also says that "during the pendency of a revision application the State Government should not take any action in respect of the area, which is the subject matter of the revision petition as the matter becomes sub judice". Having regard to the wide powers thus

conferred. one would except the C.G. to dispose of the application on merits, either granting the lease in whole or in part or rejecting it. But, curiously, in most of the cases which come up before Courts as also in this case, the C.G. seems reluctant to pass any order except to set aside the "deemed refusal" and direct the S.G. to dispose of the application afresh within a specified period. That was the order passed, for example, in IMFA's case the time given being 200 days. But the S.G. does not seem to pay any heed to this direction and no order is passed within a reasonable period. Well, one would think a second approach to the C.G. may be helpful. IMFA tried it but got back a reply to say that the C.G. was helpless in the matter. The original order in revision has stated: "should the State Government fail to pass order on the petitioner's application he may seek redress in an appropriate Court of Law, if so advised" and the subsequent application was rejected by the C.G. on the ground that the C.G. becomes functus officio when it passes the order in revision and has no jurisdiction to revise it. So all that the applicant can do is to wait for some time and then file a writ petition. Even if the writ petition were to be heard quickly all that the Court can do is to direct the S.G. to dispose of the application expeditiously. This is an ex- tremely cumbrous and ineffective procedure in which several years pass but the application stands still. Thus, for e.g., ORIND made an application in 1971 and is yet to know what the fate of its application would be. It puzzles 'us why the C.S., even in the first instance, could not dispose of the application on merits in the light of the report received from the S.G. and after hearing concerned parties. (2) Proliferation of applications: Another problem created by the passage of time is the entry of new parties in the fray. We shall later point out that, though S. 11 tries to enunciate a simple general principle of "first come; first served" in practice, priority of an application in point of time does not conclude the issue. In this case itself. for instance: during the period ORIND's application of 1971 has been under consideration before various authorities and in the writ petition filed in Orissa High Court, several other competitors have come into the picture. The statutory provi- sion is not clear as to which of the applications in respect of any particular area, are to be considered together. If ORIND's application of 1971 for example: were to be considered only on the basis of the persons who had made applications at that time or a short time before or after, one result would follow; if, on the other hand: if all the applications pending for disposal at the time ORIND's appli- cation is to be granted or rejected are to be considered. the result would be totally different. Since the interests of the nation require that no lease for mining rights should be granted without all applications therefore at any point of time being considered and the best among them chosen or the areas distributed among such of them as are most effi- cient and capable; the latter is the only reasonable and practical procedure. That is why this Court, in its order dated 30.4.87: laid down--we think rightly--that all appli- cations pending for consideration as on 30.4.87 should be considered by Rao.

(3) Procedure for consideration of applications: A further confusion created in this case is due to the fact that leases of different areas in different villages and dis- tricts have been applied for. No attempt has been made to locate, with reference to any compact block of land; who exactly are the competitors and whether there are areas in respect of which there is no competition at all. It will be seen later how this has caused difficulty in the present case. But what we wish to point out here is that the statute must lay down clearer guidelines and procedure. Having regard to the new avenues for vast industrial development in the country, the more workable procedure would be for the S.G. to call for applications in respect of specified blocks by a particular date and deal with them together: other later entrants not being permitted in the field. Otherwise only confusion will result,

as here. There was a time when the S.G. looked to private enterprises for mineral develop- ment in its territory. Even now, it has been stated that 87% of the State territory containing chromite is under lease to one industrial house. Of late, however, competition has crept in. The S.G. has its own public sector corporations and various entrepreneurs are interested in having mining leases for their purposes. It is, therefore: vital that there should be a better and detailed analysis, district- wise and area-wise and that a schedule for consideration of applications in respect of definite areas should be drawn up with a strict time frame so that the State is no longer constrained to deal with sporadic applications or make a routine grant of leases in order of priority of applica- tions. These are aspects which call for careful considera- tion and appropriate statutory amendments. IS S. 11(2) CONCLUSIVE?

Now, to turn to the contentions urged before us: Dr. Singhvi, who appeared for ORIND, vehemently contended that the rejection of the application of ORIND for a mining lease was contrary to the statutory mandate in S. 11 (2); that, subject only to the provision contained in S. 11(1) which had no application here, the earliest applicant was entitled to have a prefer- ential right for the grant of a lease; and that a considera- tion of the comparative merits of other applicants can arise only in a case where applications have been received on the same day. It is no doubt true that S. 11(2) of the Act read in isolation gives such an impression which, in reality, is a misleading one. We think that the sooner such an impres- sion is corrected by a statutory amendment the better it would be for all concerned. On a reading of S. 11 as a whole one will realise that the provisions of sub-section(4) completely override those of sub-section (2). This sub- section preserves to the S.G. a right to grant a lease to an applicant out of turn subject to two conditions: (a) record- ing of special reasons and (b) previous approval of the C.G. It is manifest, therefore, that the S.G. is not bound to dispose of applications only on a "first come, first served"

> basis. It will be easily appreciated that this should indeed be so for the interests of national mineral development clearly require in the case of major minerals. that the mining lease should be given to that applicant who can exploit it most efficiently. A grant of ML in order of time- will not achieve this result.
>
> In the context of his submission pleading for priority on the basis of the time sequence- Dr. Singhvi referred to certain observations in the decisions reported as Ferro Alloys Corporation of India v. Union, I.L.R. 1977 Delhi 189 at p. 196 and as Mysore Cements Ltd. v. Union, A.I.R. 1972 Mysore 149 at p. 15 1. we do not think these decisions help him. In the former case; an application by FACOR for a lease was rejected on the ground that an earlier application was being accepted. FACOR contended this was wrong- that the S.G. could not have refused to look into its application merely because another applicant had a preferential right under S. 11(2) and that its application as well as that of the earlier applicant should have been considered together. It is in the situation that the Court observed that rule 11 primarily embodies the general principle of "fist come- first served" and an out-ofturn consideration under S. 11(4.) was an exception for which a strong case had to be made out. The petitioner could not have a grievance if the general principle was followed. So also, in the latter case an earlier application having been accepted and a

lease granted, the consideration of a later application was held to be uncalled for. These decisions cannot be treated as authorities for the proposition that the S.G. is bound to grant an earlier application as soon as it is received and cannot wait for other applications and consider them all together and grant a later one 'if the circumstances set out in rule 11(4) are fulfilled. That apart it has to be remem- bered that the S.G. did reject ORIND's application by an order dated 23.10. 1973. This order was set aside in the C.G. on 20.2. 1977 and the S.G. directed to consider it afresh. The S.G. did not comply with this order and so a writ petition was filed by ORIND which was pending when this writ petition was" filed. Subsequently the High Court on 9.2.89 directed the S.G. to consider and ,dispose of ORIND's application on merits. The S.G. on' 7.4.89 dismissed ORIND's application on the ground that the issue is before us and hence the S.L.P. against the order of rejection of the S.G. Even assuming that we accept the S.L.P. filed by ORIND that will only entitle ORIND to have its application reconsidered for grant along with such other applications as may be pending as on the date of such reconsideration. In the context of the scheme of the Act and the importance of a lease being granted to one or more of the better qualified candidates where there are a number of them it would not be correct to say that as the S.G.'s order of 29.10.1973 has been set aside ORIND's application should be restored for reconsideration on the basis of the situation that prevailed as on 29.10. 1973 and that therefore it has to be straight- away granted as there was no other application pending on that date before the S.G. In matters like this subsequent applications cannot be ignored and a rule of thumb applied. We are unable to accept the submission of Dr. Singhvi that the application of ORIND being the earliest in point of time should have been accepted and that we should direct accord- ingly. As to how far the requirements of S. 11(4) are ful- filled in the present case that is an aspect which will be considered later.

PROMISSORY ESTOPPEL It will be convenient here also to deal with another argument raised by Dr. Singhvi based on grounds of promisso- ry estoppel. Dr. Singhvi points out that when ORIND applied to the C.G. for revision of the order of rejection of its application on 23.10.73 the S.G. on 26.2.74 wrote to the C.G. as follows:

M/s Orissa Industries Limited made 'representation to the State Government on' 15.12. 1973 for reconsidering grant of lease to serve the captive requirements of their refractory plant. They also brought to the notice of the State Government an export order of refractories of sizeable value of about Rs.2 crores received from National Iranian Steel Mills. Teheran Chromite, being essential raw material for manufacture of refractories they pressed for grant of Mining Lease. After careful consideration of the representation, the State Government have revised the policy of reserving the chromite area only for exploitation in public sector and have decided for grant of chromite to serve the captive requirements of industry within the State should be given first priority. Accordingly, it is proposed to grant the mining lease for chromite over the available areas subject to revision of the previous order of the State

> Government by Government of India u/s 30 of the Mines & Minerals (Regulation & Development) Act, 1957 and u/s 5(2) of the said Act. Steps are being separately taken to exclude this area from the operation of reservation notification for exploitation of chromite in the public sector.
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> 3. In the interest of the local industries. the State Govt. do not intend to throw open the area after releasing from reservation. Approval of Government of India would also be necessary for not throwing open the area in the relaxa- tion of the rule 58 of the Mineral Concession Rules 1960.
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> 4. Out of 1129.25 hectares applied for, an area of 379.93 hectares is covered by overlapping of applied leases or applications including an area of 142 hectares- which is being separately recommended to Government of India for grant of Mining lease in favour of M/s Orissa Cement Limit-

ed. As such the net area available for grant of mining lease is therefore. 749.32 hectares.

5. The State Government having rejected the application of the party in Government Proceeding No. 1043 dated 23.10. 1973 are got obtain to revise their own order by granting Mineral Concession as instructed in your department letter No. MV-I(445)/61 dated 5.1.72. The case is therefore. recommended to Government of India for grant of Mining Lease over an area of 749.32 hects. in favour of M/s Orissa Industries Limited revising the above order of the State Government u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957. As chromite ore is specified mineral under the first schedule of the Act- approval of Government of India is also requested u/s 5(2) of the Act.

6. I would therefore, request you to kindly obtain and communicate orders of Government of India on revision u/s 30 of Mines & Minerals (Regulation & Development) Act, 1957 and approval u/s 5(2) of the said Act and in relaxation of Rule 58 of the Mineral Concession Rules. 1960 for grant of Mining Lease for chromite over an area of 749.32 hectares in Cuttack District in favour of Orissa Industries Limited." Simultaneously, it is pointed out, the S.G., while sending its comments to the C.G. on the contents of another revision application filed by ORIND against the rejection of its application (also dated 5.7.71) for a lease of 446.38 hec- tares in village Sukrangi of Cuttack District, had this to say:

> "Recently in State Government letter No. 1747MG dated 26.2.74 chromite bearing area to the extent of 749.32 hectares in Cuttack district has been recommended to Govern- ment of India for grant in favour of M/s Orissa Industries Ltd. The need of M/s Orissa Industries Ltd. will be met from this. It is the responsibility of the party to obtain raw materials for its factory and the State Government cannot take such responsibility as contended by the petitioner. The party is at liberty to purchase the chrome ore from Orissa Mining Corporation.
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> XXX XXX
> XXX

> The State Government have already recommended an area in favour of M/s Orissa Industries Ltd. to the Govt. of India to meet the requirements of their industry. The State Government have already decided to grant the area applied for by M/s Orissa Industries Ltd. in their M.L. application under revision to M/s Orissa Mining Corporation Ltd. who are now working the area as an agent of the State Government. Hence the question of granting this area to M/s Orissa Industries Ltd. does not arise."

Also, on 5.3.74 the S.G. published a notification dereserv- ing the said 749.32 hectares (said to have been earlier reserved for exploitation in the public sector by a notifi- cation of 3.7. 1962). Dr. Singhvi submitted on the strength of this correspondence and notification that the S.G. having sought to justify its rejection of ORIND's application for 446.38 acres on the ground that the company's application for 749.32 hectares was being recommended after dereserva- tion, it was not open to the S.G. now to take up a different stand and that ORIND's application for 1229.25 hectares now under consideration should have been granted at least to the extent of 744.32 hectares the dereservation and lease in favour of ORIND, of which had been recommended by the S.G. itself as early as 1974. In support of this contention, learned counsel relied on the observations made in a series of decisions of this Court: Kanai Lal Sur v. Paramnidhi Sadhukhan, [1958] 2 SCR 366; M/s Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of Uttar Pradesh and Ors., [1979] 2 SCR 641; Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd., [1983] 3 SCC 379; Surya Narain Yadav & Ors. v. Bihar State Electricity Board & Ors., [1985] Suppl. 1 S.C.R. 605; Union of India & Ors. v. Godfrey Phi- lips India Ltd., [1985] Suppl. 3 SCR 123 and Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors., [1990] J.T. 1 S.C. 363.

This argument is interesting but overlooks certain very important relevant circumstances. As mentioned earlier, ORIND's revision petition was disposed of by the C.G. on 23.2. 1977. This order contains no reference to the S.G.'s letter of 26.2.74; on the contrary, it proceeds on the footing that no comments had been received from the S.G. Possibly this is because the letter of 26.2.74 was not in the form of comments on the ORIND's revision application but was in the form of the S.G.'s recommendations on ORIND's representation to it dated 15.12.73, although it does sug- gest that the C.G. could set aside the order of 23.10.73 and direct the grant of a lease to ORIND in respect of 749.32 hectares. Be that as it may, the C.G. did not accept the recommendation of the S.G. Indeed, we find on record that, having regard to a letter of the C.G. dated 15.5.74, the S.G. sent a letter dated 17.7.74 withdrawing the earlier recommendation made by it on 26.2.74 for the allotment of 749.32 acres to ORIND. In view of this letter, the C.G. simply set aside the order of 23.10.73 on the ground that it was not a speaking order and directed the S.G. to dispose of ORIND's application within 100 days in the light of the letter of the C.G. dated 15.5.74. Interestingly, this letter had been written in reply to a proposal from the S.G. that the exploitation of chromite had to be entrusted to the public sector. Accepting this suggestion, the letter pro- ceeded to lay down certain broad priorities on the basis of which leases could be granted and certain other directions in respect of research and development. The position, there- fore, is that the C.G. did not accept the S.G.'s recommenda- tions regarding the grant of a lease to ORIND in respect of 749.32 hectares out of the 1129.25 hectares applied for. There was, however, delay in the disposal of the application by the S.G. When the S.G. took up consideration of the matter once again it took note of three circumstances to reject the

application of ORIND. These were:

(i) One of the directions in the C.G.'s letter of 15.5.74 was that "no lease of lumpy ore for metallurgical and re-

fractory grade be granted to private sector unless mining undertakings of the State or Central Government are not interested in the exploitation of ore in these leaseholds"

and the requirement of ORIND was for lumpy chromite ore;

(ii) Two notifications had been issued on 28.4.77 and 3.8.77 reserving certain areas for exploitation by the public sector. The former dealt specifically with the 749.32 hec-

tares which had been proposed for allocation to ORIND in the letter of the S.G. dated 26.2.74. The latter covered a huge area of 1460 sq. km. in various districts of the State;

(iii) The claims of all applicants had been considered by Rao and Rao had come to the conclusion that no mining leases need be given to ORIND.

We shall consider later the claim of ORIND on merits. But, for the present, we only wish to point out that no grounds have been made out which could support a plea of promissory estoppel. The grant of a lease to ORIND had to be approved by the C.G. The C.G. never approved of it. The mere fact that the S.G., at one stage, recommended the grant cannot stand in the way of their disposing of the application of ORIND in the light of the C.G.'s directives. Perhaps, the highest that ORIND can claim is that, since this lease of 749.32 acres has not come through, the SG's order rejecting its application in respect of 446.38 hectares deserves to be considered. But that area is not the subject matter of the present S.L.P. by ORIND. Moreover, ORIND has not placed before us any information as to what happened to the revi- sion petition filed by it against the rejection of the application in respect of 446.38 hectares of the further proceedings, if any, in relation thereto. We express no opinion as to ORIND's entitlement to a lease on that appli- cation in case it does not succeed in its claim here in respect of 749.32 hectares. It will be open to ORIND to pursue such remedies in respect thereof as it may be advised and as may be available to it in law.

THE RESERVATION POLICY The principal obstacle in the way of ORIND as well as the other private parties getting any leases was put up by the S.G., OMC and IDCOL. They claimed that none of the private applications could at all be considered because the entire area in all the districts under consideration is reserved for exploitation in the public sector by the noti- fication dated 3.8.77 earlier referred to. All the private parties have therefore joined hands to fight the case of reservation claimed by the S.G., OMC and IDCOL. We have indicated earlier that the S.G. expressed its preparedness to accept the Rao report and to this extent waive the claim of reservation. Interestingly, the OMC and IDCOL have en- tered caveat here and claimed that as public sector corpora- tions they could claim, independently of the S.G.'s stand, that the leases should be given only to them and that the Rao report recommending leases to IMFA, FACOR and AIKATH should

not be accepted by us.

The relevant provisions of the Act and the rules have been extracted by us earlier. Previously, rule 58 did not enable the S.G. to reserve any area in the State for exploi- tation in the public sector. The existence and validity of such a power of reservation was upheld in Kotiah Naidu v. State of A.P., A.I.R. 1959 A.P. 185 and Amritlal Nathubhai Shah v. Union, A.I.R. 1973 Guj. 117, the latter of which was approved by this Court in [1977] 1 S.C.R. 372. (As pointed out earlier, rule 58 has been amended in 1980 to confer such a power on the S.G.). It is also not in dispute that a notification of reservation was made on 3.8.77. The S.G., OMC and IDCOL are, therefore, right in contending that, ex facie, the areas in question are not available for grant to any person other than the S.G. or a public sector corpora- tion [rule 59(1), proviso] unless the availability for grant is renotified in accordance with law [rule 59(1)(e)] or the C.G. decides to relax the provisions of rule 59(1) [rule 59(2)]. None of those contingencies have occurred since except as is indicated later in this judgment. There is, therefore, no answer to the plea of reservation put forward by the S.G., OMC and IDCOL.

The private applicants seek to get over this difficulty in several ways. In the first place, they all vociferously urge that this plea has been taken by the S.G. belatedly, that the OMC and IDCOL have come into the picture very late and that this plea should not be allowed to be raised at this stage. The learned Advocate General for the State of Orissa has pointed out, we think rightly, that there is no substance this grievance. The objection regarding reservation was raised by the S.G. at the very first opportunity it had, in a preliminary counter affidavit filed by it in the writ petition dated 29.10.1984. The counteraffidavit mentioned about the reservation in no uncertain terms and a copy of the relevant page of the Orissa Gazette dated 12.8.77 which contained the reservation notification dated 3.8.77 was also annexed to the counter affidavit. Reference was also made to the statutory provisions and judicial decisions. The claim was reiterated, when ORIND joined the proceedings, in a reply filed by the State to the counter affidavit filed by ORIND on 22.8.85; this reply affidavit refers to the letter of the C.G. dated 15.5.74 and the notification of reserva- tion dated 28.4.77 pertaining to the 749.32 acres in respect of which ORIND had made an application. In a further coun- ter-affidavit dated 24.11.89 filed "in reply to the addi- tional submissions dated 17.10.89 filed on behalf of ORIND", the notification of 3.8. 1977 has also been referred to. OMC and IDCOL had submitted their applications for lease but no orders had been passed thereon. When they came to know that the applications of IMFA and FACOR were considered by this Court and certain interim orders passed, they approached Rao to consider their applications as well. This request was opposed by the other parties whereon OMC and IDCOL sought and obtained the directions of this Court that their appli- cations should also be considered by Rao. Before Rao, they supported the S.G. plea of reservation. In the circumstances Set out above, it is difficult to accept the contention of the various private applicants that the plea as to reserva- tion should not be entertained at all on the ground of delay and 1aches.

It is then argued that though the S.G. may have formally notified a reservation, it has not been very serious about this and has always been willing to consider private appli- cations for leases. In support of this contention, reliance is placed on the following circumstances:

(a) On 26.2.74, the S.G. has clearly expressed its willingness to dereserve the area of 749.32 acres and, indeed, followed it up on 5.3.74 with a notification of dereservation.

(b) Though the S.G. claims that reservation is neces-

sary to meet the S.G.'s requirements because 81% of chromite ore rich lands already stand leased out to a private party (TISCO), the S.G. proceeded to renew the grant in favour of that party.

(c) The S.G. has been willing enough to lease out lands to private parties: (i) The S.G. has granted leases to FACOR on 9.2.72, 7.10.72 and 12.11.76 in respect of 157.05 hects.. 133.31 hects. and 72.84 hects. respectively in Bokhla, Kathpal and Ostapal villages. (ii) it has entered into an agreement with AIKATH to grant a lease in respect of a part of the land applied for by him in item 8; (iii) it has agreed to lease out item 3 and 26.62 hectares out of item 4 in favour of IMFA; (iv) it agreed to lease out 180 acres in item 5 in favour of I-FACOR.

(d) Even at this final stage of hearing of the writ petition. the Advocate General of the State has conceded that the S.G. is prepared to abide by the Rao report i.e. the S.G. is willing to grant leases to IMFA, FACOR and AIKATH but not to OCC or ORIND. This is patently discrimina- tory.

We do not, however, think that these circumstances establish that the State is not serious about its plea of reservation. So far as item (a) is concerned. we have al- ready pointed out that this was the initial attitude of the Government but this policy was changed in pursuance of the C.G.'s letter dated 15.5.74 and its order on ORIND's revi- sion application. The S.G. itself had, in fact, withdrawn the recommendations made on 26.2.74 by its letter of 17.7.74. The thought of dereservation had therefore been given up by the S.G. in July'74 itself though the notifica- tion of dereservation was superseded only in 1977. In regard to items (b) & (c), the position is that the lease of 1976 was after the dereservation of 5.3.74. The leases to FACOR in 1972 (the details of which are not available before us) are stated to have been granted after obtaining C.G.'s order for relaxation. The full circumstances in which the lease in favour of TISCO was renewed are not before us but perhaps such renewal was dictated by the nature of the industry run by TISCO and its importance for the economy of the State and the country. These apart, the Court approved of the grant of leases to IMFA and FACOR. So far as (d) is concerned, the learned Advocate General of Orissa has made it clear that the S.G. does not accept the Rao report in so far as it ignores its claim of reservation. The concession made only is that since the Rao Committee, in recommending grant of leases to IMFA and FACOR is only giving effect to a fait accompli in pursuance of the interim directions of this Court, they are willing to abide by it. It will therefore be clear that, except for two or three instances, where leases have been granted by the S.G. on its own, the S.G. has generally and consistently adhered to its stand that the chromite bearing lands are reserved for exploitation in the public sector. The rules permit the C.G. to relax the rigid requirements of reservation in individual cases after re- cording special reasons. We are not here called upon to decide whether the relaxations made in the above eases were in accordance with the rules or not. It is sufficient to say here that these exceptional and isolated instances of lease are not sufficient to sustain the plea of the parties before us that the policy of reser- vation is merely being raised as a formal defence and has never

been seriously implemented by the S.G. Dr. Singhvi also raised a plea of arbitrariness and mala fide to challenge the reservation policy. He urges on the first count that it was not open to the S.G. to go on shift- ing its reservation policy from time to time without ade- quate reasons, Such conduct was also vitiated, he said, as amounting to malice in law and referred in this context to the observations of this Court in Venkataraman v. Union, [1979] 2 SCR 202. We do not think this contention has any substance. Chromite ore is an important major mineral and the importance of its conservation and proper utilisation for our country's development cannot be gainsaid. The S.G. rightly decided upon a policy of reservation in 1967 and this was kept up till 1974. In February 1974 the S.G. was in favour of freer issue of mining leases but gave up this policy in pursuance of the C.G.'s letter of 15.5.74. Reser- vation was, therefore, clamped in 1977 again. Applications could still be considered to see how far a relaxation was permissible having regard to the nature of the applicant's needs, the purpose for which the lease was asked for, the nature of the ore sought to be exploited, the relative needs of the State, the availability of a public sector undertak- ings to carry out the mining more efficiently and other relevant considerations. There is no material on record to substantiate a plea that the S.G. has been acting arbitrari- ly or mala fide in its policy formulations in this regard. Our conclusion that the areas in question before us were all duly reserved for public sector exploitation does not, however, mean that private parties cannot be granted any lease at all in respect of these areas for, as pointed out earlier, it is open to the C.G. to relax the reservation for recorded reasons. Nor does this mean, as contended for by OMC and IDCOL, that they should get the leases asked for by them. This is so for two reasons. In the first place, the reservation is of a general nature and does not directly confer any rights on OMC or IDCOL. This reservation is of two types. Under S. 17A(1), inserted in 1986, the C.G. may after consulting the S.G. just reserve any area-not covered by a PL or a ML--with a view to conserving any mineral. Apparently, the idea of such reservation is that the miner- als in this area will not be exploited at all, neither by private parties nor in the public sector. It is not neces- sary to consider whether any area so reserved can be exploited in the public sector as we are not here concerned with the scope of such reservation, there having been no notification under S. 17A(1) after 1986 and after consultation with the S.G. The second type of reserva- tion was provided for in rule 58 of the rules which have already been extracted earlier in this judgment. This reser- vation could have been made by the S.G. (without any neces- sity for approval by the C.G.) and was intended to reserve areas for exploitation, broadly speaking, in the public sector. The notification itself might specify the Govern- ment, Corporation or Company that was to exploit the areas or may be just general, on the lines of the rule itself. Under rule 59(1), once a notification under rule 58 is made, the area so reserved shall not be available for grant unless the two requirements of sub-rule (e) are satisfied: viz. an entry in a register and a Gazette notification that the area is available for grant. It is not quite clear whether the notification of 5.3.74 complied with these requirements but it is perhaps unnecessary to go into this question because the reservation of the areas was again notified in 1977. These notifications are general. They only say that the areas are reserved for exploitation in the public sector. Whether such areas are to be leased out to OMC or IDCOL or some other public sector corporation or a Government Company or are to be exploited by the Government itself is for the Government to determine de hors the statute and the rules. There is nothing in either of them which gives a right to OMC or IDCOL to insist that the leases should be given only to them and to no one else in the public sector. If, there- fore the claim of reservation in 1977 in favour of the public sector is upheld absolutely, and if we do not agree with the findings of Rao that neither OMC nor IDCOL deserve any grant, all that we can do is to leave it to the S.G. to

consider whether any portion of the land thus reserved should be given by it to these two corporations. Here; of course, there are no competitive applications from organisa- tions in the public sector controlled either by the S.G. or the C.G., but even if there were, it would be open to the S.G. to decide how far the lands or any portion of them should be exploited by each of such Corporations or by the C.G. or S.G. Both the Corporations are admittedly instrumen- talities of the S.G. and the decision of the S.G. is binding on them. We are of the view that, if the S.G. decides not to grant a lease in respect of the reserved area to an instru- mentality of the S.G., that instrumentality has no right to insist that a ML should be granted to it. It is open to the S.G. to exercise at any time, a choice of the State or any one of the instrumentalities specified in the rule. It is true that if, eventually, the S.G. decides to grant a lease to one or other of them in respect of such land, the instru- mentality whose application is rejected may be aggrieved .by the choice of another for the lease. In particular, where there is competition between an instrumentality of the C.G. and one of the S.G. or between instrumentalities of the C.G. inter se or between the instrumentalities of the S.G. inter se, a question may well arise how far an unsuccessful in- strumentality can challenge the choice made by the S.G. But we need not enter into these controversies here. The ques- tion we are concerned with here is whether OMC or IDCOL car, object to the grant to any of the private parties on the ground that a reservation has been made in favour of the public sector. We think the answer must be in the negative in view of the statutory provisions. For the S.G. could always denotify the reservation and make the area available for grant to private parties. Or, short of actually dere- serving a notified area, persuade the C.G. to relax the restrictions of rule 59(1) in any particular case. It is. therefore. open to the S.G. to grant private leases even in respect of areas covered by a notification of the S.G. and this cannot be challenged by any instrumentality in the public sector.

Before leaving this point, we may only refer to the position after 1986. Central Act 37 of 1986 inserted sub- section (2) which empowers the State Government to reserve ureas for exploitation in the public sector. This provision differs from that in rule 5,', in some important respects--

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

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

(iii) the reservation can only be for exploitation by a Government company or a public sector corporation (owned or controlled by the S.G. or C.G.) but not for exploitation by the Government as such.

Obviously, S. 17A(2) and rules 58 could not stand together as S. 17A empowers the S.G. to reserve only with the approv- al of the C.G. while rule 58 contained no such restriction. There was also a slight difference in their wording. Perhaps because of this rule 58 has been omitted by an amendment of 1988 (G.S.R. 449E of 1988) made effective from 13.4.88. Rule 59, however, contemplates a relaxation of the reservation only by the C.G. By an amendment of 1987 effective on 10.2. 1987, (G.S.R. 86-E of 87) the words "reserved by the State Government" were substituted-for the words "reserved by the Government" in rule 59(1(e). Later, rule 59(1) has been amended the insertion of the words "or under section 17-A of the Act" after the words "under rule 58" in clause (e)

as well as in the second proviso.

The result appears to be this'

(i) After 13.4.88, certainly, the S.G. cannot notify any reservations without the approval of the C.G., as rule 58 has been deleted. Presumably, the position is the same even before this date and as soon as Act 37 of 1986 came into force.

(ii) However, it is open to the S.G. to denotify a reservation made by it under rule 58 or S. 17A. Presumably, dereservation of an area reserved by the S.G. after the 1986 amendment can be done only with the approval of ,the C.G. for it would be anomalous to hold that a reservation by the S.G. needs the C.G.'s approval but not the dereservation. Anyhow, it is clear that relaxation in respect of reserved areas can be permitted only by the C.G.

(iii) It is only the C.G. that can make a reservation with a view to conserve minerals generally but this has to be done with the concurrence of the S.G. We are concerned in this case with reservations made by the S.G. under rule 58 before 1986 which, there is no reason to doubt, continue in force even after the introduction of S. 17A. These, as pointed out above, can be dereserved by th S.G. but a relaxation can be done by the C.G. only. We shall consider later whether this power of the C.G. can be or has been or should be exercised in this case. It is sufficient to observe here that the reservations notified in 1977 do not necessarily vitiate the grant of leases to private parties.

STATUS OF RAO REPORT We now come to the question regarding the status of, and the weight to be attached to, the Rao report. The writ petition and other proceedings before us were directed against the S.G.'s failure to pass favourable orders on the applications of various parties. Normally, in such a case, this Court would either have directed the S.G. to consider the applications afresh and pass appropriate orders or left it to the parties to file revision petitions before the C.G. against the S.G.'s orders. Here, as described earlier, the various parties came up before this Court one after the other and some of them had their writ petitions pending in the Orissa High Court. This Court, therefore, decided that the best course would be to consoli- date all the applications that were pending on 30.4.87 for the consideration of the C.G. so that a satisfactory deci- sion could be arrived at after an examination of the rela- tive merits of the various applicants. This Court did not specify the statutory provision under which this was to be done but it is apparent that it was intended to be an exer- cise of the power of the C.G. under S. 30, though this aspect was not clarified when FACOR draw attention to it in C.M.P. 13347/87. We have no difficulty in construing the Rao report as a decision on the claims of the various parties before it, though, having regard to the terms of the order of this Court dated 6.10.87, it has been styled as a report. The objections to this conclusion are three-fold and they are dealt with below:

> First, it is pointed out that revisions to the C.G. under S. 30 can be validly dealt with only by a "tribunal" and not by a single officer. We find that the procedure indicated is not dictated by the statute or the rules. It is only a forum outlined in an office order more as a matter of internal regulation than as a rigid rule of procedure. We have seen one of these orders dated 10.7. 1987. It consti- tutes three Single Bench

> Tribunals each consisting of a designated Joint Secretary in the Department of Mines and three Divisional Bench Tribunals each comprising of a desig- nated Joint Secretary in the Department of Mines and a designated Joint Secretary in the Department of Legal Af- fairs in the Ministry of Law and Justice. The instructions are:
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> "To the extent possible, cases in which parties have not asked for personal hearing should be disposed of by Single Bench Tribunals unless the member feels that some complicated legal issue is involved requiring advice of the member from the Law Ministry.
>
> The cases where personal hearing has been requested by parties, the Single Member Tribunals will decide whether to dispose of the cases after grant of hearing by himself or whether the hearing should be held by Division Bench Tribu- nal."

It will thus be seen that even regular revision petitions under S. 30 can be validly disposed of solely by a Joint Secretary in the Department of Mines unless he considers it necessary, either because a personal hearing is asked for or because some complicated legal issue is involved, to invoke the aid of a Joint Secretary in the Law Ministry. Here, there is no regular revision petition except perhaps in one case; the disposal is by the Secretary to the Depart- ment of Mines; he has been specially authorised to deal with the matter by this Court; and no legal issued at all are involved. We, therefore, see nO irregularity or defect in the procedure forged by this Court for a speedy and effec- tive disposal of the claims before the Court. Secondly, it is said that though the order of 30.4.1987 directs the secretary to dispose of the representations by a reasoned final order, the subsequent order of 6.10.87 asks him to sent a report to this Court. We do not think there is any inconsistency between the two orders. Even the order of 6.10.87 requires the Secretary to arrive at a just, equita- ble and objective decision. He has been asked to send a report of his decision to the Court, with copies to the parties, only in order that, if any of the parties are aggrieved by his decision, their grievances may be consid- ered by this Court in this W.P. itself, instead of driving the parties to a fresh course of litigation. Thirdly, it is submitted that Rao's hands were more or less tied by the various observations and directions of this Court thus preventing him from coming to independant conclu- sions of his own. This criticism is unfounded and also belied by the contents of the report. This Court had made it clear that Rao should not consider himself bound by the memoranda of compromise filed in the High Court of Orissa- (with AIKATH and FACOR) or the orders passed by this Court in regard to the allocation of areas (to IMFA and FACOR) though necessarily he had to "bear in mind the previous orders made in their [IMFA and FACOR] favour and the previ- ous leases and the rights, if any, granted therefrom and their consequences". He was also asked to bear in mind the public benefit and public interest involved and also the need for the proper exploitation of the mines. In fact also we find that although Rao has approved the grants made in favour of IMFA and FACOR by the S.G. (which, he remarks, were perhaps based on the observations made by this Court). he has clearly reached his conclusions on these independent- ly. In fact, he has set out a basis for justifying the grants to IMFA and FACOR. It is also clear that there were no Court orders that could have influenced his decisions on the claims of the other parties. This objection is, there- fore, not at all tenable.

OMC, IDCOL, OCL and ORIND complain, indeed, that Rao has been completely overwhelmed by the weight of the observa- tions and the leases granted by the S.G. pursuant to interim orders of this Court. They have gone to the length of criticising, and, indeed, challenging, the validity of these interim orders which had been passed without notice to any of them. They have invoked, in support, several passages from the decision of this Court in Antulay v. Nayak, [1988] 2 SCC 602. We think these criticisms are unfounded. This Court had only directed the grant of two leases pending disposal of the writ petition. At the time these directions were made, only IMFA, FACOR and AIKATH were before the Court. IMFA had pointed out that FACOR had been given certain leases although its earlier applications were pending before the C.G. The S.G. submitted to the Court that a lease in respect of item 1 had been granted to FACOR, that item 5 had already been agreed to be leased in favour of AIKATH and FACOR and that it was willing to grant a ML in respect of item 3 and 26.62 acres out of item 4 to IMFA. It was in view of this that the Court passed the order. Similarly, the ML directed to be granted to FACOR was also in consequence of the S.G. 's acquiescence therein. It is, therefore, incorrect to characterise these orders as erroneous or unjustified. They were fully within the scope of the writ petition and were passed after hearing the parties before the Court. No doubt, OCC, ORIND, OMC and IDCOL were not there then. After they put in their appearance, this Court made it clear that while the earlier orders, the observations therein and the leases granted in pursuance thereof should be kept in mind, Rao would not be bound by them but would be free to arrive at his conclusion. We, therefore, do not see any grounds for the criticisms put forward by these parties in regard to the interim orders passed by the Court.

For the above reasons, we are of opinion that, though styled a report, the findings given by Rao are in the nature of a decision of the C.G. on the claims of the various parties. We, therefore, proceed to consider the Rao report on its merits.

MERITS OF THE RAO REPORT This takes us then to the merits of the various claims put forward before Rao and his decision thereon. For our present purposes, we think we can consider the Rao report in two parts:

> (a) his endorsement of the S.G.'s decision to grant ML to IMFA, FACOR and AIKATH:
>
> (b) the rejection by him of the claims put forward by the above three parties for leases in respect or areas over the above what has been allotted to them as well as the rejection of the claims of the other parties.

So far as the first aspect is concerned, we think that Rao's decision, that the leases that have been granted already in favour of IMFA, FACOR be confirmed, should be upheld. In our view, these should be treated as leases legitimately granted to them in exercise of the powers of relaxation under rule 59(2). It is true that the orders granting the leases do not elaborately record the reasons but they were passed in the context of this litigation and have to be considered in the light of the affidavits and counter affidavits filed herein. We are also of opinion that the Rao's decision regarding the grant of a lease to AIKATH (not yet implemented) should also be upheld. In these three cases, we think, the records disclose sufficiently the reasons on the basis of which the leases

have been decided upon and are adequate to justify the MLs actually granted. We shall just summarise these reasons which have also been taken note of by Rao.

(a) ML to AIKATH, IMFA, FACOR

1. AIKATH is admittedly an individual who discovered chromite ore in the State. He had secured a lease as early as in 1952 though that lease was annulled by the State when it took over. Again, as against a lease of 640 acres which he had once obtained and started operating upon, the S.G. has finally approved of a lease in respect of only 140 acres. AIKATH had been actually working some mines from 1.5.53. His original grant had been approved before the area was reserved on 3.7.62. If the S.G. considers these to be weighty considerations and entered into a compromise with him for a lease of 140 acres and this has also been recorded by the Orissa High Court, there are no grounds to interfere with the decision of the S.G.

2. So far as FACOR is concerned, the requirements for their plant in Andhra Pradesh were met by the ML granted to them in 1971-72 at Kathpal and Boula, thus recognising their claim for a ML to meet part of their requirements of ore. Their present needs were in connection with their plant at Randia in Balasore District which required about 1,20,000 tons per annum of ore. The compromise entered into with FACOR agreeing to grant a ML for an area 72.84 hectares having a potential of about 2.4 million tons would cater to 50% of its needs on a 20 year time-frame making allowances for wastage in recovery.

3. IMFA needs 50,000 tons per annum for their plant at Therbauli and 120,000 tons in respect of a plant at Chandwar run by a subsidiary. While the reserve potential of 26.62 hectares allotted to IMFA out of item 4 is roughly 0.8 million tons the reserve potentials of 108.86 acres given out of area 3 and of another 17.02 hectares in Balasor District given for the plant of the subsidiary were yet to be assessed. Nevertheless. it was expected that they would cater to the needs of IMFA more or less to the same extent that the ML in favour of FACOR catered to its needs. It is true that a relaxation under rule 59(2) has to be made by the C.G. The orders of grant do recite the approval of the C.G. in this regard. An objection has been taken that the C.G. granted the approval not after applying its mind to the matter but merely because this Court had directed it to do so. We do not think this contention can be accepted. Apparently, when the S.G. agreed to lease out the areas to IMFA and FACOR it was pointed out that this could not be given effect to without the C.G.'s approval. This Court thereupon directed that the S.G. should seek such approval. The direction to the C.G. is only that its approval should be given within the particular time limit set out therein. It cannot be construed, reasonably, as a direction compel- ling the C.G. to grant approval whether it agreed with the S.G .'s decision or not. We would. therefore, reject this contention and treat the grants to IMFA anti FACOR as made in exercise of the power of relaxation u/s 59(2). Once again, we would like to observe that, though there is no specific recording of reasons by the S.G. or C.G. inasmuch as these leases came to be granted by way of com- promise, it is a fair inference that the compromise proposals were prompted by the, at least partial, acceptance of the claims put forward by these parties. Since the grant of leases to these three parties can be attributed to the relaxation of the reservation rule in particular cases, the finding of Rao that these leases may be confirmed deserves acceptance.

We have to add a few words in respect of AIKATH. Though the S.G. and AIKATH had entered into a compromise as early as 4.12. 1984, no lease has yet been granted in his favour perhaps as the C.G. has had no occasion to consider the matter earlier. We do not think that any useful purpose will be served by remitting the matter and asking the S.G. to seek the formal approval of the C.G. therefore. The decision of Rao itself can be taken as containing the approval of the C.G. in this regard. We would, therefore, uphold Rao's decision and direct the S.G. to execute, at as early as possible,a ML in favour of AIKATH in respect of the 140 acs. agreed to be leased to him under the compromise dated 4.12.84.

(b) OTHER CLAIMS It is asserted on behalf of OCL and ORIND that, if there are factors justifying the relaxation of reservation in favour of IMFA and FACOR there are equally valid factors justifying a like relaxation in favour of these two compa- nies as well. The operative part of the Rao report in regard to the claims of these two parties reads thus:

> "For the requirement of the other parties viz. M/s Orissa Industries Ltd., M/s Orissa Cements Ltd., manufactur- ing refractories, their requirements of chrome ore are relatively less and that too, consisting mostly of hard lumpy ore. The potential for hard lumpy ore in the areas under consideration is relatively less, since most of it is located in the areas which have already been leased out to TISCO who are also one of the larger producers of hard lumpy ore and are capable of meeting the needs of other industries also.
>
> The occurrence of chrome ore is such. that hard lumpy ore, lumpy friable ore and fine ore occur together and in varying proportion. The refractory manufacturers require- ments are such that if they want to get hard lumpy ore from the areas under consideration, they will have to necessarily become traders of the other grades which will be in higher proportion. They have been carrying on their business for the past several years without any captive mines. Hence. it is felt that their requirements can be adequately met by the other producers of chrome ore, including hard lumpy ore. Hard lumpy ore will be available from other producers of chrome ore to meet their requirements, including the Orissa Mining Corporation and no captive mining leases need be given to them, in the areas under consideration."
>
> XXX XXX
> XXX
>
> The Refractory industries viz. the Orissa Industries Ltd. and M/s Orissa Cements Ltd. for their level of production and their need for hard lumpy ore, captive mines in the areas under consideration do not optimally meet their re- quirements and there is enough lumpy ore in the State from other sources."

Rao's line of reasoning is criticised by OCL and ORIND. Sri Bhandare, on behalf of OCL, urges, inter alia:

(a) The company's refractory plant is in need of at least 35,000 to 40,000 MT of ore per annum (not 15000 MT as worked out by Rao) and for securing a regular uninterrupted supply, it needs a captive mine badly; instead it is thrown at the mercy of traders like TISCO or Sirajuddin & Co. or the OMC who are unable to supply the quantities of ore needed by OCL.

(b) The company which has a vital mineral-based industry has not been granted even a single ML for which it had been applying from 1961 to 1986 whereas traders like Mohanty and Sirajuddin have been granted leases.

(c) Besides supply of refractories for domestic consumption OCL has also a vast export market and has earned huge foreign exchange by exports to countries like Pakistan, Bangladesh, Korea, Kenya, etc.

(d) The company has also employed about 3000 workers who are adivasis or who belong to the Scheduled Castes and Scheduled Tribes.

(e) The industrial licence granted to OCL by the C.G. envisages that the OCL should secure PL and ML from the S.G. for its needs of ore.

(f) The S.G. had made on 25.1.72 a grant of a ML to OCL over an area of 187.02 hectares with the approval of the C.G. The S.G. had indeed recommended the grant of ML to OCL.

(g) It is also stated that in certain informal meet-

ings held recently, the S.G. has expressed itself in favour of granting ML in favour of the OCL.

Likewise, on behalf of ORIND, it has been urged that Rao has erred in thinking that the need of the company was of lumpy ore which could be adequately met by procuring the ore from private parties and that it would not be necessary to grant a mining lease for meeting its requirements. It is submitted, in particular, that--

(i) ORIND's requirements are not small as suggested by the SG but come to a minimum of 25,000 MT per annum and would indeed go up to 65,000 MT with the setting up of a ferroalloys plant for which steps are being taken;

(ii) the reasoning that ORIND has been functioning without a captive source all along and hence could continue to do so is bad logic and also a misleading argument which overlooks that ORIND has been put to great difficulty in obtaining even 8,000 to 10,000 MT (about one half of its needs) in driblets from various sources being at their mercy in regard to quantity, price and other vagaries. Even OMC has been capricious in its supplies of ore in that it has agreed to supply 25,000 MT to OCL against their needs of 15,000 MT only whereas it is willing to supply only 9,000 MT only to ORIND against its present requirements of 20,000 MT.

(iii) the assumption that ORIND needs only lumpy ore is not correct. Actually more than 60 to 65% of the ore used by ORIND is friable ore.

(iv) ORIND also/deserves grant of ML on other grounds of national and public significance. It supplies basic refrac- tories not only to core and strategic domestic industries but also exports them outside India and the exports made by it, being value added and involving proportionately less consumption of ore, earn much more foreign exchange than the exports of IMFA & FACOR. The want of a captive source of supply has gravely prejudiced the commissioning of ORIND's first benefaction plant for refractories. It also employs a strong labour force and thus provides opportunities for large scale employment.

(v) if MLs can be granted to AIKATH, IMFA, FACOR, ORIND also deserves one. OMC has been allotted huge areas which remain idle and unexploited and a predominant portion of its ore is supplied to the metallurgical industry not leaving much for the refractory industry.

(vi) atleast the area marked as Area No. 7 in the plan filed by ORIND should be allotted to it.

We have briefly summarised the claims of ORIND & OCL. It is unnecessary to discuss these contentions at length as we cannot but help feeling that the claims of OCL and ORIND have been rejected summarily by Rao without an advertence to the various considerations urged by them. In our opinion, this part of Rao's decision has to be set aside as being too cryptic and unsustainable. Pursuant to this conclusion, it is open to us to direct these claims to be considered afresh by the C.G. We, however, think it more expedient that the claims of the OCL and ORIND should be restored, for detailed consideration in all their several aspects, before the S.G., as the 'S.G. has had no opportunity to consider the various aspects pointed out and as this course will also provide one opportunity to the claimants to approach the C.G. again, if dissatisfied with the S.G.'s decision to consider whether, despite the reservation, some relaxation can be made also in favour of these two companies. The learned Advocate General for Orissa criticised the conclusion of Rao conceding the right of industries set up in the State, even of FACOR and IMFA, to captive mines for meeting their requirements. We are inclined to think he is right in saying that merely because an industry is allowed to be set-up in the State by grant of an industrial licence and/or certain other conces- sions, it does not follow that it becomes entitled to a captive mine to cater to its needs. We, however, express no concluded opinion on this issue' which does not arise for our consideration. The SG has to take into account various factors and aspects (some of which have also been referred to in the interim order of this Court dated 27.9.84) before granting a ML to an individual concern carving out an excep- tion to its reservation policy. This it has done in respect of IMFA and FACOR for certain special reasons which have been elaborated upon earlier. Whether it would do so also in favour of OCL and ORIND is for the State to consider. We express no opinion on these claims and leave it for the consideration of the SG and C.G. It would have been noticed that the applications of these two companies have not been considered in this light earlier. We, therefore, restore the applications of OCL and ORIND for the consideration of the S.G. The learned Advocate General of Orissa also submitted that Special Leave Petition No. 8574/89 filed by ORIND from the order of the S.G. is not maintainable. He urged that the S.G., in disposing of applications for ML, is not function- ing as "tribunal" and he cited the decisions in Shivji v. Union, [1960] 2 SCR 775 and Indo-China Steam

Navigation Co. v. Jasjit Singh, [1964] 6 SCR 594 in support. We do not consider it necessary to go into this issue. The S.G. has, by the impugned order, rejected ORIND's application, inter alia, on the ground that, in view of the pendency of W.P. 14116/84 before this Court, it could not at that stage pass any order on the application. It would, therefore, be open to ORIND to ask the S.G. to reconsider the application in the light of our present order. We see no necessity f6r insisting on such a formal request and would, therefore, direct the S.G. to consider ORIND's application afresh in the light of this judgment.

So far as OMC & IDCOL are concerned, Rao has "recommend- ed" that the areas of items I & 2, left after the grants to IMFA and FACOR. be given on lease to OMC. We have seen that there are huge areas of mineral bearing lands which have been reserved for the public sector. Its interests do not clash or come into conflict with those of private applicants which can only claim a right to the extent the SG is willing to relax the rule of reservation. We do not think the OMC or IDCOL have any voice in requiring that the SG should keep certain extents of land reserved and should not grant any ML at all in favour of an), private party. The interests of these corporations are safe in the hands 01' the S.G. and the allocation of MLs to these organisations is a matter of discretion with the S.G. Strictly speaking,, therefore. no question of any application by them for ML need arise at all. But, when made, their applications arc considered by the S.G. and, on revision by the C.G. as a matter of form. To this extent, they have a statutory remedy but, beyond this. we think they cannot go. We are of opinion that their interests are safe with the S.G. and need no directions from us.

Even IMFA and FACOR urge that their claims to further leases deserve consideration. Rao has already adjudicated upon their claims and "recommended" leases to them to the extent indicated. If they apply to the S.G. for more leases. it is open to the S.G. to consider whether they deserve any further leases and if so, to what extent. more reserved areas could be released in their favour.

The learned Advocate General for the State emphasised that the State is also interested in its industrial develop- ment and the national economy and that, while reserving substantial areas for public sector exploitation, the State has a well-formulated policy in respect of grant of private leases which has been placed before Rao. He also submits that, even if grant of a ML in favour of a particular party is not found feasible, the State will do its best to ensure that the ore mined in the State is equitably distributed so as to meet the legitimate needs of all industries operating in the State. We have no doubt that the S.G. will keep. all relevant aspects urged by the parties in reaching their decision on the matters re- manded to it by us.

In the circumstances, we accept and confirm Rao's recom- mendation for grant of MLs to IMFA, FACOR and AIKATH, to the extent indicated by him. We set aside his rejection of the claims of OCL and ORIND. We leave it open to all the parties to place their claims, or further claims, as the case may be, in regard to the areas applied for by them on or before 30.4.1987, backed by supporting reasons, before the S.G. in the form of representations within four weeks from the date of this order. The S.G., we hope, will dispose of these applications within the statutory period failing which the parties will have their remedy under the statute by way of revision to the C.G. In arriving at its decisions, it will be open to the S.G. to take into account the discussions and findings of the Rao report in the light of this judgment. The S.G. should also keep in mind that no leases to any of the

parties (other than OMC & IDCOL) can be granted unless either the areas so proposed to be leased out are dereserved and thrown open to applications from the public or unless the C.G., after considering the recommendations of the S.G., for reasons to be recorded in writing, considers a relaxa- tion in favour of any of the parties necessary and justi- fied.

Before we conclude, we should like to place on record our appreciation of the detailed and excellent report given by Dr. Rao. He has brought together all the relevant data and analysed the various claims put forward before him; a detailed note on chromite deposits in the State of Orissa prepared by the Chief Mining Geologist of the Indian Bureau of Mines has also been made an Annexure to the report. The report and its annexures are bound to be of immense help and value to the S.G. and C.G. in arriving at their decisions not only on the various applications but also in regard to their future policy in the matter of grant of chromite leases and of the supply of chromite to the needy applicants in an equitable manner.

W.P. No. 14116/87 and the other applications are dis- posed of in the above terms. There will be no order as to costs.

G.N. Petitions disposed of.