Ferro Alloys Corpn. Ltd. & Anr vs U.O.I & Ors on 22 March, 1999

Equivalent citations: 1999 (2) JT 288, AIR 1999 SUPREME COURT 1236, 1999 AIR SCW 913, 1999 (4) SRJ 290, 1999 (2) SCALE 176, 1999 (2) LRI 163, 1999 (3) ADSC 193, 1999 (4) SCC 149, (1999) 2 JT 288 (SC), (1999) 3 CIVLJ 732, (1999) 88 CUT LT 772, (1999) 2 SCALE 176, (1999) 3 SUPREME 171

Author: S.B.Majmudar

Bench: S.B.Majmudar, A.P.Misra

PETITIONER:
FERRO ALLOYS CORPN. LTD. & ANR.

Vs.

RESPONDENT:
U.O.I & ORS.

DATE OF JUDGMENT: 22/03/1999

BENCH:
S.B.Majmudar, A.P.Misra

JUDGMENT:

S.B.Majmudar, J.

Leave granted.

We have heard learned counsel for the parties finally in this appeal and accordingly, this appeal is being disposed of by this judgment. The short question requiring a long answer in this appeal is whether the writ petition filed by the appellant Corporation before the Orissa High Court was maintainable. The High Court in the impugned judgment has taken the view that it was not maintainable being barred by the principle of res judicata. In order to appreciate the grievance of the appellant against the impugned judgment, it is necessary to note a few relevant introductory facts.

INTRODUCTORY FACTS : The appellant put forward its claim for grant of mining lease for extracting an important mineral - chromite in Sukinda Valley situated in the State of Orissa. The State of Orissa is having substantial reserves of the aforesaid mineral. Originally, Tata Iron & Steel Co. Ltd. (for short TISCO) was granted mining lease for 50 square kilometres of area in Sukinda

Valley by order of the Collector, Cuttack sometime in September, 1952. Originally, mining lease over 1813 hectares of area was granted to TISCO for chromite extraction after preliminary exploration for a period of 20 years on 12.1.1953. After the Orissa Estates Abolition Act, 1951 (for short the O.E.A Act) came into force, the rights of erstwhile Zamindar (Raja of Sukinda) were vested in the State which granted the lease to TISCO. In 1973, renewal was granted for an area of 1261.476 hectares subject to the condition that TISCO will establish a beneficiating plant as to the friable and lean ore in the leasehold area for the purpose of improving the quality for use in the indigenous plants, namely, Ferro-Chrome and Refractories. Before the aforesaid lease could expire by efflux of time on 3rd October, 1991 TISCO applied to the State authorities for second renewal of the mining lease for 20 more years under Section 8(3) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short the MMRD Act). The State Government of Orissa recommended to the Central Govt. for approval of the said second renewal for the entire area in which TISCO was having earlier lease. The aforesaid recommendation was made in compliance with the requirement prescribed under the MMRD Act read with Mineral Concession Rules, 1960 (for short the Rules). It may be noted that the said recommendation was for re-grant of mining lease for 10 years to TISCO for the entire area of 1261.476 hectares though the demand of TISCO for second renewal of this lease was for 20 years. It was suggested by the State Govt. to grant lease for a period of 10 years with effect from 12.1.1993 subject to certain conditions mentioned in the recommendatory letter. On 3rd June, 1993, the Government of India with reference to the recommendation of the State Government dated 28.11.1992 conveyed its approval under Section 8(3) in relaxation of Section 6(1)(b) of the MMRD Act. On 11.6.1993, a Member of Parliament complained to the Ministry that during the last fifty years, TISCO had not done much for the industrialisation of the State of Orissa and the mining areas granted to it were hardly exploited for more than three decades. He indicated that renewal of lease of the entire chromite mining area in favour of TISCO once again would not be in the interest of development of the State and also would not be in national interest. The matter was looked into by the Central Govt. afresh. It reviewed its earlier order of 3rd June, 1993 and granted approval for renewal of lease to TISCO confining it to only half the area i.e. 650 hectares. The said order dated 5.10.1993 further directed that rest of the area of approximately 600 hectares be deleted from the existing lease of TISCO and made available to other industries by the State Government as per the MMRD Act and Mineral Concession Rules, 1960 in the interest of mineral and industrial development in the country. The aforesaid order of the Central Government was challenged by TISCO before the Orissa High Court in Writ Petition OJC No.7729/93 filed on 19.10.1993. The rival claimants, Jindal Strips Limited and Jindal Ferro Alloys Limited, Respondent Nos. 3 and 4 respectively herein, filed a cross petition being OJC No.7054/94 in the Orissa High Court praying for a suitable writ or order directing the authorities concerned not to grant renewal of lease to TISCO. It may be mentioned that in the aforesaid writ petition of TISCO, the present appellant M/s. Ferro Alloys Corporation Ltd. (for short FACOR) was made a party Respondent on its request for intervention. Indian Charge Chrome Limited (for short ICCL) and Indian Metals Ferro Alloys Limited (for short IMFA) Respondent Nos. 5 and 6 respectively herein, in their turn also filed Writ Petition OJC No.5422/94 in the Orissa High Court opposing the grant of renewal of mining lease to TISCO. The present Respondent No. 7 M/s. Ispat Alloys (for short ISPAT) had not filed any Writ Petition in the Orissa High Court though it is also a claimant for mining lease for the very same mineral.

The High Court of Orissa, after hearing the parties concerned in the writ petitions, by its order and judgment dated 4.4.1995, took the view that the entire matter was required to be re- considered by the Central Government. It held that the order dated 3rd June, 1993 of the Central Government granting approval for renewal of lease to TISCO for the entire area and the subsequent order dated 5th October, 1993 could not be sustained in law. The matter had got to be reconsidered by the Central Government as to the proposal of subsequent renewal of the lease of TISCO and as to whether the Central Government would authorise renewal of such lease by forming an opinion in the interest of mineral development. The High court did not observe anything as to the merit of TISCOs claim for subsequent renewal of the lease. Regarding locus standi of the other writ petitioners before the High court whose writ petitions were being disposed of by the aforesaid common judgment, it was observed that their apprehension was without justification and their interest was of contingent nature and that in the event the Central Government found it not prudent to authorise subsequent renewal of TISCOs lease, the area eventually would be available and the State Government of Orissa would take steps for making necessary advertisements and inviting applications for grant of mining lease. It was also suggested that the other petitioners were opposing renewal of TISCOs lease and hence they deserved to be given hearing by the Central Government by way of fair play and in compliance with the principle of natural justice and to enable them to place necessary record for consideration by the Central Government. The applications of employees of TISCO as intervenors were found to have no merit and were rejected.

Against the aforesaid order of the High Court, TISCO filed special leave petition in this Court being SLP (C) No. 10830/95, other cognate SLPs arising out of the common order of the High Court on 10th May, 1995 were also filed. By an interim direction, this Court clarified in TISCOs SLPs that the pendency of the proceedings in the special leave petitions would not stand in the way of the Central Government in disposing the matter in accordance with law. In the meantime, on 3rd May,1995 appellant FACOR made a representation to the Central Government staking its claim for being granted mining lease for the entire area of 1261.476 hectares.

The Central Government in its turn and in compliance with the decision of the High Court and as a follow up action appointed a High Power Expert Committee under the Chairmanship of Shri S.D. Sharma, Joint Secretary in the Ministry of Mines, to consider the submissions filed before the Central Government by parties in the High Court proceedings in pursuance of the directions of the High Court of Orissa in its Judgment dated 4.4.95. The Committee was directed to submit its report to the Government within two weeks from the date of the order of the Central Government i.e. 24th May 1995. The Committee was also required to give a personal hearing to all the parties concerned as stipulated in the judgment of the Orissa High court. The aforesaid expert committee known as Sharma Committee, after hearing the parties concerned gave a detailed report on 16th August, 1995. As per the said report second renewal of TISCOs lease was recommended for a smaller area, namely, 406 hectares. The Sharma Committee also gave personal hearing to other claimants for mining lease in the area and who were opposing renewal of lease claimed by TISCO. The Sharma Committee after hearing them assessed the needs of these rival claimants and came to its own estimates regarding the requirements of these rival claimants. The Committee made it clear that it was not undertaking the task of granting any lease to any of these rival claimants in connection with the remaining area which might become available after reducing the occupied mining lease area with TISCO. In other

words, after confirming TISCOs renewal of lease of 406 hectares, the balance of 855 hectares land which was to be available with the State of Orissa for granting mining leases to other claimants had to be processed by the State authorities in accordance with law. The Sharma Committee, however, in the light of the claims put forward by rival claimants before it and the data submitted by them in support of their respective cases for allotment of leases in their favour, made the assessment of their requirements as noted earlier.

In the light of the aforesaid report of Sharma Committee, the Central Government by its detailed order dated 17th August, 1995 requested the State Government of Orissa to take necessary steps to issue orders granting subsequent renewal of mining lease for chrome ore in favour of TISCO for 406 hectares for a period of 20 years over a compact and contiguous area. It was also directed that the State of Orissa should take further action on the mining lease applications of other 4 applicants other than TISCO, i.e., (1) Jindal Strips Limited/Jindal Ferro Alloys Limited, (2) the present appellant FACOR (3) ICCL/IMFA and (4) Ispat Alloys Limited. These other claimants are Respondents 3, 4, 5, 6 and 7 respectively in this appeal. In the said order the Central Government further directed the State Government of Orissa to grant mining lease to the aforesaid four applicants as per law over the balance area of 855.476 hectares to be released by TISCO, on the basis of proportionate requirements of the chrome ore for these parties as assessed by the committee, in a fair, just, equitable and contiguous manner in consultation with Indian Bureau of Mines within a period of 30 days from the date of issue of the order of the Central Government. The State Government was also directed by the Central Government to seek its approval for grant of mining leases as per the provisions of the MMRD Act and the Rules. It was also observed that since the other four parties were in dire necessity of the raw material (chrome ore) and had set up mineral based industries and were suffering for want of chrome ore, the Central Government in conformity with the observations of the High Court of Orissa in its Judgment dated 4.4.1995 and in exercise of powers conferred by sub rule (1) of the said Rule 59 relaxed the provisions of sub rule (1) of Rule 59 with a view to expedite the process for making available the raw material, namely, chrome ore, to the needy industries in the interest of the mineral development. The requirements of chrome ore of these 4 parties, besides TISCO, which appeared before the committee, as finally accepted by the Central Government were listed as Annexure I to Appendix A of the aforesaid order of the Central Government. In the said order it was also stated for information of the State Government that in the pending SLP filed by TISCO in the Supreme Court against the High Court Judgment, the Supreme Court on 17th July, 1995 had granted six weeks time to the Government to pass appropriate orders and the matter was to be listed after 8 weeks. The aforesaid order of the Central Government which was partly in favour of TISCO and partly in favour of the present appellant as well as the aforesaid contesting Respondents 3 to 7 was also produced before this Court in the pending SLPs of TISCO and Industrial Development Corporation of Orissa Ltd. (for short IDCOL). The present appellant and Respondents 3 to 7 in this appeal were also party Respondents to the said proceedings before this Court. In addition to these contesting Respondents, the State of Orissa and the Union of India were also party Respondents. After hearing the contesting parties in their respective cases, relevant points for determination were framed by this Court after granting leave to appeal in the SLPs and by its decision in the case of Tata Iron & Steel Co. Ltd. vs. Union of India And Another, (1996 (9) SCC 709), a Bench of two learned Judges, speaking through A.M.Ahmadi, CJ, after considering the main grievance of the respective contesting parties, upheld the findings reached by the Sharma

Committee and the consequential order of the Central Government dated 17th August, 1995. It accordingly dismissed the appeals filed by TISCO and IDCOL. As we have noted, the impugned order of the Central Government dated 17th August, 1995 which in its turn was an off-shoot of Sharma Committees report had directed the State of Orissa to grant mining leases to four applicants other than TISCO in the remaining area of 855.476 hectares of land. The appellant herein was one of those four applicants found eligible for being granted lease for extracting chromium. However, the Central Government had observed that so far as the appellants requirement of chrome ore was concerned, it had accepted the assessment of the Sharma Committee to the extent of 6.40 metric tones for the first 20 years of lease and for the remaining 30 years its requirement of chrome ore was assessed at 14.13 metric tones, totalling to 20.53 metric tones in all. For Respondent Nos. 3 to 7, different assessments of the requirement of chrome ore as made by the Sharma Committee were accepted by the Central Government in its order dated 17th August, 1995. That order got confirmed by this court in the aforesaid decision in TISCOs case (Supra).

In the meanwhile, the appellant being dissatisfied with the aforesaid order of the Central Government dated 17th August, 1995 made a detailed representation to the State Government on 26th May, 1996 spelling out its own requirement of chrome ore which, according to it, was not correctly assessed by Sharma Committee and which assessment was accepted by the Central Government. The said representation was forwarded by the State Government to the Central Government on 12th June, 1997. The appellants representation reiterated its claim for grant of mining lease for chrome ore over the entire area of 1261.476 hectares in Sukinda Valley as earlier applied for on 19.10.93. However, subsequently on 29th June, 1997 the State Government of Orissa recommended to the Central Government for granting leases to four claimants, namely, IMFA/ICCL, Jindals, Ispat and FACOR over 50% of the left over area totally admeasuring 855.476 hectares on the basis of 50% of their respective requirements as assessed by the Sharma Committee, the remaining 50% of the balance area out of 855.476 hectares was sought to be thrown open for consideration of claims of other claimants for such mining leases along with aforesaid four claimants to the extent their requirements were not fully met by reduction of their estimated requirements by 50% as per the said recommendation of the State Government.

Being aggrieved by the aforesaid order of the State Government dated 29th June, 1997 and the earlier order of the Central Government dated 17th August, 1995 the appellant filed a fresh Writ Petition being OJC No.12032/97 in the Orissa High Court out of which the present appeal arises.

The High Court after hearing the parties concerned, took the view that the writ petition filed by the appellant after the decision rendered by this Court in TISCOs case (supra) challenging the very same order of the Central Government dated 17th August, 1995 which was confirmed by this Court in the aforesaid decision was not maintainable on the ground of res judicata. It was also held that the order of the Central Govt. dated 17th August, 1995 was legally justified and the subsequent order of the State Government dated 29th June, 1997 could also not be said to be suffering from non-application of mind and the decision making process of the State Government was not suffering from any infirmity. As seen earlier, this order of the High Court is the subject-matter of the present appeal moved by the dissatisfied writ petitioner FACOR.

RIVAL CONTENTIONS: Learned Senior Counsel, Shri F.S.Nariman for the appellant, vehemently contended that the High Court had patently erred in law in dismissing the writ petition as barred by res judicata. He took us to the relevant pleadings of the parties, the judgment of this Court in TISCOs case (supra) and also relied upon the relevant documents for submitting that in TISCOs appeal there was no occasion for the appellant to raise the inter se dispute between the contesting Respondents nor has the Court adjudicated upon the present grievance of the appellant that assessment of its need by the Sharma Committee as accepted by the Central Government was erroneous and an under-estimate. That there was no express decision of this Court on this aspect nor was the appellant required to put forward this contention earlier. Hence, neither res judicata nor constructive res judicata would apply to the facts of the present case. He alternatively submitted that, in any case, the High Court could have held that the present grievance was premature as the appellants earlier application for grant of mining lease which was dismissed as premature by the State Government was pending scrutiny in revision before the Central Government and hence, this issue could have been kept open.

Learned senior counsel Shri Shanti Bhushan, appearing for Respondent nos. 3 and 4, on the other hand, submitted that the appellant itself invited the Sharma Committee to assess its needs for chrome ore and also invited the Central Government not only to accept the said assessment but also to exercise powers under Rule 59 sub-rule (2) for dispensing with the procedure under Rule 59, sub-rule (1) of the Rules. That when the question of legality of the order of the Central Government was being considered by this Court in TISCOs appeal the appellant as Respondent therein did not think it fit to challenge the assessment of its need by the Committee as accepted by the Central Government. Thus, at least on the principle of constructive res judicata, if not actual res judicata, the appellants present grievance is barred. It is also barred on the principle of estoppel and acquiescence. Shri Shanti Bhushan, in this connection, invited our attention to relevant provisions of MMRD Act and submitted that the Central Governments order was perfectly justified and binding on all parties especially when it was wholly approved by this Court.

Shri Vaidyanathan, learned Addl. Solicitor General, appearing for Respondent No.1 - Union of India, submitted that the Sharma Committee was appointed by the Central Government in the light of the directions issued by the High Court in TISCOs writ petition. That the Central Governments order of 17th August, 1995 was merely recommendatory in nature and it was for the State Government to pass appropriate orders. He, however, submitted that the Central Government would request this Court to issue appropriate directions in the light of the earlier decision of the Central Government laying down the scope and ambit thereof.

Learned counsel for Respondent no.2 - State of Orissa, contended that the order of the Central Government dated 17th August, 1995, as confirmed by this Court, left it to the State Government to pass appropriate orders regarding grant of lease to rival claimants. That the State Government in exercise of its own independent jurisdiction under the Act had passed its order dated 29th June, 1997 which was not challenged by any of the parties before this Court and hence must be held to be binding on all parties and consequently, the appellants writ petition was rightly dismissed by the High Court.

Ms. Indra Jaisingh, appearing for Respondent no.5, in her turn, submitted that the appellants writ petition was clearly barred by res judicata or constructive res judicata and, in any case, it was barred by delay, laches and acquiescence as well as on the ground of estoppel. That the appellant itself invited the Sharma Committee to assess its needs of chrome ore. After it was so assessed, the Central Government passed the order of 17th August, 1995. Even that order was wholly supported by the appellant before this Court in TISCOs and IDCOLs appeals. It sat on the fence at that stage. Even after the arguments in the appeal were over in October, 1995 and when the matter was awaiting judgment, the appellant filed writ petition in the High Court challenging the order of Central Government. It did not think it fit to get that petition transferred to this court nor got any clarification from this court for preserving its right to challenge the assessment of its needs by separate proceedings. It is, therefore, now too late in the day for the appellant to raise this contention by separate proceedings. In fact, the appellant is estopped from its own conduct from doing so, as all other Respondents have changed their position and have acted upon the Central Governments order by treating the assessment of relative needs of rival claimants by the Central Government to be correct and binding on all rival claimants.

Shri Chidambaram, learned senior counsel for Respondent no.6, broadly adopted the aforesaid arguments and further contended that the entire cake of 1261.476 hectares of land in Sukinda Valley was sought to be claimed by rival claimants. In TISCOs appeal, the rival claimants were TISCO on the one hand, and the present appellant and Respondent nos.3 to 7, on the other. Once this court restricted TISCOs claim on the basis of its need for chrome ore, necessarily implied therein was the finding of this Court that the assessment of needs of other claimants like the appellant and other Respondents was rightly done by the Central Government on the basis of the report of the Sharma Committee. Hence, the issue about proper assessment of appellants need was not only res judicata but even on the ground of constructive res judicata and also on the ground that the appellant cannot blow hot and cold subsequently, the appellants writ petition was rightly dismissed by the High Court. Our attention was invited to a decision of an English Court to which we will make a reference hereafter. Shri Chidambaram also placed reliance on Order 41 Rule 22 CPC in support of his contention.

Learned senior counsel, Shri Gupta for Respondent no.7, also adopted the arguments of learned senior counsel appearing for contesting Respondents 2 to 6 and submitted that equitable distribution of a scarce mineral like chrome ore has to be done. This principle is also settled by this Court in the case of Indian Metals Ferro Ltd. vs. Union of India, (1992 (Suppl.1) SCC 191). On the basis of this principle, the High Court rendered its decision earlier in TISCOs writ petition which was followed by the Central Government by appointing the Sharma Committee and the Sharma Committees recommendations were accepted by the Central Government by its order dated 17th August, 1995. Thus, the entire exercise of equitable distribution of this rare and costly mineral in Sukinda Valley was completed by the Central Government and was approved by this Court. Any tinkering with the same, therefore, cannot be permitted to any of the Respondents and accordingly, the appellants present proceedings were clearly misconceived and amounted to going behind the order of the Central Government as confirmed by this Court.

Learned senior counsel Shri Desai, in support of I.A.1 of 1999 submitted that the order of the State Government dated 29th June, 1997 which was upheld by the High Court in the impugned judgment is correct and requires no interference. That the present appellant or even contesting Respondents have also not thought it fit to challenge the same and consequently, the State of Orissa should proceed in the light of the said order on the principle of live and let live. It becomes at once clear that Mr.Desais grievance in the Intervention Application would not survive if the State upheld . Governments order dated 29th June, 1997 is Shri Nariman, learned senior counsel for the appellant, in Rejoinder submitted that neither the bar of express res judicata nor constructive res judicata can be pressed in service against the appellant. That at the stage of TISCOs appeal before this Court no occasion arose for the appellant to make the grievance regarding upward revision of assessment of its needs. That this Court was only concerned with TISCOs claim and IDCOLs claim. These claims could be examined without going into the wider question of inter se disputes between the contesting Respondents. He also submitted that there is no question of any estoppel on the part of the appellant or any acquiescence, as the said question never arose for consideration earlier. That there was no delay also on the part of appellant in challenging the order of the Central Government dated 17th August, 1995 as the appellant had promptly challenged the same before the High Court in the beginning of the year 1996. He, therefore, submitted that the appeal may be allowed and the order of the High Court may be set aside.

Points for determination: In the light of the aforesaid rival contentions, the following points arise for our determination. 1. Whether the writ petition filed by the appellant before the High Court was barred by res judicata; 2. In the alternative, whether the said petition was barred by the principle of constructive res judicata;

3. Even if the findings on the aforesaid points are in negative, whether the writ petition was liable to be dismissed on the additional ground that the appellant had waived its grievance in the writ petition and, therefore, the writ petition was not maintainable on the grounds of waiver, estoppel and acquiescence on the part of the appellant and also on the ground that it was barred by delay and laches; 4. Whether the order of the State of Orissa dated 29th June, 1997 was in conflict with the earlier order of the Central Government dated 17th August, 1995 as upheld by this court in TISCOs case (Supra). Whether the order of the State Government dated 29th June, 1997 is binding on the appellant as well as on the contesting Respondents 2 to 7;

5. In any case, whether it is a fit case for interference under Article 136 of the Constitution of Inidia by this Court on the facts and circumstances of the case; and 6. What final order?

We shall now proceed to deal with the aforesaid points in the same sequence in which they are listed above.

Point No.1: So far as the question of res judicata is concerned, it has to be kept in view that the appellants grievance against the impugned order of the Central Government dated 17th August, 1995 and against the report of the Sharma Committee as accepted by the aforesaid order of the Central Government proceeds in a narrow compass. The submission of Shri Nariman, learned senior counsel for the appellant is that even though the appellant joined issues before the Sharma

Committee in connection with assessment of its need for chrome ore to enable it to claim mining lease for the entire area which was in possession of TISCO earlier, the ultimate assessment of appellants need as made by the Sharma Committee and as approved by the Central Government by its order dated 17th August, 1995 involved a patent error and hence it was required to be revised upwards. The short question is whether this grievance was on the anvil of scrutiny of this Court when it decided TISCOs case (supra) and other cognate matters as per its judgment and whether it was finally resolved by it. Now it has to be kept in view that before any issue is said to be heard and finally decided, the Court considering it has to be shown to have expressly considered such an issue and to have decided it one way or the other and such decision should have obtained finality in the hierarchy of proceedings. Then only such an issue can be said to be heard and finally decided between the parties. For the present discussion we may assume that the appellant had joined issue with the contesting Respondents before this Court when it was called upon to decide the rival claims resulting in the decision in TISCOs case (supra). Even then the question remains whether this Court expressly considered the grievance of the appellant against the order of the Central Government dated 17th August, 1995 when it did not go behind the estimate of the Sharma Coimmittee regarding the need of the appellant for chrome ore. So far as this question is concerned, we have to look to the express findings reached by this Court in the aforesaid decision. When we turn to that decision, we find that Ahmadi, C.J., speaking for the Court in that case in paragraph 2 of this Report, clearly mentioned the grounds of challenge for consideration of the Court. They were listed as two grounds being (1) the challenge to the common judgment and order of the Orissa High Court dated 4.4.1995 arising out of OJC No. 7729 of 1993; and (2) the decision of the Central Government dated 17.8.1995 made pursuant to the said judgment of the High Court.

Shri Shanti Bhushan, learned Senior Counsel for the contesting Respondents 3 & 4, submitted that the decision of the Central Government dated 17th August, 1995 was challenged before this Court not only by TISCO but also by IDCOL. That so far as IDCOL is concerned, its challenge was clearly against paragraph 2 of the final directions of the Central Government in the order dated 17th August, 1995. Two directions were issued by the Central Government to the State Government in the said order which have to be noted in extenso. The relevant averments in paragraph 17 of the order read as under : 17. the Honble High Court of Orissa in para 96 of its judgment dated 4.4.1995 has taken note of the dire necessity of the parties before it for chrome ore and observed that ..the parties are in the dire necessity and moving from pillar to post.. Keeping this dire necessity of the parties in view, the Honble High Court has further observed that exigencies of situation arisen that the national interest and the interest of mineral development cannot be kept in a cold storage for an indefinite period Besides TISCO, the four (4) parties mentioned in para 10 above are the leading consumers of chrome ore and are languishing for captive source of raw material for their mineral based industries. Secondly, it would be in the interest of mineral development to hasten the process of decision making. After the surplus rendered area is handed over by TISCO to the State Government, the working in abandoned quarries are most likely to be damaged due to rains and may create other environmental hazards also. It would be very costly and difficult to restart abandoned mines. It will only add to the national cost to allow these quarries to get damaged and may even require the needy parties to go in for import of the raw material to meet the requirements of their industries. Therefore, so as to ensure earliest compliance to the said observation of the Honble High Court, the State Government of Orissa is requested to take necessary steps to :-

(i) issue orders granting subsequent renewal of ML for chrome ore in favour of TISCO over 406 hectares for a period of 20 years over a compact and contiguous area as per breakup given in para 16 above. The physical demarcation based on the above guidelines may also be carried out by the State Government in consultation with Indian Bureau of Mines within a time frame of 30 days in the light of guidelines in para 6.1.12 and 6.1.13 of the Committees Report.

(ii) to take further action on the ML applications of the other 4 (four) applicants (other than TISCO) mentioned in para 10 above for grant of mining leases as per law over the balance area of 855.476 hectares of TISCO as assessed by the Committee) on the basis of proportionate to the requirements of the chrome ore for these parties as furnished to the Committee in a fair, just and equitable and in a contiguous manner in consultation with Indian Bureau of Mines within a period of 30 days from the date of issue of this order and make its recommendation to the Central Government for approval for grant of mining leases as per provisions of the MMRD Act and the Mineral Concession Rules, 1960. The Government has carefully seen the observations of Honble Orissa High Court in OJC No. 7729 and others contained in its judgment dated 4.4.1995. Since the other 4 (four) parties are in dire necessity of the raw material (chrome ore) as observed by the Honble High Court and have set up mineral based industries and are suffering for want of chrome ore, the Central Government in conformity with the observations of Honble Orissa High Court (in para 96 of its judgment dated 4.4.1995) and in exercise of powers conferred by sub rule (2) of rules 59 hereby relaxes the provisions of sub rules (1) of the said rule 59 objective of expediting the process for making available the raw material, which is chrome ore, to the needy industries in the interest of the mineral development. The chrome ore requirements of these 4 (four) parties besides TISCO, which appeared before the committee constituted by the Central Government, as finally accepted by the Central Government, are listed as Annexure I of Appendix A of this letter, and the assessment of area for TISCO as finally accepted by Central Governments listed as Annexure II of Appendix A and in case of M/s Ispat Alloys Limited, the requirements are listed as Appendix C. A mere look at the two directions contained in the aforesaid paragraph 17 shows that, so far as the first direction is concerned, the State Government was clearly directed by the Central Government to grant renewal of lease of only 406 hectares of land to TISCO for 20 years. But so far as the second direction is concerned, it obviously pertained to the rival claims of remaining 4 applicants consisting of the appellant as well as Respondents 3 to 7 and, therefore, their claims were to be considered for grant of appropriate portions of land for mining purposes from the balance area. It is the second direction which was challenged by TISCO before this Court as TISCO wanted the grant of the entire 1261.476 hectares of land and was aggrieved by reduction of its allowable claim to 406 hectares only. Consequently, a direct conflict arose between TISCO, on the one hand, and the appellant and other rival claimants on the other. That dispute projected only one controversy between the parties, namely, whether TISCO could be granted more than 406 hectares of land by way of renewal of its lease and wheher any excess area could

> be made available to the other rival claimants, like the appellant and Respondents 3 to 7, who were before this Court as party Respondents. Consequently, TISCOs challenge to direction no. 2 did not raise a further question for consideration regarding the correctness of assessment of relative needs of the appellant and Respondents 3 to 7 for chrome ore. On these aspects, there was no dispute inter se between TISCO and others. Of course, there could have been such a dispute between the appellant, on the one hand, and the Central Government, on the other, who were party Respondents in the very said proceedings. There could also be an inter se dispute in this connection between the appellant as well as other Respondents 3 to 7, who were also Respondents before this Court in the earlier proceedings.

It is also well settled that there can be res judicata on issues raising questions inter se amongst contesting Respondents but in order that such dispute can be said to have been adjudicated upon, express decision rendered by the Court on such issues has to be ascertained. Once we turn to para 30 of the Report in TISCOs case (Supra), we find only five issues which had arisen for consideration of this Court. They read as : (i) Whether the High Court of Orissa was justified in striking down the decisions of the Central Government dated 3.6.1993 and 5.10.1993 on the ground that the requirement of Section 8(3) of the Act had not been met; (ii) Whether the report of the Rao Committee and the decision of this Court in Indian Metals case are relevant for the consideration of renewal of leases under Section 8(3) of the Act; (iii) Whether the High court and the Committee were justified in hearing prospective applicants while considering the issue of renewal of TISCOs lease; (iv) Whether the Committee was justified in interpreting the concept of mineral development under Section 8(3) of the Act as requiring the assessment of the captive mining requirement of different industries and the application of the principle of equitable distribution of mining leases; (v) Whether the Central Government in its order dated 17.8.1995, had correctly analysed the needs and requirements of TISCO in recommending that its lease be renewed over land measuring 406 hectares.

It is obvious that in the aforesaid proceedings no issue arose for consideration as to whether the assessment of the need of the appellant for chrome ore by the Sharma Committee as accepted by the Central Government by its order dated 17th August, 1995, was an underestimate. Consequently, whatever observations might have been made by his Court while dealing with issue no. 4, cannot be said to be an express decision on the vexed question as to whether the assessment of the need for chrome ore, so far as the appellant is concerned, as approved by the Sharma Committee and accepted by the Central Government, involved any error or not or whether it was required to be re-assessed for upward revision. It is, therefore, difficult to agree with the contention of learned Senior counsel for the Respondents that such an issue was expressly adjudicated upon by this Court in the aforesaid decision and the findings thereon, therefore, could not be made the subject matter of fresh proceedings between the parties. Not only the contesting parties were not heard on this issue but also there was no final decision thereon inter se these parties. Consequently, it is difficult to appreciate the reasoning in the impugned order of the High Court that the controversy in this connection raised by the appellant in the present writ petition was finally concluded by this Court and, hence, the writ petition raising this contention, was barred by res judicata.

The first point for determination, therefore, is answered in negative in favour of the appellant and against the Respondents.

Point No.2: This takes us to the consideration of the question whether the judgment of this Court in TISCOs case (supra) operates at least as constructive res judicata against the appellant. Now it must be kept in view that the appellant was also a party- Respondent in the aforesaid appeal before this Court when this Court considered the grievance of TISCO and IDCOL as appellants centering round second part of the order of the Central Government dated 17.8.95. The present appellant as party-Respondent in that proceedings was only interested in supporting the order of the Central Government in so far as it had held the appellant to be entitled to the grant of appropriate lease on the basis of the assessment of its requirement of chrome ore. TISCO and IDCOL had contended before this Court that the appellant and other contesting three claimants who were also Respondents, were not required to be granted any lease. Thus, in the said proceedings, the dispute between the contesting parties was a limited one, namely, whether TISCO and IDCOL should be granted lease of the entire land in question or whether the contesting Respondents including the appellant were entitled to get their assessed requirements for chrome ore as considered by the authorities upheld while considering the question of re-grant of appropriate mining lease to TISCO. It becomes at once clear that the inter se dispute between the appellant, on the one hand, and the other contesting three claimants on the other centering round the correct assessment of their respective requirements of chrome ore was not in the anvil of controversy between the contesting Respondents including the appellant in those proceedings. In fact they all had a common defence against TISCO and IDCOL who were the appellants before this Court.

Under these circumstances, the question arises whether the appellant as one of the Respondents might have raised the further question regarding its claim for further upward revision of its assessed requirement of chrome ore and also whether it ought to have raised such a question for consideration of this Court in those proceedings. It is obvious that in order to attract the bar of Explanation IV to Section 11 CPC and before it can be held that any subsequent contention on the point can be treated to be hit by the bar of constructive res judicata, it has to be seen whether such a contention might and ought to have been made the ground of defence or attack in such former proceedings. Only then such a matter can be deemed to have been a matter directly and substantially in issue in such former proceedings. It is difficult to appreciate how the appellant as a contesting Respondent was of necessity required to raise the defence that the assessment by the Sharma Committee of its requirement of chrome ore was an underestimate and was required to be revised upwards and, hence, it could have been a valid ground of defence against the claim of the appellants, namely, TISCO and IDCOL before this Court. Without raising such a contention, the appellant could have defended and actually defended the decision of the Central Government dated 17th August, 1995 treating the appellant to be one of the eligible claimants for a mining lease in the very same area in which TISCO and IDCOL were claiming such leases to the exclusion of the appellant amongst others. Equally, such a contention would not have been made a ground of attack by the appellant against contesting Respondents inter se or even against the State of Orissa and the Central Government, who were the other contesting Respondents for getting TISCO & IDCOL non-suited in their appeals. In fact, all of them as Respondents at that stage were interested in supporting the order of the Central Government dated 17th August, 1995. That was their common

defence against the claims of only contesting opponents, namely, TISCO and IDCOL who were the appellants before this Court. Consequently, Explanation IV to Section 11 CPC on the facts of the present case, cannot be said to be attracted at all.

It is no doubt true that principle of constructive res judicata can be invoked even inter se Respondents, but it is well settled that before any plea by contesting Respondents could be said to be barred by constructive res judicata in future proceedings inter se such contesting Respondents, it must be shown that such a plea was required to be raised by the contesting Respondents to meet the claim of the appellant in such proceedings. If such a plea is not required to be raised by the contesting Respondents with a view to successfully meet the case of the appellant, then such a plea inter se contesting Respondents would remain in the domain of an independent proceedings giving an entirely different cause of action inter se the contesting Respondents with which the appellants would not be concerned. Such pleas based on independent causes of action inter se Respondents cannot be said to be barred by constructive res judicata in the earlier proceedings where the lis is between the appellants on the one hand and all the contesting Respondents on the other. In other words, when the appellants are not concerned with the inter se disputes between the contesting Respondents such inter se disputes amongst Respondents would not give rise to a situation wherein it can be said that such contesting Respondents might and ought to have raised such a ground of defence or attack for decision of the Court. In this connection, it would be profitable to refer to a decision of this Court in the case of Iftikhar Ahmed & Ors. vs. Syed Meharban Ali and Ors., (AIR 1974 SC 749), dealing with the principle of res judicata which obviously would include also the question of constructive res judicata between the co-defendants. K.K. Mathew J., speaking for the Court in that case made the following pertinent observations : Now it is settled by a large number of decisions that for a judgment to operate as res judicata between or among co- defendants, it is necessary to establish that (1) there was a conflict of interest between co-defendants (2) that it was necessary to decide the conflict in order to give the relief which the plaintiff claimed in the suit and (3) that the Court actually decided the question.

In Chandu Lal v. Khalilur Rahaman, AIR 1950 PC 17. Lord Simonds said:

> It may be added that the doctrine may apply even though the party, against whom it is sought to enforce it, did not in the previous suit think fit to enter an appearance and contest the question. But to this the qualification must be added that, if such a party is to be bound by a previous judgment, it must be proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided. We see no reason why a previous decision should not operate as res judicata between co-plaintiffs if all these conditions are mutatis mutandis satisfied. In considering any question of res judicata we have to bear in mind the statement of the Board in Sheoparsan Singh v. Ramnandan Prasad Narayan Singh AIR 1916 PC 78 that the rule of res judicata while founded on ancient precedent is dictated by a wisdom which is for all time and that the application of the rule by the Courts should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

> The raison detre of the rule is to confer finality on decisions arrived at by competent Courts between interested parties after genuine contest: and to allow persons who had deliberately chosen a position to reprobate it and to blow hot now when they were blowing cold before would be completely to ignore the whole foundation of the rule.
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> (see Ram Bhaj v. Ahmed Said Akhtar Khan, AIR 1938 Lah
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> 571).

The aforesaid principle would squarely get attracted while considering the question of constructive res judicata between the appellant on the one hand and the contesting Respondents on the other who were all co-Respondents before this Court in TISCO and IDCOLs appeals. Considering the basic requirements of the principle of constructive res judicata amongst co-Respondents in TISCO and IDCOLs appeals, it has to be found out whether inter se those co-Respondents the question of correct assessments of present appellants need for chrome ore was necessary to be agitated by the present appellant for enabling the Court to give appropriate relief to TISCO and IDCOL in their appeals before this Court. It becomes absolutely clear on the facts of the present case that the grievance of the appellant in the present proceedings regarding the alleged error in the assessment of its requirement for chrome ore and the question whether such assessment was required to be revised upwards, which may be relevant for deciding the appellants independent claim against the Central Government as well as the State of Orissa and also vis-a-vis other contesting claimants being three other Respondents had nothing to do with the question of granting relief to the appellants TISCO and IDCOL in the said earlier proceedings. As this important condition was not satisfied for attracting the bar of constructive res judicata against the appellant, it is not possible to agree with the contention of learned counsel for the Respondents that the appellants grievance in the present proceedings was also barred on the ground of constructive res judicata, in the light of the earlier decision of this Court in TISCOs case (supra).

We may also, in this connection, refer to the submission of the learned senior counsel Shri Chidambaram for the Respondent no.6 that for deciding the claim of TISCO for being granted renewal of lease for the entire 1261 hectares of land or to any lesser extent, the comparative needs of all the four rival claimants, including the present appellant, had to be ascertained and were, in fact, ascertained. The said assessments made by the Sharma Committee were accepted by the Central Government by its order dated 17th August, 1995. It is this order which was brought in scrutiny before this Court in the SLPs of TISCO and IDCOL. Consequently, the land being one and the same and there being five rival claimants including TISCO, whose comparative needs were ascertained by the Committee and the Central Government, if the appellants claim for upward revision of the assessment of its need was accepted, it would have directly affected, apart from other Respondents, the Special Leave Petitioner TISCO itself, and consequently, all the rival claims of contesting parties in the aforesaid proceedings raised a common controversy and a lis to that effect inter-parties. It is difficult to appreciate this contention for the simple reason that the present claim of the appellant against the contesting Respondents 3-7, who were all parties before this Court in the earlier proceedings, raises a dispute inter se all these Respondents who were before this Court in the said

proceedings. To that extent, it can be said that there was a conflict of interest inter se co-Respondents but the short question is whether for resolving this inter se conflict, any finding was necessary so as to meet the claim of the common appellant TISCO. It is, of course, true that TISCO was demanding not only 400 and odd hectares of land as granted to it by the Central Government by its order dated 17th August, 1995 but was also claiming the entire 1262 and odd hectares of land. But once the relative assessments of needs of co-Respondents before this Court were upheld by this Court, the said finding was enough to non-suit TISCO in its SLP and for confining its claim to only 400 and odd hectares of land, as granted by the Central Government by its order dated 17th August, 1995, upholding of the total requirements of all contesting co- Respondents. It was sufficient to reject the claim of TISCO for getting lease of any additional area. It was not then necessary for the contesting Respondents before this Court in the said proceedings to go further and require this Court to decide their inter se conflict of interest or claims. That dispute was entirely foreign to the scope of the proceedings before this Court wherein there was lis only between TISCO on the one hand who had been granted 400 and odd hectares of land and the contesting Respondents on the other including the present appellant whose total assessment of comparative needs together was a sufficient defence for rejecting the claim of TISCO for any additional grant of land.

In order to appreciate the nature of the controversy inter-parties amongst rival claimants in the earlier proceedings before this Court, it would be profitable to take a simple illustration.

Suppose A, B and C each claims 100 per cent share in a given property. A files a suit against B and C for getting its claim adjudicated. The Trial Court holds on evidence that A has got only 50 per cent share while B and C, the contesting defendants each has got 25 per cent share. A files an appeal seeking 100 per cent share instead of 50 per cent granted by the Trial Court. B, however, claims more than 25 per cent share vis-a-vis C - say up to 30 per cent. Still their inter se dispute may not be required to be decided in appellants appeal as even if shares of B and C together are retained as held by the Trial Court to 50 per cent in all that would be sufficient to non-suit A in appeal by rejecting his claim for anything more than 50 per cent as the property is one and the same. Therefore, in appeal of A contesting Respondents B and C for opposing A will have a common defence and it will not be necessary for B to urge or for the Appellate Court to go further and examine the inter se dispute between B and C and find out whether Bs share was 30 per cent and Cs share was 20 per cent. Thus even though between these two contesting Respondents B and C there may be a conflict of interest inter se, so far as their common opponent A is concerned, it would be sufficient for them to jointly submit that he is not entitled to anything more than 50 per cent and for deciding the lis in appeal between A on the one hand and B and C on the other, it would not be necessary for the Court to resolve the inter se dispute between B and C. Consequently, when appeal of A is dismissed holding that he has not more than 50 per cent share and thereby confirming the decree of the Trial Court, inter se dispute between B and C about their respective shares can not be treated to be barred by constructive res judicata. Thus the Explanation IV to Sections 11 CPC would not apply as such a contention even though might have been raised by B it was not required to be raised. It could not be said that it ought to have been raised by B inter se vis-a-vis C to get As claim defeated in his appeal. Such a claim can validly form subject matter of an independent proceedings between B and C if and when occasion would arise and dismissal of As appeal confining his share to 50 per cent in the very same suit property would not project any bar of constructive res judicata against B vis-a-vis C when

he chooses to claim more than 25 per cent share in the very same property in any future litigation. Consequently, it cannot be held as submitted by the learned counsel Shri Chidambaram that only because cake is one and there were 5 claimants including TISCO whose needs were ascertained by the Central Government on the basis of the report of Sharma Committee and when brought in the arena of contest by TISCO the inter se claims between present appellant and other contesting Respondents namely 3 to 7 who were all co-Respondents before this Court in the earlier proceedings could be said to have been barred by constructive res judicata on account of the earlier decision of this Court and could not have been made subject matter of future litigation like the present one.

It is also not possible to appreciate how Mr. Chidambaram could press in service Order 41 Rule 22 of CPC which can apply only when the Respondent in appeal can support the order of the lower court on any ground held against it. In TISCOs appeal there was no occasion for the appellant to support the earlier judgment of the High Court on any ground which could have been said to be wrongly decided against it nor could the appellant support the Central Governments order dated 17th August, 1995 on the ground that it underestimated its needs. Such a grievance would amount to attacking the order and not supporting it. The second point for determination, therefore, is also answered in the negative in favour of the appellant and against the Respondents.

Point No. 3: So far as this point is concerned, we have given our anxious consideration to the rival contentions. We find that the appellant FACOR stood on the fence before this Court when the judgment was rendered in TISCOs case (Supra). By the time this Court heard the aforesaid cases on 5.10.95 and reserved its judgment, FACOR had already got assessment of its need decided by the Sharma Committee as well as by the Central Government by its order dated 17th August, 1995. Not only that but subsequent thereto on 23rd August, 1995, FACOR itself had made an application for mining lease for 462.406 hectares presumably on the basis that its requirement was much more than that assessed by the Sharma Committee and accepted by the Central Government. If that is so, when it was already a party Respondent before this Court which took up for consideration on 5th October, 1995 the question whether Sharma Committee Report as accepted by the Central Government by its order dated 17th August, 1995 was correct or not, the stand adopted by the appellant FACOR before this Court assumes importance.

It discretely kept silent and invited this Court to accept the said decision of the Central Government as a whole. That is to say by 5th October, 1995 FACOR as a Respondent in the proceeding before this Court deliberately did not choose to challenge the said order on any permissible ground if it was aggrieved by the lower assessment of its need by the Committee as accepted by the Central Government. On the contrary, its stand before this Court by 5th October, 1995 was of necessity one of getting the said order wholly upheld. And that is exactly what this Court did in its judgment delivered later on on 23rd July, 1996 . It is also pertinent to note that in between FACOR had filed Writ Petition OJC No.1474/96 on 19th February, 1996 before the Orissa High Court challenging the order of the Central Government dated 17th August, 1995. For reasons best known to it, FACOR did not think it fit to get the said writ petition transferred to this Court for decision. Instead, it never moved its writ petition for orders before the High Court even till date. This conduct of FACOR shows that before this Court it was interested in getting the order of the Central Government dated 17th August, 1995 wholly confirmed. It never raised any dispute inter se among the other Respondents

who were the present contesting Respondents or even against the Central Government which was also a party to the proceedings before this Court. It kept mum on this aspect and invited this Court to wholly confirm the order of 17th August, 1995 and also successfully got it confirmed by this Court. It was, therefore, too late for FACOR to subsequently turn round and try to go behind the said order. Thus, on the principle of conscious waiver of its objections to the order dated 17th August, 1995 it must be held that FACOR gave up its grievance regarding assessment of its requirement of chrome ore as approved by the Sharma Committee and accepted by the Central Government. Its conduct showed that it was satisfied by the order of the Central Government dated 17th August, 1995 recommending grant of lease of appropriate extent of land for meeting the assessed need of the appellant for chrome ore for the coming 50 years. We, therefore, find considerable force in the submission of the learned Senior counsel for the contesting Respondents that FACOR by its own conduct had waived its dispute regarding the correct assessment of its need by the Committee and as confirmed by the Central Government by its order dated 17th August, 1995. It acquiesced in the said assessment.

Apart from the question of acquiescence, FACOR would also be liable to be non-suited on the ground of estoppel. As noted earlier, it did not get its pending writ petition OJC No.1474/96 transferred for adjudication before this Court when the earlier proceeding wherein by October, 1995 Central Governments order of 17th August, 1995 was already considered was awaiting judgment of this Court. When FACOR, as a contesting Respondent in SLP filed by TISCO and IDCOL, had tried to support the order of Central Government dated 17th August, 1995 before this Court it definitely created an impression in the minds of the other contesting Respondents, including the State Government and the Central Government, that it was supporting the order of 17th August, 1995 in its entirety. These contesting Respondents, on account of the aforesaid conduct of FACOR changed their position and could legitimately presume that the appellant had no grievance against the relative assessment of the needs of other contesting parties. On that clear stance of FACOR arising out of its conduct before this Court, Respondents could legitimately proceed on the basis that FACOR was claiming mining lease in the light of assessment of its need as made by the expert committee and accepted by the Central Government and hence the balance land would be available to the rest of the contesting Respondents as per their assessed needs. It is because of the conduct of FACOR that the State Government relying on the said basis of the assessment of relative needs of the four claimants as upheld by this Court, passed the subsequent order dated 29th June, 1997. It is pertinent to note that in the present proceedings neither FACOR nor any of the other contesting Respondents/claimants have made any grievance regarding the slicing down to the extent of 50% of the requirement of four claimants including FACOR as effected by the State Government by its aforesaid order. Thus, the appellant not only acquiesced in the order of 17th August, 1995 but allowed the State Government to act on the same, on the basis that FACOR was satisfied by the assessment of its need by the Central Government and also being further satisfied in getting at least 50% of its assessed need acted upon by the State Government which can grant appropriate lease of land to that extent in the first instance. Therefore, the order of the State Government dated 29th June, 1997 must be held to have proceeded on the admitted stand taken not only by FACOR but also by the other claimants before this Court when it delivered its Judgment in TISCOs case (Supra). Thus, because of non- contentious attitude adopted by FACOR before this Court in the proceedings culminating in the aforesaid judgment not only the other three rival claimants but also the Central

and the State Governments changed their positions and acted upon the representation flowing from the non-contentious attitude adopted by the FACOR in connection with the order of Central Government dated 17th August, 1995. Not only the said order was supported by FACOR before this Court, but it became successful in getting it confirmed by this Court and thereafter the said decision was acted upon by all the contesting Respondents. Hence, it is too late for FACOR to turn round and try to get out of the order of this Court. Therefore, even on the principle of estoppel, FACOR must be held to be bound by the assessment of its need as approved by the expert committee and accepted by the Central Government and which assessment was got approved by FACOR itself as a supporting Respondent before this Court. FACOR cannot blow hot and cold in this connection. It cannot now submit to this Court differently from what it submitted in the past when this Court decided TISCOs case (Supra) and got the assessment of its need approved by this Court. It cannot turn round and say that this Court should not have accepted the said assessment.

When we turn to the decision of this Court in TISCOs case (Supra), we find all the rival claimants namely, TISCO, IDCOL, FACOR and other contesting Respondents 3 to 7 who were all parties in the aforesaid proceedings before this Court, were heard in support of their rival claims. Even though the present contention of the appellant FACOR may technically not be held to be barred by res judicata or constructive res judicata, this Court, after hearing all the contesting parties, including FACOR, appears to have adopted a package deal for closing down the long simmering controversy between the parties finally and had brought down the curtain with a view to fructify the need for equitable distribution of this precious mineral chrome ore in public interest. In this connection it is profitable to note the observations of this Court in Paragraphs 63 to 68 of the Report in TISCOs case (supra) at pages 726 : 63. We have studied the Committees report on this issue and we find that most, if not all, of these contentions have been dealt with in the report . We find it difficult to accept the contention that the Rao Committee had not endorsed the concept of captive mining because, as we have already mentioned, it does in fact do so. Having studied the decision in the Indian Metals case we find that on the issue of the requirement of captive mining, this Court had expressly refrained from giving an opinion on the issue as it did not arise for its consideration; however, it did recommend that chromite ore be supplied to needy applicants in an equitable manner. It must be pointed out that nowhere in the Rao Report nor in the report of the Committee, has the requirement of captive mining been interpreted to mean that every industry within the State would, by reason of its existence, be entitled to a mining lease. The captive requirement of an industry is a factor that has to be kept in mind while granting leases but, it is to be done on a comparative scale. While the Central Government exercises its discretion in granting or renewing a lease, it is clear that the capacity of an industsry to effectively exploit the ore, will be a predominant consideration. The submission of the learned counsel that none of the other parties before this Court required the mineral ore for captive consumption cannot be accepted. This aspect has been specifically examined by the Committee at pages 260-263 of its report. In order to properly appreciate the issue of captives consumption, the Committee examined the needs of the other parties before it. It stated that each of these parties had manufacturing industries which produce value-added products and earn considerable foreign exchange for the country, and it was therefore of the view that an analysis of their total requirement was necessary in the interests of mineral development as also that of the nation. Based on the information supplied to it, the Committee thereafter made an assessment, for a total period of 50 years, of the captive and net requirements of ICCL, IMFA, FACOR and JSL. At

page 349 of its report, the Committee has also taken note of the projected captive and net requirements of Ispat Alloys. This being a finding of fact that has been recorded by the Committee, we have to accept that the argument of captive consumption does have a basis in the facts of the present case. On the issue of the application of the principle of equitable distribution, we are of the view that the Committee had, after having taken note of the prevailing situation and the problems faced by needy manufacturers, taken the correct view in recommending its implementation.

64. We are, therefore, of the view that the Committee had correctly interpreted the relevant material available for appreciating the concept of mineral development and adopting the stance that it encompassed the concept of captive mining as well as the principle of equitable distribution. 5. Validity of the Central Government s order dated 17.8.1995 which declared that renewing TISCOs lease over an area of 406 hectares would satisfy its needs and requirements. 65. The Committee made an estimate of the captive mining requirement of each of the parties appearing before it after coming to the conclusion that this was a fundamental guideline to be kept in mind while renewing TISCOs lease. To complete this exercise, it relied upon the submissions of counsel, technical evidence submitted by them and the relevant technical information available. In the case of TISCO, after taking into account all the technical grounds and objections put forth by the learned counsel for TISCO, the Committee came to the conclusion that its lease should be granted renewal for a period of 20 years over a contiguous area of 461 hectares.

66. By its order dated 17.8.1995, the Central Government while endorsing the finding of the Committee recommended to the State Government that TISCOs lease be renewed for 20 years over a reduced area of 406 hectares. The reasons for the reduction were also provided. 67. The decision of the Committee and the consequent order of the Central Government have been assailed by the learned counsel for TISCO on a number of technical grounds. Many of these have already been dealt with by the Committee. 68. At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal issues are intertwined with those involving determination of policy and a plethora of technical issues. In such a situation, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is inconsistent with the Constitution and the laws. In the present matter, in its impugned judgment, the High Court had directed the Central Government to set up a Committee to analyse the entire gamut of issues thrown up by the present controversy. The Central Government had consequently constituted a Committee comprising high level functionaries drawn from various governmental/institutional agencies who were equipped to deal with the entire range of technical and long-term considerations involved. This Committee, in reaching its decision, consulted a number of policy documents and approached the issue from a holistic perspective. We have sought to give our opinion on the legal issues that arise for our consideration. From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to, and followed the recommendations of, the Committee which is more qualified to address these issues. (Emphasis supplied) A mere look at the aforesaid observations, leaves no room for doubt that once the assessment of rival needs of parties seeking mining lease from the very same area in Sukinda Valley was done by the expert committee and was approved not only by the Central Government but also

by this Court, the dispute inter se was sought to be put to an end on the principle of equitable distribution of such a rare and costly mineral. This package evolved by this Court must be held to be binding on all the contesting parties, leaving aside the question of res judicata or constructive res judicata. Once this was the intention of this Court, it must be held that a clear signal was given by this Court to the authorities concerned that the assessment of relative needs of rival claimants for the costly mineral should be accepted as a binding yardstick and in that light appropriate areas out of the very same Sukinda Valley should be carved out for these claimants including FACOR. This intention as reflected by the judgment of this Court would disentitle the appellant to go beyond the sweep of this judgment on any technical ground. This conclusion is, therefore, an additional ground on which the appellant would not be entitled to get any relief from us under Article 136 of the Constitution of India. Otherwise, it would amount to upsetting the entire apple cart and would result in denuding the judgment of this Court of its real content, direction and efficacy. After the Courts judgment in TISCOs appeal, the only thing left for the Respondent authorities was to proceed further in the light of the decision of this Court and also in the light of the confirmed order of the Central Government dated 17th August, 1995. We have already noted earlier that none of the contesting parties before us namely, FACOR on the one hand and Respondents 3 to 7 on the other has challenged before us the subsequent order of the State Government by which the relative assessment of the needs of these claimants was sliced down by 50 per cent. Hence none of them can get rid off the same. Of course, as per the said order of the State Government, it will be bound to consider along with the claims of others, the remaining claims of the appellant and other contesting Respondents 3 to 7 for being granted additional land for mining leases from the very same Sukinda Valley for meeting the balance of 50 per cent of their assessed needs as per Central Governments order dated 17th August, 1995. In fact, in the light of the aforesaid order dated 29th June, 1997, the State of Orissa has already appointed a committee under the Chairmanship of Sri Jagadish Prasad Dash, IAS, Addl. Secretary to Government, Steel and Mines Deptt., by its order dated 16.11.1998 for doing the needful. Learned counsel for the State of Orissa made it clear that the said Committee will also consider the question of granting of further mining leases of chromite in Sukinda Valley to FACOR and the remaining three claimants namely, IMFA, ICCL, ISPAT and M/s. Jindal Strips, as mentioned in the order of 27th June , 1997. When we turn to the said order, we find that after slicing down the assessed need of all the aforesaid four claimants by 50 per cent, the total area which will be earmarked for them out of the available 855.476 hectares of land will be 419.18 hectares. Meaning thereby, on a conjoint reading of the order of the State Government of Orissa and its Notification dated 16.11.98 appointing Sri Jagadish Prasad Dash as Chairman of the Committee to assess the requirement of chrome ore of needy applicants, the following picture emerges. From 855.476 hectares of land being available in Sukinda Valley for grant of mining lease to other claimants after taking out 406 hectares to be re-granted to TISCO, 419.181 hectares will have to be kept reserved for the aforesaid four claimants, namely, FACOR and Respondents 3 to 7 as per the Order dated 29.6.1997. Therefore, the balance of the available area in Sukinda valley for grant of mining leases to other applicants including the aforesaid four applicants would be 436.295 hectares. This area will have to be taken into consideration by Sri Jagadish Prasad Dash as well as by the State of Orissa for granting of mining lease to other claimants whose applications are pending scrutiny before it and while doing so, the said Committee and the Orissa Government will also have to take into consideration the remaining 50 per cent assessed needs for further grant of mining leases to FACOR as well as Respondents 3 to 7 as made clear by the Orissa Government Order and reiterated

before us by its learned counsel. This is the maximum relief which can be made available to the appellant FACOR in the light of the earlier decision of this Court in TISCOs case (Supra) and which was invited by FACOR itself by keeping mum before this Court while it was called upon to confirm the Central Government Order dated 17th August, 1995 in its entirety.

We have also to keep in view the peculiar conduct exhibited by the appellant in connection with the order of the Central Government dated 17th August, 1995. This very order was hotly contested before this Court by TISCO and IDCOL. The appellant along with Respondents 2 to 7 were contesting Respondents. At this stage all of them were sailing in the same boat, they had common defence against TISCO and they were successful in getting their defence accepted by this Court. The result was that the entire order of the Central Government was confirmed by this Court with the assistance of contesting Respondents including the appellant. The assessment of relative needs of appellant and contesting Respondents was upheld by this Court as seen earlier by endorsing the findings of fact as arrived at by the Sharma Committee and accepted by the State Government. The appellant by inviting this Court to confirm that order again turned round subsequently and adopted a volte-face. It is also interesting to note that after this Court in TISCOs case heard the parties in October, 1995 and reserved its judgment which was delivered nine months thereafter on 23.7.96 and in the mean time, when the appellant itself thought it fit to raise the dispute about the assessment of its need as accepted by the Central Government by its order dated 17th August, 1995 by filing a substantive Writ Petition in the Orissa High Court on 16.12.96 being OJC 1474/96 nothing prevented the appellant from at least filing an I.A. in this Court for getting clarification regarding reserving its right to challenge the order of 17th August, 1995 on the ground raised in writ petition OJC No.1474/96. If that would have been done this Court would have either reserved it that liberty when it ultimately pronounced its judgment on 23.7.96 or it would have rejected the said liberty. In either case the appellant would have got its claim either kept open for future adjudication or would have got it expressly barred. The appellant, for the obvious reasons, was not inclined to take that risk and sat on the fence, allowed its writ petition OJC No.1474/96 to remain in suspended animation and allowed this Court to uphold the Central Governments order dated 17th August, 1995 in its entirety. Even thereafter the appellant by filing review proceedings could have got clarification from this Court for preserving its present dispute regarding correct assessment of its need for adjudication before the Orissa High Court where his writ petition was pending. Even that effort was not made presumably because the appellant did not want to take such a risk. If its Review petition was dismissed, its pending petition in the Orissa High Court challenging the very same order of the Central Government dated 17th August, 1995, would have been rendered incompetent. Thus at every step, the appellant, for reasons best known to it, did not think it fit to raise this dispute before this Court prior to its decision dated 23.7.96 and even subsequent thereto. Therefore, there is no escape from the conclusion that the appellant had deliberately waived its challenge to the order of Central Government dated 17th August, 1995 in so far as it had upheld the assessment of its need for chrome ore and for grant of appropriate mining lease on that basis.

In this connection, we may also usefully refer to a decision to which our attention was invited by learned senior counsel, Shri Chidambaram for Respondent No. 6. In the case of House of Spring Gardens Ltd. & Ors. vs. Waite & Ors., 1990 (2) All England Reports, 990, the Court of Appeal in England had to consider the question of estoppel which would be binding on all co- defendants in an

action filed by the plaintiff in English court. In that case the plaintiff before the English Court had earlier obtained a money decree against all the three defendants from the Irish Court. The said decree was sought to be challenged in Ireland by Defendant Nos.1 and 2 on the ground that it was obtained by fraud. In the said second proceedings before the Irish Court, the third defendant, Mr. Macleod, was not a party, though his interest was common to the other two defendants who had challenged the Irish Court decree in their suit on the ground of fraud. The said proceedings ultimately failed in the Irish Court and their appeal was also dismissed. Thereafter, the plaintiff filed proceedings in the English Court under RSC Order 14 to enforce the Irish Courts judgment obtained by him against all the three defendants as a debt at common law. In the said proceedings in the English Court, Defendant No.3 Mr. Macleod took up a contention that the earlier decision of the Irish Court rejecting the plea of fraud of the plaintiff was not binding on him as he was not a party to the said proceedings in Ireland challenging the plaintiffs decree on the ground of fraud. It was held by the Court of Appeal that such a plea was not available to Mr. Macleod on the ground of estoppel. It was observed that where common defendants were estopped from pleading that a foreign judgment had been obtained by fraud in consequence of a judgment in a separate, second action in the foreign jurisdiction, a defendant who had not been a party to the second action would nevertheless, because of the privity of interest between himself and the other defendants, be bound by the estoppel if he had been aware of the proceedings and would have been entitled to be joined with them but had decided without explanation not to apply for being so joined. Accordingly, the third defendant was privy to the estoppel binding the other defendants and was therefore bound by the decision in the second Irish action that the prior judgment had not been obtained by fraud. The Court of Appeal, spoke through Stuart-Smith, L.J. Concurring with the said decision, McCOWAN, L.J., observed as under : In my judgment, the wording of that paragraph of Mr. Macleods defence was tantamount to saying : Let the Irish courts decide the issue of whether the judgment was obtained by fraud, and until they have, let not this action proceed. In taking that line Mr. Macleod was, I consider, not merely acquiescing in, but positively encouraging a decision of this issue by the Irish Courts in an action to which he was not a party. That was a very clever tactic. If the judgment of Costello J. were set aside as against the Waites, he could certainly have benefitted because in practical terms it could never have been enforced against him. If, on the other hand, the Waites failed in their Irish action, he could do what he has in fact now done, which is to say that he is not bound by the decision in that action since he was not a party to it, and to have another bite at the cherry of alleging fraud against the plaintiffs.

The aforesaid observations clearly apply to the present case in which the appellant stands still on a weaker footing. In the aforesaid case before the Court of Appeal in England defendant Macleod was not a party before the Irish Court in the second action but his interest was represented by other co-plaintiffs, while in the present case, the appellant was very much a party Respondent in TISCOs appeal. It took a calculated chance of getting a favourable decision of this Court along with Respondents 3 to 7 and got the order of the Central Government dated 17th August, 1995 confirmed against TISCO but in the process the entire order favouring the appellant and Respondents 3 to 7 was upheld by this Court. Once the appellant took up such a stand regarding validity of the Central Governments order dated 17th August, 1995, it cannot subsequently oppose the very same order, which it was responsible in getting confirmed from this Court. Such a clever tactic which was not countenanced by the Court of Appeal in the aforesaid case cannot also be permitted to be adopted by

the appellant on the facts of the present case.

As we have already held earlier, even though the technical bar of res judicata and constructive res judicata may not apply on the facts of the present case to non-suit the appellant, at least on the grounds of estoppel and acquiescence as well as waiver, the appellant can be said to have given up its challenge regarding upward revision of the assessment of its need as arrived at by the Expert Committee and as confirmed by the Central Government when it saw to it by keeping mum that the entire order of the Central Government dated 17th August, 1995 got confirmed by this Court in TISCOs appeal.

Though the appellants present grievance is held to be barred on the ground of estoppel, waiver and acquiescence, it cannot, however, be held that it is barred by delay and laches, as the appellant had rightly or wrongly but promptly challenged the order of the Central Government dated 17th August, 1995 before the Orissa High Court not by one but by three writ petitions, first of which was filed on 16th February, 1996 being OJC 1474/96.

Once this conclusion is reached against the appellant on the aforesaid grounds, the alternative plea of Mr. Nariman that appellants claim be considered to be premature, necessarily fails.

The 3rd point for determination, therefore, is accordingly answered in affirmative against the appellant and in favour of the Respondent.

Point No. 4: It is true that the Central Governments order dated 15th August, 1995 recommended to the State Government to give the entire 855 hectares of land after excluding the portion earmarked for TISCO, to the four claimants namely, the appellant and Respondents 3 to 7. However, the State Government by its decision dated 29th June, 1997, took the view that 50% of the available area of 855.476 hectares be reserved for consideration of other parties including the captive consumers who have set up industries inside the State and recommended grant in the first instance of the balance 50% of the area to be distributed amongst the four parties, namely, M/s. IMFA/ICCL, M/s. Ispat Alloys Ltd. and M/s. Jindal Strips and also the appellant herein. 50% of the area was to be made available to these four parties whose cases were recommended by the Government of India. It was also observed while assessing the need of the remaining claimants over 50% area being withheld by the Government, further needs of the aforesaid four parties could also be taken into consideration as noted earlier.

Now it becomes at once obvious that despite the whole hearted approval of the Central Governments order dated 17th August, 1995 by this Court, in TISCOs case (Supra), the State Government in its discretion passed the aforesaid order dated 29th June, 1997 slicing down the claims of the aforesaid four parties covered by the Central Government Order by 50%. It is pertinent to note that neither the appellant nor any of the contesting Respondents 3 to 7 have thought it fit to challenge the aforesaid order of the State Government to the extent it sliced down their claims for allotment by 50% from the available area of 855.476 hectares. Mr. Shanti Bhushan, learned senior counsel appearing for the contesting Respondents 3 and 4, as well as other senior counsel appearing for remaining Respondents 5 to 7 submitted that they did not think it fit to challenge the aforesaid

slicing down by 50% of their demand for allotment of leases only on the principle that a bird in hand is worth two in the bush. It is also required to be noted that the learned senior counsel, Shri Nariman in his turn, also did not challenge the order of 29th June, 1997 regarding slicing down of appellants need by 50%. The challenge to the said order was mounted by the appellant before the High Court on an entirely different ground namely, that its need for chrome ore was more than as assessed and therefore, the Central Governments Order dated 17th August, 1995 and the consequent order of the State Government dated 29th June, 1997, were not legal and valid but no alternative challenge was mounted or pressed before us in connection with the State Governments Order of 29th June, 1997 on the aspect of slicing down or reserving 50% of 855.476 hectares for consideration of claims of other parties including the captive consumers. As seen earlier, this challenge of the appellant about assessment of its need by the Central Government is not maintainable. We must, therefore, hold that the order of the State Government dated 29th June, 1997 slicing down up by 50% the need of the appellant as assessed and also reserving the remaining 50 per cent of 855.476 hectares of land for consideration of claims of other parties including the captive consumers and also permitting consideration of claims of the appellant and Respondents 3 to 7 for meeting their remaining 50% assessed need will remain binding on the appellant as well on the contesting Respondents 3 to 7. The said order also cannot be said to be in conflict with the order of the Central Government dated 17.08.1995. This point, therefore, is held in affirmative against the appellant and also against Respondents 3 to 7. In view of our aforesaid decision on point No. 4, the grievance made by learned senior counsel Shri Desai in the Intervening Application No. 1 of 1999 does not survive for consideration. The said I.A. will stand disposed of accordingly.

Point No. 5: In view of our decision on Point No. 3, it is obvious that it is not a fit case for our interference under Article 136 of the Constitution of India. No useful purpose can be served by remanding this proceeding for a fresh decision of the High Court even though the appellant succeeds in showing that the grievances made by it regarding the alleged error in assessment of its need by the Expert Committee and as confirmed by the Central Government by its Order dated 17th August, 1995 was not barred by res judicata or constructive res judicata. It is for this simple reason that the appellant by its own conduct has disentitled itself from getting any fresh decision on this aspect from any court. In the light of our findings on Point No.3, Point No.5 is, therefore, answered in the negative against the appellant and in favour of the Respondents.

Point No.6: As a consequence of our decision on Point Nos.3, 4 and 5, the inevitable result is that this appeal fails and will stand dismissed. However, it is clarified that the State of Orissa will carry out the remaining exercise pursuant to its order dated 29th June, 1997 at the earliest and will see to it that Shri Jagadish Prasad Dash Committee constituted by it on 6.11.1998 also completes its exercise in connection with the remaining area of 436.295 hectares out of 1261.476 hectares, after in the first instance granting leases as per its order dated 29th June, 1997 in the reserved area of 419.18 hectares out of 1261.476 hectares for mining of Chromite in favour of the four parties i.e. the appellant and Respondents 3 to 7 in Sukinda valley of Jaipur District.

It is obvious that the grant of mining leases to the extent of 50% to the appellant and Respondents 3 to 7 as per Order of the Orissa Government dated 29th June, 1997 will remain binding between the parties. However, any additional leases granted by the State of Orissa pursuant to the Report of Shri

Jagadish Prasad Dash Committee or even otherwise to the appellant and Respondents 3 to 7 to meet wholly or partially their remaining 50 per cent of assessed needs as per Central Governments order dated 17th August, 1995 will be subject to the revisions, if any, by the aggrieved parties before the Central Government in accordance with law.

There will be no order as to costs in the facts and circumstances of the case.