

Final Order No. 3/2008

Dated 24.1.2008

(In Revision Application File No.16(79)/2007-RC II)
& File No. 16(80)/2007-RCII)

M/s Dalmia Cement (Bharat) Limited :

Petitioner

Versus

State Government of Madhya Pradesh :
Respondent

M/s Prism Cement Limited :
No. 1

Impleaded Party

M/s Jai Prakash Associates Limited:
Party No. 2

Impleaded

ORDER

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

These Revision Applications (R.As.) have been filed by M/s Dalmia Cement (Bharat) Limited, the petitioner, to challenge the Order No. 3-18/2006/12/1 dated 15-02-2007 and Order No.3-

18/2006/12/1 dated 23-03-2007 passed by the State Govt. of Madhya Pradesh (hereinafter referred to as the Impugned Order).

2. Through the impugned order dated 15-02-2007, the State Government has rejected the application of the petitioner in respect of their PL application for Limestone over an area of 1434.853 hectares in Jamuna, Janardhanpur, Patarahai, Bairiha, Distt. Jabalpur, MP and through impugned order dated 23-03-2007, the State Government has recommended the PL applications of M/s Prism Cement Ltd. and M/s Jai Prakash Associates Ltd. for Limestone on the same area for seeking prior approval of the Central Government. The Petitioner had also filed a Writ Petition in the High Court of MP at Jabalpur and the Hon'ble High Court vide order dated 9.10.2007 directed the petitioner to file revision application before the Mines Tribunal within a period of 30 days. The High Court has further directed the Central Govt. to decide the matter after issuing notice to all the concerned parties expeditiously as far as possible within a period of 60 days from the date of filing of the aforesaid revision application.

3. The ground of rejection cited in the impugned order dated 15-02-2007 are that the State Govt. have afforded an opportunity of being heard in the matter to all the concerned parties and the representative of M/s Dalmia (Bharat) Cement Ltd. have placed their arguments and also gave information about the cement plants

established by them in various parts of the country. However, they did not place any information/plan regarding establishment of cement plant in MP. They have further orally informed that they would take action on establishment of cement plant in MP, if PL is granted. It has further been indicated in the impugned order that having gone through the available documents, it is clear that while granting PL in the year 1994 in favour of M/s Dalmia Cement Ltd., State Govt. have kept a fact in view that they would set up a major cement plant in Satna Distt. However, the company have neither taken any step in the last 12 years for setting up cement plant nor they have taken any interest in disposal of their application. Besides it has also been noted that the petitioner have not deposited the difference of amount pertaining to application fee. In view of above facts and having considering the entire matter in totality the State Govt. cancelled the PL application of M/s Dalmia Cement Ltd. over an area of 1434.853 hectores in the village Patarahai, etc. and State Govt. also rejected PL application of the company dated 25.6.1991.

4. The State Government wrote to M/s Dalmia Cement Company Ltd. vide Memorandum dated 27-05-2005 to complete their application and also to deposit the difference in application fee, however they failed to do the same. Subsequently, after hearing the PL application dated 25-6-1991 was rejected and earlier decision in their favour was rejected vide Order dated 15-02-2007. M/s Jai Prakash Associates has informed that they are going to establish a cement plant in Satna district at a cost of 120 crore with an annual production of 3MT which would yield a revenue of Rs.20.25 crore.

During hearing, M/s Prism Cement gave in writing that the capacity of cement plant established by them in Satna Distt. has to be increased and they are also going to establish a cement plant at a cost of Rs.1100 crore with an annual production of 3 MT. During hearing none of the applicant produced neither any proof of availability of Limestone nor any record. It has further been stated in the impugned order that since both the companies viz. M/s Prism Cement Company Ltd. and M/s Jai Prakash Associates Ltd. wanted to establish cement plant of annual capacity of 3 MT each, which would yield additional revenue to the State Govt., local employment, etc. and keeping in view these facts and after due consideration by the State Govt. PL has been sanctioned in favour of M/s Prism Cement Company Ltd. and M/s Jai Prakash Associates Ltd.

5. The petitioner in the revision application has stated that the impugned order dated 15-2-2007 is contrary to both facts and law. The only grounds on which the impugned decision of the State Govt. is based relates to non furnishing of detailed project particulars/report of the proposed major cement manufacturing plant to be established by the petitioner. Particularly, this requirement was never asked for by the State Govt. any time earlier and therefore there was no reason for the petitioner to have submitted these particulars and details, which were never asked for or demanded. The impugned order based on the aforesaid requirement has been the sole ground for cancellation of the decision to grant prospecting license to the petitioner. No prior opportunity was granted by the State

Government, requiring the petitioner to furnish the detailed project particulars of the proposed cement manufacturing plant, before passing the impugned order. The petitioner has repeatedly highlighted its commitment to set up a major cement manufacturing plant in the region on being granted the prospective license. There has been no communication or any letter from the State Govt. requiring it to submit any further details, and consequently, the impugned order of cancellation is entirely based on an erroneous assumption of the State Govt. that the petitioner was not keen on setting up a major cement plant. Therefore, the basis of the impugned order dated 15-02-2007 is built on assumptions and presumptions, the basis of which do not exist at all.

6. The petitioner has further stated that the State Government has passed the impugned order dated 23-03-2007 on the applications made by M/s Jai Prakash Associated Ltd. and M/s Prism Cements Ltd., impleaded parties under the same notification under which a decision to grant prospecting license to the petitioner was taken in 1991. They have further mentioned that the State Govt. passed an erroneous order ignoring the fact that group companies of Jai Prakash Associated Ltd. had earlier filed similar applications along with the petitioner, which were rejected in the past for the very same area. Further the State Govt. vide its impugned order dated 15-02-2007 and 23-03-2007 only tried to hide its collusive, arbitrary, discriminatory conduct in the grab of baseless, unjustified and merit less grounds like, failure to submit a detailed project plan, failure to

make payment of deficit fee and even more baseless reasoning of not taking any steps to show initiation. The petitioner has further mentioned that a bare perusal of the impugned order of allotment in favour of the impleaded party would reveal that such requirement was never insisted from them, and prospecting license has been granted to them only on the basis of their assurances, without filing of any project plan.

7. The petitioner has therefore prayed that the Hon'ble Revisional Authority may be pleased to allow their revision application and quash the impugned orders dated 15-02-2007 and 23-03-2007 passed by the State Government and direct the State Government to grant PL to the petitioner.

8. The petitioner has further stated that it has an existing cement plant of 3.5 million tonnes per annum capacity in Distt. Trichi, Tamil Nadu and also has a significant interest in Orissa Cement Ltd. which has a 2.2 million tonnes capacity cement plant. The petitioner company is keen to establish a cement plant in Satna distt. of Madhya Pradesh with annual capacity of 3 million tonnes. The petitioner has submitted an application on or about 25.6.1991 for grant of a prospecting licence for the total notified area of 24.63 sq. kms. Alongwith the application it submitted all requisite documents and also paid and deposited the prescribed application fee as per section 9 read with form B and schedule II of the MMDR Act. Twenty nine parties filed their applications for grant of prospecting license .

Apart from the petitioner company, M/s Jaiprakash Enterprises, M/s J.P. Cement and Birla Jute Mills also submitted their applications for grant of Prospecting Licenses. Both the concerns of Jai Prakash Group viz Jaiprakash Enterprises and J.P. Cement withdrew their applications from consideration on the date of hearing, now impleaded party No. 2 in the present revision petition pleading lack of interest.

9. Aggrieved by the order dated 22.6.1995 , M/s Birla Jute Mills and some other parties on 29.8.2007 challenged the order of the State Government in the revisional jurisdiction of the Central Government under rule 54 of the Mineral Concession Rule, 1960. The order of the State Government dated 22.6.1995 was forwarded to the Central Government for approval under section 5 of the MMDR Act, 1957. In view of the pendency of the revision applications, the Central Government did not send its approval. A formal order communicating the grant of prospecting license was never issued by the State Government. As a result, the required prospecting license deed could not be executed in terms of the Rules. In the year 1999 the revision application filed by M/s Birla Jute Mills and others were dismissed. In the same year i.e. 1999, Lime Stone was deleted as a mineral specified in the First Schedule thereby dispensing the statutory requirement of seeking approval from the Central Government in respect of a Prospecting License. That despite repeated attempts and efforts, the State Government did not come forward within a specified time limit for execution of the Deed of

prospecting licence. On 19.7.2005 , M/s Jaiprakash associates Ltd moved two applications for grant of mining leases for the same area for which a decision is on record of the State Government dated 22.6.1995, deciding to grant PL in favour of the Revisionist Company. A few days after filing of the two applications on 9.8.2005 , a D.O. purportedly dated 27.5.2005 was received by the petitioner company from the State Government seeking some information.

10. The petitioner company on 9.8.2005 itself sent a reply to the State Government informing them that all the documents sought by them are part of the record on the basis of which the order dated 22.6.1995 was passed. By way of an abundant caution the petitioner company informed the Government that it is willing to re-furnish the documents if so desired. State Government vide notice dated 27.1.2007 asked the petitioner to be present before the State government in the matter. No documents were sought and no deficiency was pointed out, Jaiprakash Enterprises on 27.11.2006 moved two applications for grant of the Prospecting Licenses for the same area as was covered vide the order dated 22.6.1995 in favour of the revisionist company. The petitioner company reiterated the offer and its commitment to set up a cement plant in Distt. Satna once the prospecting license is granted. Despite the State Government possessing no jurisdiction to rehear or re-decide a matter, the State Government took upon itself an onerous duty to rehear the matter in order to facilitate the grant of Prospecting Licence in favour of Jaiprakash Associates and Prism Cement.

11. The rules nowhere envisage cancellation of an order passed under order 12(1) impugning it later after it has been affirmed by the Central Government through the subterfuge of a rehearing by the State Government. The decision of the State Government dated 22.6.1995 which is in the form of an order cannot be reviewed, revised or reheard by the State government. It was no body's case that the decision dated 22.6.1995 cannot be permitted as an order and an argument to that effect by Jaiprakash Cement and Prism Cements is neither available in law nor can be permitted at their behest. The Jaiprakash Associates did not challenge the proceedings of 22.6.1995, Prism Cement was not even an applicant before the State government on the date of hearing before passing of the order dated 22.6.1995.

12. The State Government in its comment has not come forward with such a stand. It has never invoked its alleged/illusory right to hear the matter once again and to pass a fresh order without showing the source or its authority to exercise such jurisdiction. The very invocation of the jurisdiction by the State Government is non est and void. The foundation of the order is the fact that the deficit application fee as required to be deposited by virtue of D.O. dated 27.5.2005 has not been paid or made good hence there is no interest of the Revisionist Company in the matter. This arguments needs to be rejected at the threshold since the application fee was paid and deposited with the State Government alongwith the application as per the rules specified in 1991. The applications stood disposed off on

22.6.1995. The second reason mentioned in the order dated 15.2.2007 by the State Government for recalling and cancelling its earlier order dated 22.6.1995 is the failure on the part of the revisionist company to provide a specific scheme/project report in respect of setting up a cement plant in Satna Distt. on the date of hearing i.e. 6.2.2007. There was no requirement to submit any scheme or project report either under the Act or the rules. Even Jaiprakash Associates and Prism Cement could submit no such scheme project reports on the date of the hearing i.e. 23.2.2007. There was no need to come forward with the scheme/project report on 6.2.2007. The notice dated 27.1.2007 merely asked the representatives of the Company to present its case. The petitioner company in its representations dated 14.2.2007 and again on 26.2.2007 reiterated its firm commitment by way of an undertaking to set up a cement plant of 3 million tonnes at Satna distt. once the deed of prospecting license is executed. The notice dated 27.1.2007 also did not specify the reason for the hearing and or whether any reports, schemes or documents are required to be presented before the Minister. On 23.2.2007 a notice was issued for hearing, calling Jaiprakash Associates and Prism Cement to hear their applications for grant of PL/ML and within 30 days thereafter, i.e. 23.3.2007, an order was passed granting them the PL based upon the cancellation of the order dated 22.6.1995. The application of Prism Cement and Jaiprakash Associates and the notice of hearing dated 23.2.2007 are violative of Rule, 59. The notification issued in 1991 did not culminate in any grant of Prospecting License to any of the applicants before the State Government in pursuance to the notification and the

notification issued in 1991 has lapsed and the situation, which was continuing in 1999 before issuance of the notification continued after the order dated 15.2.2007 was passed.

13. The impleaded party no.1 has stated in their written submission that on 24.5.1981 Government of Madhya Pradesh issued notification on availability of areas for grant of PL in village Chormari, Jamuna, Patarhai, Bairiha & Janardhanpur of tehsil Rampur Baghelan, Distt. Satna. Petitioner, M/s DCBL applied on 25.6.1991 for grant of PL over an area of 24.63 kms in villages Janardhanpur, Pararhai Bairiha and Jamuna. Govt. of Madhya Pradesh had, vide letter dated 22.6.1995 conveyed that it would grant PL to M/s DCBL for 2 years over an area of 1434.853 hecets in applied villages. W.e.f. 18.12.1999 Limestone was deleted from scheduled I of the Act, and hence prior approval of the Central Government was no longer required and Govt. of Mahdya Pradesh was it self competent to grant PL. During the period 18.12.1999 to 26.5.2005 neither the Govt. of Madhya Pradesh nor the petitioner took any initiative for grant of said PL to the petitioner. On 27.5.2005 , Govt. of Madhya Pradesh wrote a letter to the petitioner in reference to its application for PL over 24.63 Sq. kms. area asking it to submit within 30 days the following documents.

- a) Current Khasra/map duly certified by patwari.
- b) Challan showing deposit of differential amount of application fee.

c) Current affidavit- all 3 types.

14. On 9.8.2005, petitioner wrote letter to Govt. of Madhya Pradesh requesting it to grant 60 days time for submission of khasra/map and affidavits. Regarding differential amount of application fee, it kept silent. However, petitioner submitted no documents or fee till 27.1.2007. On 27.1.2007 Govt. of Madhya Pradesh wrote letter to petitioner granting it opportunity of hearing before MRD Minister. The date of hearing was fixed on 6.2.2007. During the hearing on 6.2.2007, the petitioner again did not submit any documents/ proof of deposit of fee, instead it only made some oral submissions regarding its financial, technical or other strengths etc. Actual grant of PL had not been made in favour of the petitioner. On 23.3.2007 Govt. of Madhya Pradesh granted following prospecting licenses:-

a) PL to Prism Cement Ltd. over an area of 1829.021 hecets in villages Bairiha and Chormari of Tehsil Rampur Baghelan, Distt Satna (MP) The present petition is not concerned with nor challenges the 1829.021 hecets granted to Prism Cements Ltd. The petition only relates to an area of 173.28 hecets in so far as Impleaded Party No. 1 is concerned. The area overlapping with the grant given in favour of Impleaded Party No. 1 in the year 2007 is only 173.228 hecets in village Bairiha only. The petitioner has also admitted that its challenge is limited to overlapping area of 173.228 hecets in village Bairiha only. The revision petition form N

is conspicuously silent with regard to the survey numbers of the area for which it had submitted application. The petitioner admits that khasra numbers of the area applied by it are not available with it. In the absence any khasra-wise /survey numbers, details of the area to be granted to the petitioner, the revision petition of the petitioner is not maintainable at all. Provisions of Rule 59 (1) (C) of the Mineral Concession Rules do not apply in the present case because no PL was ever granted to the petitioner. As such no notification was required to be issued for regrant. The decision to grant PL to the petitioner vide letter dated 22.6.1995 was never got executed in favour of the petitioner. Ample opportunity was available with the petitioner during 1995 to 2007, more so during 1999 to 2007 till the order of rejection was passed on 15.2.2007. The petitioner was given opportunity of personal hearing also by MRD Minister of Govt. of Madhya Pradesh on 6.2.2007. The answering impleaded party had set up a cement plant in the year 1997 in backward district of Satna in village Mankahari by making huge investment of approximately Rs. 675 crores. The present installed capacity is 2.5. million metric tonnes of clinker per annum. The Cement plant of the answering impleaded party has a life of 50 to 60 years. However, the existing mineable reserve of the answering impleaded party as on 1.5.2007 is 38. 923 million metric tonnes which would last for approximately 10 years with plant capacity of 2.5. million metric tonnes per annum. Present stock of limestone shall last up to 8.5 year with the upgraded capacity of 3 million metric tonnes per annum. As the answering impleaded party set up new plant of 3.5 million metric tonnes per

annum it would last up to 4 years only. The answering impleaded party is in the process of setting up of new Cement plant of 3 million metric tonnes per annum with an expenditure of approximately Rs. 1244 crores. State Government while passing the order dated 23.3.2007 took in to account the fact that the answering impleaded party is ready and willing to install a cement plant of 3 million metric tonnes per annum capacity. The answering impleaded party submitted an application on 18.12.2003 , for granting prospecting license in respect of land situated in 3 villages namely Bairiha, Chormari and Patarhai. Since, the answering impleaded party due to some un avoidable reasons could not give the of area in respect of which the application was submitted, the answering impleaded party by another application dated 22nd October, 2005, provided the details in respect of the area which was applied for by the answering impleaded party. That pursuant to the above said grant, the answering impleaded parties have already got executed the following:-

- (i) That, a prospecting license in terms of order dated 23.3.2007 of the State Government has been registered and executed by Collector, Satna in favour of Impleaded Party No. 1 on 24.5.2007.
- (ii) Impleaded Party No. 1 has signed a memorandum of Understanding with MP Trade & Investment Facilitation Corporation Ltd., wholly owned undertaking of Government of MP for setting up of its Prism Cement Unit-II involving investment of about Rs. 800 crores.

- (iii) Impleaded Party No. 1 has applied to the State Government for Tax assistance and also for approval from MP Pollution Control Board for clearance.

15. The State Government in their comments have stated that 26 applications for mining lease/prospecting licences between 22.4.91 to 14.11.91 were received over an area of 24.63 Sq. kms in Janadharanpur, Patrahi, Baria, Jamuna, Chormari, Baghai, Mahari, Jajhajjar, Mughwari and Karmau under Tehsil Rampur Baghelan in Distt. Satna (MP). Out of these an area of 1434.853 hecets. was found available for undertaking prospecting license in favour of M/s Dalmia Cement Ltd. Since limestone was a mineral listed under the first schedule of the MMDR Act 1957 and therefore prior approval of the Central Government under section 5(1) was required. The proposal was accordingly sent to the Central Government for seeking prior approval under section 5(1) and 6(1) (c) of the Act. Since M/s Birla Jute Industries, Survesh Pratap Singh and Shri Bhagwan Singh had filed revision application before the Central Government in the matter and therefore the proposal of the State Government for seeking prior approval in favour of M/s Dalmia Cement Ltd. was sent back to the State Government. M/s Dalmia Cement Ltd. vide State Government's notice dated 27.7.05 under the provisions of Rule 12(1)(B) of the MCR, 1960 was asked to deposit the differential amount of the application fees khasra/ approved map by Patwari of the applied area and affidavit within 30 days, which the petitioner failed to comply with within the stipulated period . The State Government in 1994 had decided to grant the area to the petitioner

for establishment of a cement plant for which the petitioner has not taken any initiative during the last 12 years. During the hearing before the State Government, the representative of the petitioner only verbally said that in case the area is granted, the petitioner will take steps for setting up of a cement plant. Since the application of the petitioner was not complete and therefore the State Government after conducting the hearing on 6.2.2007 cancelled the decision to grant the area to the petitioner vide their order dated 15.2.2007. State Government had not passed any order for grant of the area for PL in favour of the petitioner. Application of the petitioner was rejected on account of incompleteness of the application and therefore there is no need to declare such area open under the provision of Rule 59 of MCR, 1960. Before the rejection of the application of the petitioner, State Government had received 7 application including those of the impleaded parties between 31.11.2002 and 21.11.2006 . After the rejection of the application of the petitioner the two impleaded parties were heard under rule 12 of MCR, 1960 and it was decided to grant the area to the two impleaded parties for undertaking prospecting operation.

16. The impleaded party No. 2 has stated in their written comments that the State Government issued a notification dated 24.5.91 for grant of prospecting licence for Limestone over an area of 24.63 Sq. Kms. The lime stone was a Schedule I mineral at that point of time i.e. in the year 1991, and as per Sec. 5(1) of the Mines and Minerals (Development & Regulation) Act, 1957, no order granting Prospecting Licence could have been passed without previous approval of the

Central Government. On consideration of various application made for PL, the state Government took an initial decision dated 22.6.95 by which they proposed and recommended to the Central Government for grant of prior approval so that Prospecting Licence can be granted to the petitioner, Dalmia Cement, for a period of 2 years on the ground that they had assured to install a mega cement plant in the aforesaid area of the State of MP. Till 1999, the petitioner did not submit any plan or any project report for installation of cement plant over the aforesaid area. From 1999 till 2005 the petitioner did not show any interest nor whispered any thing nor submitted any project report regarding installation of cement plant in the aforesaid area. Kept the matter pending for six long years and due to that the Government suffered a huge revenue loss. The State Government therefore issued notice to the petitioner calling upon it (i) to submit Khasras/Maps duly approved by Patwari of the aforesaid area as required under Rule 12(1) of Mineral Concession rules 1960, (ii) to pay the deficient amount of fees and (iii) to submit the affidavits, so that an appropriate order on the application of the petitioner for grant of prospecting licence could be passed. The petitioner submitted the reply to the aforesaid notice after expiry of 2 months on 9.8.2005 and sought time to comply with the same within 60 days. The petitioner failed to submit all the necessary document as per notice dated 27.5.2005 as assured. The aforesaid affidavits were to be submitted as required under Rule 9(2) a,b,e,f, g of Mineral Concession Rules 1960. They also neither submitted the Project Report nor stated that they are interested in installing the cement plant in the aforesaid area. The petitioner did not point out as to on which area and in which

village they are interested to instal the Cement plant.. On 6.2.2007 the petitioner expressed its intention to set up the cement plant elsewhere in the country though the object ab initio, was to set up the cement plant in the State of M.P. in order to create revenue and generate employment to the local people.

17. M/s Jaiprakash Associates Ltd. is one of the largest business conglomerates in the cement industry and has set up three modern computerized cement plants of 4 M.T. capacity in Rewa District in the State of Madhya Pradesh which is the single largest at one location in India. M/s. Jaiprakash Associates proposed to install another cement plant of 3 MT per annum capacity in Satna district and with that proposal they applied to the Collector for grant of prospecting licence over an area of 1118.017 hectares in village Patrahi, Bauraha, Karn1au and Janardhanpur situated in Rampurbaghelan, district Satna, on 27.11.06.

18. On 23.02.2007, the State Government issued notice to the impleaded parties calling upon them to attend a hearing on 26.02.2007 with respect to the pending application and on 23.03.2007 the State Governn1ent after considering the pending application and hearing the impleaded partiespassed an order granting PL for Limestone in favour of the answering impleaded party and. subsequently on 24.5.2007, the necessary documents were executed in favour of the impleaded party.

19. When the application of the petitioner was defective for want of necessary information with regard to exact Khasra no., latest site plan and the necessary affidavits, there was no option available with the government but to reject such application forthwith. The application submitted by the petitioner was not in compliance with the Khasra No. over which the PL was claimed by the petitioner rather the said application was vague and it only stated the area of approx 25.49 sq m, without specifying the place .

20. Rule 12 (1A) of MCR,60 does not grant immunity to the petitioner if there is deficiency in the payment of prescribed fee. Despite the issuing of notice by the State Government calling upon the petitioner to rectify the defects, the petitioner did not act diligently and falsely assured the state government that the needful would be done within 60 days, however the same was never done till the date of rejection of the application.

21. The impugned order dated 15.02.2007 is self explanatory and if read in totality would demolish the allegation so levelled by the petitioner. The said order clearly states that the representative of the petitioner who appeared personally before the competent authority and submitted the proposal for establishing the cement plant in the country but did not produce any proposal with regard to establishment of cement unit in the state of Madhya Pradesh. During the course of hearing the answering impleaded party which is already a major producer of Cement in the State, provided in writing that it would invest 1200 crore in the establishment of a 3 MT cement

plant. The bar of review, if not provided in the Act and the Rules applies only to judicial and quasi-judicial authorities. Rule 59 is not applicable in the present case as no area has earlier been granted to any body and the earlier decision dated 22.6.95 was a mere proposal sent by the State Government in favour of the petitioner. At best the said correspondence which rejected and determined the rights of other 24 applicants, it could be considered as an order because their very right, title and interest in respect of the grant of PL were decided. Since the right, title and interest of the petitioner was not determined but was recommended for approval and thus was a conditional decision.

22. The Petitioner has stated in their rejoinder has stated that the impugned orders passed by the State Government are violative of natural justice as no proper and fair opportunity of hearing was given to the petitioner before revoking the decision to grant prospecting licence to it vide the order dated 15th Feb., 2007. It is denied that the petitioner has failed to bring forth any of the grounds warranting interference with the order dated 15.2.2007 and 23.3.2007. Order dated 15.2.2007 has been passed by the State government without affording proper and fair opportunity of hearing to the petitioner. Order dated 23.3.2007 has been passed behind the back of the petitioner without giving any opportunity whatsoever to the petitioner. The action of the State Government is completely arbitrary and malafide as they have passed the order dated 23.3.2007 after entertaining the applications of the impleaded party no. 1 and 2 when the decision to grant prospecting licence in favour of the petitioner

was subsisting. Decision to grant prospecting licence was taken in favour of the petitioner on 22.6.1995 but a Prospecting License deed was never executed in favour of petitioner. The petitioner had already written to the impleaded parties on 11th August, 1995 to execute a licence deed which was never done by the petitioner. The request of the petitioner to the impleaded parties to execute a license deed was pending before them and was for the first time on 27th May, 2005 that they wrote a letter to the petitioner asking for certain documents which was received by the petitioner on 9.8.2005 and was replied to the petitioner on the same date informing the State Government that the documents which have been sought by the State Government have already been submitted to them with the application. The State Government decided to be silent for almost two years and only on 27th January 2007 the petitioner all of a sudden was called for a meeting with the Minister of Mines, State of M.P. on 6th Feb., 2007 for the disposal of the application of the petitioner. The contention of the impleaded party that it appears that the petitioner had no intention to set up a cement plant is nothing but a wild imagination of the impleaded party. The petitioner has always been ready and willing to set up a cement plant in the area and the purpose of obtaining a prospecting license is to assess the quality and quantity of mineral available in the area and it is unimaginable to expect the petitioner to establish a cement plant and expend huge sums of money without even carrying out prospecting operations to assess the quality and quantity of limestone available in the area. Neither the non setting up of the cement plant by the petitioner due to aforesaid reason can be inferred as if the petitioner was not

interested in setting up of the cement plant nor it can be said that due to the petitioner not fulfilling any obligations, the State Government suffered losses. It is an undisputed fact that the petitioner had applied for the area on which the impleaded party no.2 has been granted a Prospecting License now, which can be verified from the official records of the State Government which area is in their possession. It has never been the case of the impleaded party no. 2 throughout that the land in respect of which they have been allegedly granted a prospecting license now is not the same area of land in respect of which a decision to grant Prospecting License in favour of the petitioner was taken on 22.6.1995. In contention of the impleaded party no.2 that non furnishing of khasra nos. will entail a dismissal simpliciter of the revision petition is not correct and the State Government can be directed by this Hon'ble Tribunal to furnish such information. The petitioner vide its letter dated 11.8.1995 asked the State Government to execute a lease deed in favour of the petitioner as per the relevant Rules in this regard. The State Government took no steps to grant lease to the petitioner or act in accordance to the rules as suggested by the petitioner in its letter. However, on 29.8.1995 one of the applicants, viz, Birla Jute Industries Ltd. whose application was rejected by the State Government filed a R.A. under section 30 of the MMDR Act, 1957, the said revision application came to be disposed of by the Central Government only in the year 1999. The first schedule to the MMDR Act was amended and Limestone was deleted from the said schedule w.e.f. 18.12.99. In view of the change in legal regime the matter of finalization of prospecting license in favour of petitioner remained

pending for a long time. The State Government first time wrote to the petitioner on 27.5.2005 asking the petitioner to make available the khasra entries of the area. The petitioner replied to the said letter vide its letter dated 9.8.2005 and clarified that the requirements pointed out had already been complied with the petitioner with his application in the year 1991 the matter again remained pending with the State Government and a letter was received by the petitioner from the State Government only on 27.1.2007 through which the petitioner called for personal hearing with the Minister on 6.2.2007. In the said letter the petitioner was never asked to submit document or the fee as was asked in the letter dated 27.5.2005. Further the said notice also did not ask the petitioner to submit a project report as one of the grounds on which the permission of the petitioner has been withdrawn. During the meeting with the Minister on 6.2.2007 the petitioner company gave a detailed presentation about the company's financial and technical strengths. The petitioner submitted a representation dated 14.2.2007 to the State Government recording the deliberations of the meeting held on 6.2.2007. A perusal of the letter dated 15.2.2007 of the State Government will show that the State Government has admitted that the matter got delayed firstly because the approval of the Central Government was pending and thereafter the revision petition of Birla Jute and Industries were pending adjudication. There was no occasion for the petitioner to take any steps as the matter was pending before the Central Government for approval under the Rule and thereafter the adjudication of revision petition were going on till 1999. The impleaded party cannot expect the petitioner to make investment of

crores of rupees only on their decision to grant prospecting license without executing a lease deed. It is also arbitrary on the ground that the State government cannot be allowed to cancel the earlier order dated 22.6.1995 on the ground that later the application fee has increased from what it was at the time when the application was filed. The petitioner has always been ready and willing to set up a cement plant in the area and to allege other wise is not correct, it is unimaginable to expect the petitioner to establish a cement plant or to do project reports without even carrying out prospecting studies. That even after the impugned order dated 15.2.2007 was passed the petitioner submitted representations dated 26.2.2007 and 12.3.2007 to the State Government clearly stating its readiness and willingness to setup a cement plant and requesting it to reconsider its decision dated 15.2.2007. The perusal of the order dated 23.3.2007 applications for granting mining lease and or prospecting license in the area from impleaded party no 1 & 2 were received by the State government during years 2002 to 2005. It is not understood and cannot be explained by the State Government that under what circumstances it started receiving applications for the same area for which an approval to grant prospecting license in favour of the petitioner was in principle granted. It has also not been mentioned that whether any advertisement was issued in this regard. Moreover, how can such advertisement be issued if the issue was settled in favour of the petitioner after the decision of the Central Government rejecting the revision applications of Birla Jute and Industries and others. A letter written by the State Government on 27.5.2005 to the petitioner was just to create a camouflage of giving an opportunity to

the petitioner whereas the State Government was clandestinely dealing with impleaded party no.1 and 2 with a premeditated mind of granting them license. In the impugned order dated 23.3.2007 there is a conspicuous omission of the date of hearing which was conducted to consider the applications of impleaded party no.1 and 2. However, if any such hearing as claimed was conducted, the petitioner was not given any opportunity of hearing especially when the decision pertained to the rights already accrued to the petitioner on the said area. The impleaded party no. 2 has not given any satisfactory reply regarding the action of the State Government to distribute the State largesse in such an arbitrary manner which has been strongly deprecated by the Hon'ble Supreme Court in its various pronouncements. A perusal of Rule 59 will show that it operates specifically when an area in question is previously held under a prospecting license or mining lease or in respect of which an order granting a permit or lease has been revoked. The area was never thrown open by the State Government after the notification of 1991 in pursuant to which the sister concerns of the impleaded party no.2 showed no interest in the area.

23. The cases were taken up for hearing on 27.12.2007 in compliance of the direction of High Court of Madhya Pradesh at Jabalpur in W.P. (C) No. 4813 of 2007. The petitioner was represented by Shri Vivek K. Tankha, Sr. Advocate, Mr. K.V. Vishwanathan, Mr. Sanjeev Kapoor, Mr. Vishal Gupta, Ms. Ratna Kaul, Advocates and Shri Rajesh Nair, DCBL. The State Government was represented by Shri S.K. Khare, Dy. Director,

Mining and Geology Bhopal and Shekhar Khare, Asstt. Mining Officer. The impleaded party No.1 was represented by Shri A.K. Tiwari, A.R. The impleaded party No. 2 was represented by Shri S.B. Upadhyay, Sr. Advocate, Shri R.S. Jaiswal, Sr. Adv. Shri Pawan Upadhyay, Advocate, Shri D.S. Rana, DGM, Jai Prakash Associate and Shri P.K. Goel, Vice-President.

24. We have heard the arguments made by all the parties concerned in the matter and have also perused the record of the case including the written submission made by the petitioner and two impleaded parties. Since both the impugned orders of the State government are interlinked and the petitioner has raised common issues in both the revision applications and therefore we are proceeding to pass a common order in these revision applications. State Government vide their recommendation dated 16.3.1994 had sent the proposal to the Central Government for seeking prior approval for grant of prospecting licence to the petitioner over an area of 1434.853 hecets. for the mineral limestone. The Central Government had returned the proposal to the State Government since some revision applications over a part of the area recommended in favour of the petitioner were pending before it and those revision applications were rejected by it later. Subsequently, the mineral limestone was taken out from the category of schedule minerals vide gazette notification dated 20.12.99 and therefore it was not required to seek prior approval of the Central Government before grant of mineral concession for limestone. When the State Government recommended the said proposal to the Central

Government it is reasonable that the State Government should have ensured the completeness of the application at the time of sending the same to the Central Government and not later on. It is also not clear that when State Government was competent to grant prospecting licence for limestone without obtaining prior approval of the Central Government, then why State Government kept waiting for 7 years and did not execute the prospecting licence deed in favour of the petitioner. We are also in agreement with the contention of the petitioner that any concrete step to set up a cement plant could be taken only after the execution of the licence deed. The petitioner had time and again reiterated its intention before the State Government to set up a cement plant after the execution of the licence deed. It also not clear as to why State Government is now of the opinion that the application of the petitioner is incomplete for want of some documents, when the prior approval of the Central Government was sought in the matter in 1994 and instead the State Government should have asked the petitioner to complete its application before the sending the same for seeking approval of the Central Government. Instead, the State Government vide notice dated 27.5.2005 asked the petitioner to complete the application for PL. if the petitioner received the notice dated 27.5.2005 only on 9.8.2005 and informed the State Government that it had already submitted details of khasra no. etc. of the area in question mining dues clearance certificate and other affidavits required in the matter at the time of filing of application of PL and sought some time for paying the difference of fees and updated affidavits as per provision of MCR, 1960. As per the provision of Rule 12 (1A) of MCR, 1960

the State Government cannot refuse the application for grant of PL on the ground that the application form is incomplete and according to the petitioner all the documents asked for by the State Government vide their notice dated 27.5.2005 were already submitted alongwith the application for PL in 1991 and we are inclined to agree with the contention of the petitioner based on the documentary evidence produced before us.

25. In view of the above, we are of the opinion that State Government has erred in passing the impugned orders and therefore directed to reconsider the matter in the light of the observations made above after affording an opportunity of hearing to the petitioner to present his case before the State

Government and pass a reasoned order as per the provision of the MMDR Act , 1957 and the rules framed thereunder within a period of 90 days from the date of passing of this order. Accordingly impugned orders of the State Government 15.2.2007 and 23.3.2007 are set aside and revision applications are disposed of accordingly.

Sd/-
(D.R. Meena)
Joint Secretary and Govt. Counsel

Sd/-
(Ajita Bajpai Pande)
Joint Secretary (Mines)