

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1849, CUTTACK, TUESDAY SEPTEMBER 25 2012/ ASWINA 3, 1934

[No.6899-IV(B)SM-08/2012/SM.]

STEEL & MINES DEPARTMENT

RESOLUTION

The 18th September, 2012

Sub: Reservation of areas for undertaking prospecting or mining operation through Odisha Mining Corporation Ltd.

Mining plays an important role in the development of the economy of the State. Article 39(b) of the Constitution of India requires the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. Thus, the State, being the owner of the mineral resources, has to ensure that the mineral resources are applied for the overall development of the community.

2. Mineral resources are finite and non-renewable. It is, therefore, imperative that timely and appropriate steps are taken to derive maximum benefit for the community while the mineral resources are still available for exploitation. The State has perceived value addition as an effective means for achievement of the afore stated objective as value addition of minerals within the State helps in (a) creation of employment opportunities, (b) generation of greater revenues and (c) setting up of ancillary and downstream industries. It is with such understanding that the State invited investors to invest in industries based on minerals like steel plants, alumina refineries, cement plants etc. In fact, many such industries have commenced production. Most of these projects are, however, grappling with issues pertaining to availability of raw material. On the other hand, the stand alone mining does not contribute to the betterment of the community while it has several side effects like adverse impact on environment; excessive load on the infrastructure, viz. roads etc.; displacement of the people inhabiting the area and the like.

3. The Expert Committee on Revenue Enhancement Measures set up by the State Government, which submitted its report in the year 2011, recommended that in future all

mines of important minerals like iron ore, chromite, manganese and bauxite should be leased out only in favour of the Odisha Mining Corporation Ltd. (OMC) and should not be given to private operators. The OMC, in turn, would supply the required quantum of minerals to the industry, says the report. Hence the need for the reservation of mine bearing areas of in favour of OMC, a State Public Sector undertaking wholly owned by the State to enable the corporation to, among others, cater to the raw material requirement of the industries not provided with captive mines.

4. It is a settled principle of law that no person has a fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation. It is apt to quote the following statement of O. Chinnappa Reddy, J. in *M/s. Hind Stoneo*, albeit in the context of minor mineral, 'The statue with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present'.

5. The Hon'ble Supreme Court of India in their judgement in Civil appeal No. 3285 of 2009 (*Monnet Ispat and Energy Ltd.Appellant vrs. Union of India and others Respondents*) delivered on 26 July, 2012 held vide Para. 111 as follows:—

“ Secondly, after enactment of 1957 Act and 1960 Rules made there under, the Central Government has all throughout understood that the State Governments as owner of mines and minerals within their territory have inherent right to reserve any particular area for exploitation in the public sector. This position is reflected from the order of the Central Government that was passed by it and which was under challenge in *Amritlal Nathubhai Shahd*. In its order the Central Government had stated, '...The State Government had the inherent right to reserve any particular area for exploitation in the public sector. Mineral vest in them and they are owners of minerals.....and Central Government are in agreement with the State Government in so far as the reservation of areas is concerned.....”

6. Presently, the provisions of Section 17A (2) of the MMDR Act, 1957 regulate the reservation of area for State public sector undertaking. The said provisions are quoted below:

“17A.(2)The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved”.

7. The Apex Court further held in the case of *Monnet Ispat (supra)* vide Para. 129 that:

“The types of reservation under section 17A and their scope have been considered by this Court in *Indian Metals and Ferro Alloys Ltd.* in paragraphs 45 and 46 (pgs. 136-139) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17A(2) requires prior approval of the Central Government before reservation of any area by the State Government for the public sector undertaking. The argument is founded on incorrect reading of Section 17A (2). This provision does not use the expression, ‘prior approval’ which has been used in Section 11. On the other hand, Section 17A (2) uses the words, ‘with the approval of the Central Government’. These words in Section 17A (2) can not be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. The approval by the Central Government contemplated in Section 17A (2) may be express or implied. In a case such as the present one where the Central Government has relied upon 2006 Notification while rejecting appellants’ application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by State Government in 2006 Notification otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in 2006 Notification.”

8. In *Indian Charge Chrome Ltd. and another vrs. Union of India and others* decided on 11.12.2006, the Supreme Court of India in Para. 17 thereof observed that:

“..... It is true that on the prior occasions when the dispute before the High Court and before this Court centered round the entitlement of various applicants for grant of fresh leases after the TISCO lease was not renewed in full, the stand of the State Government was that it would abide by the recommendations of Dash Committee transformed into Chahar Committee. But it is difficult to postulate that the adoption of such a stand in the context of the disputes then arising, could estop the State from taking a decision under section 17A (2) of the Act to recommend to the Central Government that the compact area left, which was the only balance area left, be granted on lease to the Government controlled Corporation, OMC so as to ensure a fair and just distribution of the Ore, which was a scarce commodity in the country. ”.

The Court further held therein that:

“ The power under section 17A (2) is a statutory power and normally there could be no estoppel against the exercise of statutory power.....”.

The Apex Court made it clear that the decision or recommendation under section 17A can be taken or made until the area in question is actually leased out to any applicant in terms of Section 11 of the Act since it is an overriding power. In the case of the Indian Charge Chrome Ltd. the area had not actual been leased out at the relevant time though a decision had been taken to lease out 84.88 ha. out of the area reserved in favour of OMC. The power of the State Government saved by Section 17A (2) of the Act of 1957 is in no way fettered or curtailed. In this case, the decision of State Government to reserve an area of hect. 436.295 of chromite mine in favour of OMC under section 17A (2) of the Act was challenged. Even though earlier the Apex Court directed that the balance 50% of the left out area relinquished by TISCO, namely, 436.295 ha. be dealt with on the basis of the report of the Dash Committee, when the Apex Court made that direction, it was not dealing with any exercise of power by the State Government under section 17A(2) of the Act nor was it dealing with the question, in the context of exercise of any such power. Therefore, the direction to deal with 436.295 hectares on the basis of the recommendations of Dash Committee, succeeded by Chahar Committee, did not by itself preclude the exercise of power by the State under section 17A(2) of the Act to make a recommendation that the exploitation be left to a corporation owned or controlled by it. “We are, therefore, not in a position to accept the argument that the prior decisions precluded the State Government from invoking its right under section 17A (2) of the Act”, held the Apex Court.

9. The Hon'ble High Court of Odisha have, in their judgement dated 10.05.2011 in W.P.(C) No. 13808 of 2009 (M/s. Indian Metals and Ferro Alloys Ltd. and another vrs. Union of India and others) while upholding the reservation of mining area in favour of OMC under section 17A(2) of MMDC Act, 1957, held that reservation of the land in favour of OMC, which is a public sector undertaking will benefit the common good.

10. The State Government, therefore, after careful consideration, hereby resolves as follows:—

(a) In exercise of the powers under section 17A (2) of the MMDR Act, 1957, the State Government has decided to reserve the areas bearing iron ore, manganese ore, bauxite and chrome ore in the State for undertaking prospecting or mining operation through the Odisha Mining Corporation Ltd., a wholly owned State mining PSU, excluding the areas already held under any prospecting licence or mining lease or reserved by the Central Government under section 17A (1A) of the said Act for Central PSU or recommended to Government of India for their prior approval under section 5(1) of the said Act.

(b) OMC would make a fair and equitable distribution of minerals amongst the user industries for higher value addition in the State, through appropriate long term arrangements, based on their requirements.

(c) All pending applications for RP/PL/ML over such areas will be disposed of accordingly.

11. The Central Government would be moved to accord approval for the aforesaid reservation as required under sub-section (2) of Section 17A of MM (DR) Act, 1957.

12. Director of Mines and Director of Geology, Odisha shall furnish land particulars with boundaries of such areas for issuing notification in the official gazette.

ORDER

Ordered that the Resolution be published in an Extraordinary issue of *Odisha Gazette*.

By Order of the Governor

RAJESH VERMA

Principal Secretary to Government