

Dated : 25/8/08

**Government of India
Ministry of Mines**

In the Revision Applications of

Shri M. Habeebulla - **Applicant No. 1**
M/S B Kumar Gowda and Sons - **Applicant No. 2**
M/S Krishna Industries - **Applicant No. 3**
M/S Krishna Mining Company - **Applicant No. 4**
M/S J S W Steel Limited - **Applicant No. 5**
Vs.
State Government of Karnataka - **Respondent**

RA No: 13/ (17)/2007-RC I, 13/ (18)/2007-RC I, 13/ (16)/2007- RC-1,
13/ (19)/2007-RC I , 13/(23)/2007- RC I

Final Order

Under Section 30 of the Mines & Minerals (Development & Regulation) Act, 1957 (MMDR Act) and Rules 55 of the Mineral Concession Rules, 1960 (MCR1960)

The applicant no.1, 2,3, 4 and 5 have filed the aforementioned Revision Applications having felt aggrieved against

- (i) the order No **CI :121: MMM:2007 dated 22.8.2007** hereinafter referred to as the "**impugned order**"
- (ii) the Gazette Notification **CI:21: MMM:2007 dated 22.08.2007** and
- (iii) the Gazette notification **CI:121:MMM:2007 dated 17.09.2007** herein after referred to as the "**impugned notifications**"

passed/ issued by the **State Government of Karnataka**, hereinafter referred to as "**respondent**". Since all the aforementioned five the revision applications have emanated from the single impugned order and resulted in issuance of the same impugned notifications, therefore, all the five revision applications are taken up together for adjudication in this single order.

02. The **applicant no.1** had filed mining lease application for iron and manganese ore over an **area of 295.26 Hectares(729.20Acres)** in Village Susheela Nagar ,Sandur Taluk, District Bellary in Karnataka vide application AML 868/2005 on 15.07.2005. The **applicant no 2** had applied for grant of Mining lease **for iron and manganese ore** to the respondents over an **area of 140 Hectares (325 Acres)** in Village Bhavihalli, Sandur Taluk ,Bellary District on 09.03.2005 vide application no 300/AML/ 2005.The **applicant No.3** had applied for the mining lease for Iron ore and manganese ore on 19.02.2005 **over an area of 2250 Acres** in Village Bhavihalli, Taluk Sandur and District

Bellary under 197/AML/2005 on 19.02.2005 and then reduced the area of application to 1765 Acres . The **applicant No4** had applied for mining lease of iron ore and manganese ore on 19.02.2005 in Village Bhavihalli, Taluk Sandur, and District Bellary over **an area of 2900 acres** vide application NO 199/AML/2005 dated 02.03.2005 and subsequently reduced the area to 1768 acres. The **applicant no.5** had applied for the mining lease for banded Hematite quartzite or jasper or chert low grade siliceous iron source on 22.03.2006 **over an area of 683.51 Hectares** in village Bhavihalli, Taluk Sandur, District Bellary vide their application dated 22.03.2006 and **reduced the area to 142.5 Ha vide their application dated 28.08.2007**

03 The respondent vide the impugned order dated 22.08.2007, have rejected the mining lease applications of seven applicants including those of applicant no. 1, 2,3,4,5 giving them the liberty to the applicants to file afresh in respect of the areas in pursuance to the notification to be issued. The applicant no 1 , 2,3,4 and 5 figure Serial number 4, 3,1,2 and 7 in the chart contained in the impugned order, though the area in respect of applicant no. 2 has been wrongly mentioned as 325 Hectares where as they had applied for mining lease over an area of 325 Acres (140Hactares).

04. The respondent have also issued gazette notification CI 21 MMM 2007, Bangalore dated 22.08.2007, which was published in the Gazette on 23.08.2007 after issuance of the said impugned order dated 22.08.2007. Through the said notification the respondent had invited the fresh applications for mining leases over an area of 683.51 Hectares in village Bhavihalli Sandur Taluk, Bellary District in Karnataka from the persons/companies/entities having an established Iron ore based industry or desirous of setting up Integrated Steel Plant(s) and requiring the extracted minerals as a raw material in such a plant. ***The fresh applications had been invited through the impugned notifications up to 30 days from the date of publication of the impugned notification in the official gazette.***

05. ***In the said notification, the respondent had mentioned that the sketch of the area is available for inspection at the office of the Director, Mining and Geology, Bangalore during working hours of all working days.*** The respondent vides another notification no. CI.121: MMM.2007, Bangalore dated 17th September 2007 issued a corrigendum making the following modification in the impugned notification dated 22.08.2007 published in gazette on 23.08.2007.

- (i) The government notification number may be read as CI.121: MMM.2007 instead of CI.:21 : MMM :2007
- (ii) The extent of area notified may be read as 142.50 Hectares instead of 683.51 Hectares

06. The applicant no. 1, 2,3,4 in pursuance to the said notification dated 17.09.2007 filed the amendment application challenging the said notification dated 17.09.2007 ,as it

seeks to substantially modify the area from 683.51 Hectares to 142.5 Hectares and a fresh period of thirty days as required in the notification has not been given. The applicants have also raised other issues in the amendment applications while challenging the said notification dated 17.09.2007 with the impugned order and notification dated 22.08.2007. The applicant no 5 have challenged the notification on the ground that the respondents had assured to provide the requisite mining leases for operationalization of their integrated steel plant at the investment of Rs 2500 crores, hence the rejection of their said mining lease application through the impugned order is illegal and hence the orders be set aside.

07. This Tribunal while hearing the stay applications filed by the applicant No. 1 and 2 had stayed the operation of the impugned order dated 22.08.2007 and both the notifications dated 23.08.2007 and 17.09.2007 till the disposal of the revision applications vide its order dated 25.09.2007. There orders were made applicable to applicant no. 3 and 4 vide its order dated 01.10.2007 and for applicant no. 5 vide its order dated 07.11.2007.

08. The main revision applications of the applicants along with the amendment applications against the impugned order dated 22.08.2007 and the impugned notifications dated 22.08.2007 and 17.09.2007 were taken up for hearing on 22.11.2007.

09. The advocate for the applicant no.1, 2, 3 and 4 reiterated their written submissions during the course of the personal hearing and submitted that

(i) the area applied by them in Sandur Taluk District Bellary are the virgin areas and pleaded that the ***respondent, in the impugned order themselves have admitted that the said areas are free areas and as per Section 11(2) of Mines and Minerals (Development & Regulation) Act, 1957, where the State Government has not notified in the official gazette, the area for grant of mining lease and two or more persons have applied for the mining in respect of any land in such area, the applicant whose application was received earlier, shall have preference to be considered for grant of mining lease over the applicant whose application was received earlier.***

(ii) despite the clear-cut provisions of Section 11(2) of MMDR Act, 1957 and non-applicability of Rules 59(1) and 59(2) of Mineral Concession Rules, 1960 (MCR, 1960), the respondents have passed the impugned order in gross violation of principles of natural justice.

(iii) they have the preferential right to get the mining lease in terms of Section 11(2) of MMDR Act, 1957, which has been turned down by inflicting the gross injustice.

(iv) the law department of the Government of Karnataka vide their FNO Law 886/OPN/2004 in CI 155 MMM 2004 dated 21.4.2005, had categorically mentioned that ***“in these circumstances there is no scope for notifying the free areas. If those areas for which Rule 59 of MCR, 1960, does not apply , are notified, it would be in the violation of Section 11(2) of MMDR Act, 1957 and will be defeating the intention of the legislature.*** Hence, the respondent have not honoured and complied with the legal opinion of their law department and passed the order contrary to the law.

(v) the ***impugned order has been passed by the respondent in gross violation of Principles of Natural Justice (PNJ) and fair play because while passing the impugned order dated 22.8.2007, the respondents have neither issued show-cause notice to the applicants, nor they have granted them the opportunity of personal hearing.***

(vi) the respondents, in gross violation of the provisions of Section 11(2) of MMDR Act, 1957, have passed the impugned order so as to help some of the existing integrated steel manufacturers and those who are willing to put up steel plant by giving them the leverage to get their case processed under 11(3) of MMDR Act, 1957 in violation to the legal provisions of the MMDR Act ,1957 and Mineral Concession Rules ,1960.

(vii) the intention of the respondents to reject the mining leases of 7 applicants is reflected in the second last para of the order in which the respondents have categorically mentioned that they have decided to notify the said free areas by rejecting the ML applications of the applicants. Therefore , the rejection of the applications without show cause notice and personal hearing and contrary to the provisions of Section 11(2) of the MMDR Act ,1957 and with the intention to notify the same areas contrary to Rule 59 of MRC,1960 clearly indicate the impugned order dated 22.08.2007 have been passed contrary to the law and hence illegal and liable to be set aside.

(viii) the impugned order has been passed on the reasons like value addition, employment, revenue generation, industrialization etc ,which are extraneous toto the MMDR Act, 1957 and MRC,1960 ,hence the impugned orders passed by the respondents are arbitrary and illegal and hence liable to be set aside.

(ix) notification issued by the respondent on 22.08.2007 itself is illegal as the state government though had mentioned in the notification that the ***sketch of the area notified is available for inspection at the office of Director Mines and Geology, Khanija Bhavan Bangalore.*** The applicant no. 2 have placed on record an application under Right to Information Act in which they had sought the information regarding sketch of 683.51 Hectares, which was required as mandatory in the form of Annexure to the notification. ***The respondent vide his noting dating 19.09.2007 have categorically mentioned that the said sketch is not readily available in the drawing Section.***

(x) a copy of the letter no. DMG/MLS/261/06/2006-07-08/1790 dated 05.9.2007 addressed by Commissioner-cum-Director to Secretary to the Government, was procured by the applicants from the respondents under Right to Information Act 2005. In the said letter the Commissioner mining and Geology has mentioned that some of the areas were overlapping in the area notified to the tune of 683.51 hectares in Bhavihalli village of Sandur Taluk, district Bellary.

(xi) it has been mentioned in the said letter ***that among the seven applicants, one Shri B. Kumar Gowda & Sons (applicant no. 2) have also submitted a project report to the Government and to the Department regarding the establishment of steel plant. But the public is asking for a sketch of 683.51 Hectares to file applications as per 3rd clause of the notification.*** Therefore it is clear that that the respondent did not have sketch with them after the issuance of the notification which is evident from their letter dated 04.09.2007 and admissions made by respondent vide their endorsement dated 19.09.2007.

(xii) it has also been also mentioned in the said letter dated 04.09.2007 that an extent of 142.5 hectares is only the available area and hence a proposal has been sent to the Government to issue corrigendum to an extent of 142.5 hectares as against 683.51 hectares, already notified.

(xiii) in the absence of the lease sketch of the proposed lease area of 683.51 ha as mentioned the impugned notification dated 22.08.2007 and the conditions stipulated therein have not been fulfilled and hence the notification dated 22.08.2007 is contrary to the MMDR Act, 1957 and Mineral Concessional Rules ,1960 and illegal. Therefore the said notification is liable to be set aside.

(xiv) the notification dated 17.09.2007, the sketch of 142.5 Hectares area has also not been given, nor a period of 30 days had been given to the public to apply afresh up to 16.10.2007. Therefore ,even the impugned notification dated 17.09.2007 is contrary to the MMDR Act 1957 and MRC 1960, and hence illegal and liable to be set aside.

(xv) the applicants have relied upon the case laws 1992Supp(1) SCC 91 and Manjunath Overseas Traders Vs State of Karnataka WA 3326/97 in support of their contentions.

(xvi) in view of the above the applicants no.1 and 4 submitted that impugned order dated 22.08.2008 and the notification dated 23.08.2008 are liable to be set aside and their applications are liable to be considered as per law on first cum first serve basis.

10. The applicant no.5, on the other hand have challenged the impugned order and the notification on the following grounds that

(i) they had set up an integrated steel plant In Torangullu in District Bellary with the manufacturing capacity of 4 million tonnes per annum of steel and an investment of Rs 2500 crores and which has a turnover of Rs 6800 crores. The revenue contributed by them to Government in excise duty, railways, port and foreign exchange earned is Rs 1600 crores, Rs 350 Crores, Rs 10 cores and Rs 880 crores respectively. They also employ about 8000 persons and 30000 persons are benefitted through the indirect

employment. They have also provided a township, hospital and lots of plantation for the welfare of the inhabitants.

(ii) the respondent had approved their expansion program to 10 million tonnes by 2010 and they had asked Director, mining and geology to grant captive iron ore mines.

(iii) the respondents while approving their project had promised to allot iron ore mines of the reserves of 110 million tonnes for its captive use, They plan to invest about Rs 100 crores for scientific and systematic mining for its captive consumption. They have the expertise, experience and financial resources for mining and their sister concern have experience of mining for 7 yrs.

(iv) they had applied for the mining lease on 22.03.2006 over 683.51 Ha in the area mentioned above being a virgin area however on 13.04.2007 they revised the area to 142.50Ha .

(v) No notification is required to be issued under the MMDR Act 1957 and Mineral Concession Rules, 1960(MCR ,1960) for grant of such virgin area by the respondents.

(vi) the respondent has illegally rejected their mining lease application through the impugned order dated 22.08.2007, though they give liberty to apply afresh in pursuance to the subsequent notification. The respondent on one side has mentioned in the order that they want to encourage the value addition and encourage investment, on the other hand rejected their mining lease application despite being most deserving candidate.

(vii) that since they had not been granted the opportunity of personal hearing before passing the impugned order ,the principles of natural justice have been infringed in contravention of Rule 26 of MRC1960.

(ix) The impugned notification dated 17.09.2007 reduced the area from 683.51 Ha to 142.5 ha and it did not give the period of 30 days from 17.09.2007 and hence the same is illegal and the same is also challenged.

(x) the impugned order of the respondents dated 22.08.2007 rejecting their mining lease application is liable to be set aside being arbitrary and illegal and the subsequent issue of the notifications dilute their preferential right to claim mining lease under Section 11(2) of MMDR Act ,1957.and thus prayed for setting aside the impugned order and the notifications dated 22.8.07 and 17.09.2007

(xi) in the event the revisionary authority holds the said two notifications legal, the respondents be directed to consider their application in accordance with the law

11. Shri M. Khayum Ali representative of the State Government during the course of the personal hearing admitted that

(i) ***the areas applied for mining lease by the applicants are free areas and the provisions of Section 11(2) of MMDR Act, 1957 are required to be followed .***

(ii) ***the principles of natural justice have not been followed in the instant case*** while passing the impugned order as neither any show cause notice nor any personal hearing had been granted to the applicant which is evident from the impugned order and the record.

(iii) ***the sketch of 682.5 Hectares was neither available with the State Government and nor with Director Mines and Geology*** as mentioned in the notification at the time of issuance of the notification dated 22.08.2007 and even subsequently as admitted in the internal correspondence as well as endorsement on the application under RTIA2005. However he mentioned that they had only a topo sheet of the area which is not the sketch as required under the notification.

(iv) confirmed that the state Government of Karnataka vide ***noting dated 19.09.2007 had categorically mentioned that the said sketch , as mentioned in the impugned notification dated 23.09.2007,is not readily available in the drawing Section.***

(v) ***the notification dated 17.09.2007 which reduced the area from 683.51 Ha to 142.5 Ha also did not have the sketch and the period of 30 days was not given in the said notification .***

12. We have carefully gone through the case record. All the five applicants have filed the instant Revision Applications against the impugned order No.CI.121.MMM.2007 dated 22.8.2007, passed by the respondent, rejecting the mining lease applications filed by them as detailed in para 2 above. The applicants have also challenged the gazette notification NO. CI: 21.:MMM 2007 dated 23.08.2007 inviting applications for mining lease over an area for of 683.51 hectares from the applicants who are already having the integrated steel plants or desirous of setting up the steel plants in the form of value addition industry and the subsequent notification No. CI.:121:MMM.2007, vide which the area notified in the notification dated 23.08.2007 was reduced from 683.51 hectares to 142.5 hectares and the number of the said notification was amended from CI: 21: MMM: 2007 to CI: 121: MMM: 2007

13. The applicants No.1 to 4 have challenged the said orders and the notification, as detailed in Para 9 above, and the applicant no.5 had challenged the said orders and the notification on the ground detailed in Para 10 above. The issue before us is whether the order issued by the respondent dated 22.8.2007 along with the said notifications dated 22.8.2007 and 17.9.2007 are liable to be set aside in view of the submissions made by the applicants, as detailed above. We would like to analyze the submissions made by the applicants on facts and legal provisions of Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) and Mineral Concession Rules, 1960 (MCR 1960).

14. It is also a fact available on record that the area for which the applicants had applied are the free virgin areas. The respondent has also admitted this fact in the impugned order and by the representative of the respondent during the course of personal hearing. Therefore, the application of the applicants has been rejected; despite they were having the preferential right of the allotment of the mining lease under Section 11(2) of the MMDR Act, 1957 on first cum first serve basis.

15. It is also evident from the record that the respondents have passed the impugned orders without following the principles of natural justice in as much as neither any show-cause notice was issued to the applicants nor any personal hearing had been granted to them and these orders have been passed without hearing to the versions they had ,before passing the impugned orders.

16. The primary aim for issuance of impugned order dated 22.8.2007 was to issue the impugned notification under Section 11(4) of the MMDR Act, 1957 and not under Rule 59 of MCR, 1960.The intention of the respondent has been clearly highlighted in the last 2 paras of the impugned order .

17. The applicants have brought on record the contentions that the impugned notification dated 23.8.2007, though contained the fact that it is accompanied by the sketch indicating the area which is available for grant of mining lease for iron ore and manganese, but in fact, no such sketch had been annexed to the notification in the gazette . This fact has been admitted by the Additional Director, Mining and Geology during the course of personal hearing as well as from the records in as much as the application made by the applicants under the Right to Information Act also indicate that even the respondents had categorically mentioned that the sketch to the notification, as detailed in the impugned notification, is not available with them. Further, Section 11(4) of MMDR Act, 1957 provides for a time limit “not less than 30 days” but the notification dated 22.08.2007 mentions a timeframe “up to 30 days”from the notification date. In view of the aforementioned, we find no hesitation in holding that the impugned notification not proper and legal in as much as it was not accompanied by the sketch, which was required and mandatory in terms of said notification and stipulated period of not less than 30 days.

18. The respondents had subsequently issued another notification on 17.9.2007 when the applicants had already filed the instant RAs by reducing the area from 683.51 hectares to 142.51 hectares and also correcting the notification No. Cl..21..MMM 2007 to Cl.121..MMM: 2007. It is seen from the record that even this notifications does not give the time limit of not less than thirty days to the applicant to apply for the MLs, as merely a corrigendum has been issued by simply reducing the area. The initial notification did not have the sketch of the area 683.51 hectares and even the subsequent notification also did not have any sketch. Moreover, the public, at large, had not been given any time limit of not less than 30 days as required under Section 11(4) of MMDR Act, 1957, we have no hesitation in holding the said notification dated 17.9.2007, has been issued in contravention of the provisions of 11(4) of the MMDR Act, 1957 and hence, ***is not a proper and legal notification.***

19. Applicant no.5 has given his own logic for staking his claim for ML over the area mentioned in the notification that they have established a plant on the investment of Rs.2500 crore and at that time the respondents have shared the mining lease of 110 tonnes and further that we have created adequate infrastructure and employment

avenues for the local inhabitants, therefore, the Government should fulfill their promise of allocating the ML. We are constrained to mention the principle of promissory estoppel does not hold good in the circumstances as have been mentioned when the allocation of MLs is required to be granted, strictly in accordance with the provisions of MMDR Act, 1957 read with MCR, 1960.

20. When the area was virgin, the action on the part of the respondent to reject the ML applications of the applicants, without affording them the opportunities of show-cause notice and personal hearing, was grossly in violation of principle of natural justice and the provisions of Rule 26(1) of MCR, 1960.

21. It is evident from the record that respondent has neither followed the Provisions of Section 11(2) of MMDR Act 1957 nor accepted the opinion of the law department of the Government of Karnataka dated 21.04.2005 in which it has been specifically mentioned that ***"in these circumstances there is no scope for notifying the free areas. If those areas for which Rule 59 of MCR, 1960 does not apply, are notified, it would be in the violation of Section 11(2) of MMDR Act, 1957 and will be defeating the intention of the legislature.*** The respondent while passing the impugned orders have ignored the provision of Section 11(2) of MMDR Act 1957 for the free areas, later notified under Section 11(4) of The MMDR Act, 1957 but also tried to import the factors like value addition, employment, revenue generation, industrialization etc for rejecting the mining applications of the applicant and for issuance of the notifications under Section 11(4) of MMDR Act, 1957 read with Rule 59 of MCR 1960 to facilitate a section of the mining industry having/ proposing to have integrated steel plants

22. It is evident from the record that the respondent issued the notification dated 23.08.2007 for 683.51 Hectare and the internal correspondence of the respondents procured by the applicants under Right to Information Act 2005 show that there was no sketch available with them till 04.09.2007. It is also evident from the remarks of office of Director Mines and Geology Bangalore on the application of the applicant under RTI Act, 2005 that the respondent did not have the sketch of the notified area till 19.09.2007. Therefore we hold that the both the impugned notifications issued by the respondent dated 23.08.2007 and 17.09.2007 are not proper and legal notifications.

23. In view of the above **we hold that the impugned order dated 22.08.2007 has been passed in violation of the provisions of MMDR Act 1957 and without following the principles of natural justice and hence liable to be set aside.** We also hold that the impugned notification dated 23.08.2007 had been issued without the sketch as mentioned in the notification and without giving the stipulated time frame and hence it cannot be held as proper and legal notification as the respondent themselves have admitted that they did not have the sketch of the notified area of 683.51 HA along with the notification. **We also hold that impugned notification reducing the area for mining lease from 683.51 Ha to 142.5 Ha have been issued without application of**

mind and without giving the statutory time period of not less than 30 days to the public to apply for the mining lease under Section 11(4) of MMDR Act ,1957 , hence the same is also improper and illegal. Hence, we hold both the impugned notifications are liable to be set aside. Since the areas applied by the applicants under their mining lease applications are virgin areas, they are liable to decided in terms of the provisions of the MMDR Act 1957 and Mineral Concession Rules 1960.

ORDER

Accordingly, we set aside the impugned order No. CI: 121: MMM: 2007, Bangalore dated 22.8.2007 along with the notification No. CI.21.MMM:2007, Bangalore dated 22.8.2007 and notification No. CI.121.MMM:2007 dated 17.9.2007 forthwith .The respondents are directed to process the mining lease applications of all the revision applicants as per the provisions of the MMDR Act 1957 and Mineral Concession Rules 1960 and pass the appropriate orders after affording them the opportunity of personal hearing with 3 months from the receipt of this order.

(T N Tiwari)
Additional Legal Advisor

(A.K. Mehta)
Director (Mines)

