

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2790 OF 2012
(Arising out of SLP(C)No.8567 of 2008)

BHUSHAN POWER & STEEL LTD. & ORS.

... APPELLANTS

Vs.

STATE OF ORISSA & ANR.

... RESPONDENTS

J U D G M E N T

ALTAMAS KABIR, J.

1. Leave granted.

2. With the intention of setting up an integrated steel plant in the State of Orissa, Bhushan Limited, entered into discussions with the State Government in 2001 in that regard. Pursuant to such discussions, Bhushan Limited applied to the Industrial Development Corporation of India (IDCO) for acquisition of land measuring 1250 acres, for setting up the proposed plant in the identified villages of Thelkoloi, Dhubenchhabrar and Khariapalli (Lapanga) in the District of Sambalpur. On 13 th November, 2001, Bhushan Limited applied to the Industrial Promotion and Investment Corporation of Orissa Ltd. (IPICOL) for appraisal and recommendation for acquisition of land for the aforesaid purpose to IDCO. Bhushan Limited also addressed two letters to the Collector, Sundergarh and Collector, Keonjhar on 28 th November, 2001, applying for grant of lease for mining of iron ore for use in the proposed plant. The applications were received in the Collector's office on 3rd December, 2001, 4th December, 2001 and 1st March, 2002. On the basis of such applications filed by Bhushan Limited, a meeting was held on 27 th March, 2002, between

the Chief Secretary, Government of Orissa and Bhushan Limited, in which the Government agreed to accord due priority to Bhushan Limited for grant of suitable iron ore areas and also agreed to recommend the proposal of Bhushan Limited to the Government of India for grant of a Coal Block.

3. Thereafter, meetings were held between Bhushan Limited and the representatives of the State Government and one such meeting was held on 24th April, 2002, under the Chairmanship of the Chief Minister, relating to the setting up of the steel plant at Lapanga. The said meeting was confirmed by IDCO and the Water Resources Department and it was decided to prepare a Memorandum of Understanding (MOU) to be signed by the parties for setting up of a 1.2 million tonnes steel plant under Phase-I and a 2.8 million tonnes steel plant in Phase-II in Lapanga, in the District of Sambalpur. The MOU contained the commitment of the

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State Government to recommend to the Central Government grant of iron ore mines to the Appellant for its use in the plant to be set up at Lapanga. As far as the grant of the iron ore mines is concerned, the State Government agreed to make the following recommendations to the Central Government:

- a) For grant of 96 million tonnes iron ore reserves in Joda Barbil Sector of Keonjhar (Thakurani area) for 50 years requirement of the plant.
- b) For additional 128 million tonnes of iron ore reserves in Keora, District Sundergarh, to meet a requirement of 1.6 million tonnes for 50 years.

The total requirement of 200 million tonnes was split up into two parts, i.e., 96 million tonnes and 128 million tonnes respectively, and the same were to be met from the Thakurani mines situated in the Joda Barbil sector and from the Keora area

of Sundergarh District.

4. Pursuant to the aforesaid understanding, on 16th May, 2002, the Government of Orissa addressed two letters to the Government of India, in its Ministry of Steel and Ministry of Coal, for allotment of Jamkhani and Bijahan Coal Blocks to Bhushan Limited. In aid of the decision to set up the steel

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plant, the Department of Energy issued a No Objection Certificate (NOC) for setting up of a power plant at Thelkoloi in the name of Bhushan Limited and, on 5th July, 2002, the State Government conveyed its approval for acquisition of 632.28 acres of private land and 634.94 acres of Government land in identified villages under Rengali Tehsil of Sambalpur District, for establishment of the steel plant. Several meetings took place between the Principal Secretary and the representatives of Bhushan Limited, where even the Joint Secretary of Mines was present and assurances were given to Bhushan Limited to send the proposal for grant of mining lease in favour of Bhushan Limited to the State Government by the first week of September, 2002. On 22 nd October, 2002, even the State Pollution Control Board gave its approval in principle for setting up the plant in the selected sites.

5. On 8th November, 2002, the Director, Mines, furnished his report on the application made by the Appellant on 4 th December, 2001, for grant of mining lease over the Thakurani Block area. In the said report it was recorded that Thakurani Block A and Block B mines had been leased in favour of the Sharda's in 1934, by the Ex-Ruler of Keonjhar and that the Thakurani Block A mines had been extensively mined by the original lessee from 1934 onwards. The report also disclosed that in 1998, the matter was settled in this Court between the State, the Sharda's and the

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Centre. It was agreed that Thakurani Block A would be relinquished in favour of the State and the mining lease of Block

B would be renewed in favour of the Sharda's. Accordingly, in terms of the settlement, the Thakurani Block A became available with the State. It is on the aforesaid basis that the Appellant had been advised to apply to the State Government for this area, and the same was done in December, 2001. The report also indicated that a mining licence could be granted to Bhushan Limited in relaxation of Rule 59(2) of the Mineral Concession Rules, 1960, hereinafter referred to as the "MC Rules", in view of the fact that the Thakurani Block A had been mined by the original lessee from 1934 onwards. The State Government was advised to recommend to the Centre for grant of relaxation under Rule 59(2) of the MC Rules.

6. On 19th February, 2003, the Orissa Electricity Regulatory Commission (OERC) passed an order granting permission for installation of a Captive Power Plant by Bhushan Limited.

7. It is at this stage that trouble began to brew. A decision had been taken to merge Bhushan Ltd. with Bhushan Steel and Strips Limited (BSSL) which had an identity which was separate from that of Bhushan Limited, though treated to be a family concern under the Bhushan family umbrella. On 21st February, 2003, the Government of Orissa was informed by Shri Brij Bhushan

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Singhal, Chairman of the Bhushan Group, that Bhushan Limited, the Appellant herein, would not be merging with BSSL, but that the papers were being processed in the name of Bhushan Limited, as a group. Accordingly, the State Government was requested not to process the papers for 2-3 months. On 17th March, 2003, BSSL wrote to the Chief Minister, informing him of the developments which had taken place and that two companies had decided not to merge, with retrospective effect from 1st April, 2002, as had been decided earlier.

8. Thereafter, on 5th May, 2003, Shri Neeraj Singhal wrote to

the Chief Minister on behalf of BSSL informing him that BSSL was unable to process the setting up of the steel plant at Lapanga and in order to minimize the friction between the two groups within the family, BSSL had decided to set up a separate steel plant at a different location in Mehramandali in the District of Dhankanal in respect whereof 1500 acres of land had been identified. On 17th June, 2003, the Water Resources Department, Government of Orissa, wrote to Bhushan Power & Steel Ltd. giving its approval of the layout for intake well for drawal of 100 cusec water for the integrated steel plant of the Company. This was followed by grant of a certificate by IDCO on 19 th July, 2003, confirming sanction of land for lease measuring 488.08 acres in favour of Bhushan Limited comprising Thelkoloi, Dhubenchhapar and Khadiapalli, which had been identified in the MOU for establishment of the steel plant by Bhushan Limited.

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9. The said sanctions were followed up by a meeting chaired by the Chief Minister of Orissa on 25h July, 2003, wherein the progress of the project was discussed and it was resolved that the application of Bhushan Limited for iron ore deposits would be recommended to the Government of India and that no fresh MOU was required to be filed. It was decided that the MOU executed earlier between the Bhushan Group and the State Government on 15th July, 2002, would remain undisturbed, since, the same had already been acted upon by both sides. It was also decided that the application of Bhushan Limited for iron ore deposits would be recommended to the Government of India in terms of the MOU, after the same was placed before the Screening Committee which was chaired by the Chief Secretary.

10. Further to the permission being granted to Bhushan Limited on 21st February, 2003, for installation of a Captive Power Plant, OERC granted a "No Objection Certificate" to Bhushan Limited for setting up of a Captive Power Plant for increased

capacity.

11. Subsequently, various other steps were taken for establishment of the power plant at Lapanga by Bhushan Power & Steel Ltd. On 10th February, 2004, the State Government wrote to

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Shri Sanjay Singhal, representing Bhushan Limited, that in view of the reorganization and restructuring of the Bhushan Group, the earlier MOU ceased to exist and had lost its force. Accordingly, a fresh MOU was required to be entered into between the Appellants and the State Government for speedy implementation of the project which was on the anvil. It is the case of the Appellants that this letter was never acted upon by either party, since, thereafter, the State allotted and granted possession of large tracts of land to the Appellants and other agreements, such as drawal of water were entered into, permission was given for connectivity with the Grid and other various other administrative sanctions, as also approval for acquisition of land, were made in favour of Bhushan Power & Steel Ltd., without any insistence for the execution of a fresh MOU. Simultaneously, Shri Neeraj Singhal of BSSL was also informed by the State that since they wanted to set up a separate steel plant at Mehramandali, a fresh MOU to this effect could be entered into between the State and BSSL.

12. Responding to the letter of 10th February, 2004, Bhushan Limited wrote back on 21st February, 2004, stating that no fresh MOU was required to be signed, since the earlier MOU was quite valid. On 11th March, 2004, the Government of Orissa, in its

Department of Industries, informed IDCO that the Government had been pleased to advise for immediate transfer of acquired land,

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both Government and private, to Bhushan Limited, after observing all the necessary formalities. However, on 17 th March, 2004, Shri Neeraj Singhal, Managing Director of BSSL, wrote to the

Principal Secretary, Department of Steel and Mines, contending that Bhushan Limited, as also BSSL, were entitled to the benefits of the MOU, which had been signed on 15th May, 2002.

13. Within a week thereafter, on 24th March, 2004, IDCO transferred the land for the project at Lapanga to Bhushan Limited and possession thereof was also made over on several dates. On 12th May, 2004, the Ministry of Environment and Forest, Government of India, gave clearance to the project at Rengali in the name of Bhushan Limited. The Chief Inspector of Factories and Boiler, gave approval to the Steam and Feed Water pipe line drawing for Bhushan Limited on 2nd July, 2004. On 3rd September, 2004, the Government of Orissa, in its Ministry of Environment and Forest, granted approval to Bhushan Limited for diversion of 59.16 hectares of forest land for establishment of the integrated steel plant and an agreement was also drawn up between the Government and Bhushan Limited on 17th September, 2004, for drawal of water from the Hirakud Reservoir for use in the proposed integrated steel plant at Lapanga. On 2nd February, 2005, the State Government wrote to Bhushan Limited, seeking the status report of the steel plant project and on 16th March, 2005, permission was granted for provisional energisation of 220 KV

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line issued by the Chief Electrical Inspector in favour of Bhushan Limited. Several other approvals were granted upto 9th August, 2005, and finally in March, 2005, Bhushan Limited (BPSL) commenced production at its steel plant. On 6th September, 2005, administrative approval was given for acquisition of additional private land for Lapanga plant, granted by the Steel and Mines Department to Bhushan Limited. Similar approval was given in respect of other lands on 28th September, 2005 and 6th February, 2006.

14. Simultaneously, with administrative approval being given for acquisition of private land for the Lapanga plant on 3rd

November, 2005, an agreement was entered into between BSSL and the Government of Orissa for putting up the steel plant at Mehramandli. There was no mention of the MOU dated 15th May, 2002, in the said agreement. Within a matter of 10 days, the Directorate of Factories and Boilers wrote to Bhushan Limited granting permission under the Factories Act, 1948, to construct the steel plant at Lapanga.

15. Surprisingly, on 31st December, 2005, the Government of Orissa issued a letter to Bhushan Limited indicating that it had decided not to treat the MOU signed earlier with M/s Bhushan Group of Companies as place specific after the company had been divided into Bhushan Limited (BPSL) and M/s Bhushan Steel and

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Strips Ltd. (BSSL). The Bhushan Group was informed that the State Government had decided to deal with both the Companies separately and to sign two separate agreements for the purpose of acquiring land, allotting mines and providing other facilities for establishment and growth of steel plants in Orissa.

16. On 9th January, 2006, a letter was addressed by the Directorate of Factories and Boilers to Bhushan Steel Ltd. approving the draft of the steam pipe line and on 13 th January, 2006, on the recommendation of the Government of Orissa, the Central Government allotted Bijahan Coal Block in the District of Sundergarh to Bhushan Limited as per the MOU.

17. Even more surprisingly, on 18th January, 2006, the Government of Orissa issued a Show-Cause Notice to Bhushan Limited to appear before the Joint Secretary on 17 th February, 2006, for a personal hearing. Several deficiencies in the application for mining lease of iron ore dated 4 th December, 2001, in respect of the Thakurani Block A, were also pointed out. Thereafter, the State Government informed the Appellants that their application dated 4th December, 2001, for mining lease over

the Thakurani area could not be allowed on various grounds.

However, the most significant ground was that the area in question came within the relinquished area of the mining lease of M/s Sharda which was not thereafter thrown open for re-allotment

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under Rule 59 of the aforesaid Rules. It was alleged that the application made by Bhushan Limited was, therefore, premature.

Having rejected the Appellants' prayer for grant of mining lease, on 9th February, 2006, the Government of Orissa made a recommendation to the Central Government to grant mining lease in favour of M/s Neepaz Metallicks (P) Ltd. in relaxation of Rule 59(1) of the aforesaid Rules, for a period of 30 years.

18. On 28th February, 2006, Bhushan Limited altered its name to Bhushan Power & Steel Ltd. (BPSL).

19. On 8th May, 2006, Bhushan Limited filed Writ Petition No.6646 of 2006 before the Orissa High Court. On the next day, the State Government issued a reminder to Bhushan Limited in regard to its letter dated 31st December, 2005, by which the State Government had asked for a separate MOU from Bhushan Limited, inspite of the MOU already existing between the parties, which had also been acted upon till as late as 26 th April, 2006. On 15th May, 2006, the High Court passed an interim order granting status-quo with regard to the applications for mining lease. On 5th September, 2006, an intervention application was filed by BSSL, which was allowed on 6th December, 2006.

20. During the course of hearing of the Writ Petition, the High Court passed an interim order and directed that the problems

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relating to the Show-Cause Notice dated 18 th January, 2006, should be resolved, keeping in view the commitments of the State.

On 26th June, 2007, the High Court directed circulation of the order dated 18th June, 2007, and liberty was given to Bhushan Limited to challenge the same by filing an affidavit in the writ

proceedings.

21. Such affidavit was duly filed on 10th July, 2007, and the order impugned in the present appeal came to be passed by the High Court on 14th December, 2007, dismissing the aforesaid Writ Petition No.6646 of 2006. The substance of the order of the High Court while dismissing the Writ Petition is :-

- (a) The Court cannot set aside the communication of the State Government asking the Appellants to sign a fresh MOU with the Government as early as possible.
- (b) The Appellants' application for grant of mining lease dated 4th December, 2001, should be considered afresh by the appropriate authorities of the State Government in accordance with law, along with other similarly placed applicants.
- (c) The Appellants would be at liberty to challenge the subsequent report of the Director of Mines dated 31st May, 2007, in the hearing which would be afforded to the Appellants by the appropriate authority of the State. 14
- (d) The Appellants would be at liberty to challenge the order dated 18th June, 2007, on merits, but it was also submitted that the application for mining lease of the Appellants would be considered after it executed a fresh MOU with the State Government.

22. As indicated hereinbefore, on 21st April, 2008, this Court passed an interim order in the Special Leave Petition filed by Bhushan Limited directing the parties to maintain status-quo with regard to the lands indicated in the application filed by the Appellants for grant of mining lease. However, one of the most

significant developments that subsequently took place was that on 15th November, 2011, Shri B.B. Singhal and Shri Neeraj Singhal, Vice-Chairman and Managing Director of Bhushan Steel and Strips Ltd. filed affidavits withdrawing all their claims and rights in the MOU dated 15th May, 2002, executed between the State Government and Bhushan Limited and declaring that the said MOU was and had always been in favour of Bhushan Power & Steel Ltd. The above-named persons also prayed for deletion of their names from the array of parties.

23. Appearing for the Appellants, Mr. Mukul Rohatgi, learned

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Senior Advocate, pointed out that only two issues arise for the consideration of this Court in the present case, namely -

a) Whether the Memorandum of Understanding dated 15th May, 2002, continues to subsist in favour of the Appellants?

b) Whether the State Government is obliged to make recommendations for the grant of iron ore mines in terms of the stipulations contained in the aforesaid MOU dated 15th May, 2002, and whether in respect of the areas which had not been notified under Rule 59(1), the State Government can make a recommendation for relaxation of Rule 59(1) under Rule 59(2)?

24. Mr. Rohatgi submitted that having entered into a Memorandum of Understanding with the Appellant Company and having acted thereupon and having also caused the Appellants to change their position to their detriment, it was not open to the State Government to call upon the Appellants to execute a fresh MOU, during the subsistence of the MOU dated 15th May, 2002.

25. Mr. Rohatgi also submitted that notwithstanding the State Government's requirement that the Appellants should enter into a fresh MOU, the State Government continued to act under the MOU dated 15th May, 2002. Despite the communications dated 10th February, 2004, and 31st December, 2005, above recorded, the State Government went on further to hold that all the steps required to be taken for installation of the steel plant at

Lapanga, had been taken, except that it did not comply with the obligations of making recommendations to the Central Government 16

for grant of iron ore mines. Mr. Rohatgi urged that during the pendency of the proceedings, the dispute between the members of the Bhushan Group had been settled and the parties had mutually agreed to withdraw all the allegations and claims relating to the MOU dated 15th May, 2002. Incidentally, by filing I.A.No.13, BSSL confirmed that Bhushan Power & Steel Ltd. was the sole beneficiary under the MOU dated 15th May, 2002, and withdrew all its claims under the MOU dated 15th May, 2002.

26. Mr. L. Nageshwar Rao, learned Senior Advocate, appearing for the State of Orissa, has also very fairly stated that in view of the settlement of disputes between the members of the Bhushan Group, the issue relating to the MOU did not survive and, since, the State Government had already performed its obligation under the MOU, the only thing remaining to be done by the State is to make recommendations to the Central Government for grant of iron ore mines to the Bhushan Power & Steel Ltd.

27. Mr. Rohatgi submitted that in the changed circumstances, the question of execution of a fresh MOU loses its relevance and the letter dated 31st December, 2005, calling upon the Appellants to execute a fresh MOU, is not required to be given effect to. Consequently, it may be held that the MOU dated 15 th May, 2002, continues to be valid and subsisting between the State of Orissa and Bhushan Power & Steel Ltd.

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28. On the question of Rule 59 of the MC Rules, which formed the basis of the State Government's decision to reject the Appellants' application for being recommended to the Central Government for grant of a mining lease, Mr. Rohatgi submitted that such recommendations had been made by the State Government

in favour of other applicants as well, such as M/s. S.M.C. Power Generation Ltd., M/s. Neepaz Metalics, M/s. Sree Metaliks and M/s. Deepak Steel & Power. Therefore, there was no reason to deny the same benefits to the Appellants as well.

29. Appearing for the Intervener, M/s. Jindal Steels Ltd., Mr. K.V. Vishwanathan, learned Senior Advocate, submitted that so long as any allotment made in favour of the Appellants did not impinge on the allotment made in favour of M/s. Jindal Steels Ltd., it could have no grievance against a separate allotment being made in favour of the Appellants.

30. The mutual settlement of the disputes between the members of the Bhushan Group has altered the situation considerably, since BSSL has withdrawn its claim under the MOU dated 15 th May, 2002, and has declared that the said MOU was and had always been executed by the State Government in favour of Bhushan Power & Steel Ltd., which had set up its steel plant at Lapanga. As

indicated hereinbefore, although, the MOU was entered into by the State Government with the Bhushan Group for setting up a steel plant at Lapanga, at a later stage, BSSL also laid claim under the MOU for setting up a separate steel plant at Mehramandali and a suggestion was also made for execution of a fresh MOU between the State Government and BSSL to this effect.

31. Pursuant to the MOU with Bhushan Limited, the State Government had not only allotted land for the setting up of the steel plant at Lapanga, it had even extended all help for the commissioning of the plant, which, in fact, had already started functioning. However, it is the claim made by BSSL under the MOU executed on 15th May, 2002, that had created obstructions in the setting up of the steel plant at Lapanga. Despite having allotted land and granted sanction to Bhushan Limited to take steps for construction of the said plant, it was subsequently

contended that the application filed by Bhushan Limited was premature and could not, therefore, be acted upon. Specific instances have been mentioned hereinabove of the steps taken by the various departments in extending cooperation to Bhushan Limited to set up its steel plant at Lapanga. To now turn around and take a stand that the application made by Bhushan Limited was premature, is not only unreasonable, but completely unfair to Bhushan Limited, who have already invested large sums of money in setting up the plant. The State Government had, on its own volition, entered into the MOU with Bhushan Limited on 15 th May, 2002, and had even agreed to request the Central Government to allot mining areas and coal blocks for operating the steel plant. Whatever differences that may have resulted on account of the dispute within the Bhushan Group, which could have led to the rethinking on the part of the State Government, have now been laid to rest by virtue of the settlement arrived at between the Bhushan Limited (now BPSL) and BSSL. The State Government has also accepted the said position. In addition to the above, the action taken by the State Government appears to us to be highly unreasonable and arbitrary and also attracts the doctrine of legitimate expectation. There is no denying the fact that the Appellants have altered their position to their detriment in accordance with the MOU dated 15th May, 2002. Whatever may have been the arrangement subsequently arrived at between the State Government and BSSL, the original MOU dated 15 th May, 2002, continued to be in existence and remained operative.

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32. The State Government appears to have acted arbitrarily in requiring Bhushan Limited to enter into a separate MOU, notwithstanding the existence of the MOU dated 15 th May, 2002, which, as mentioned hereinabove, had been acted upon by the parties.

33. In the light of the above, the High Court erred in holding

that it could not interfere with the decision of the State

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Government calling upon the Appellants to sign a fresh MOU with the Government, during subsistence of the earlier MOU. the

Since

State Government has already made allotments in favour of others in relaxation of the Mineral Concession Rules, 1960, under Rule 59(2) thereof, no cogent ground had been made out on behalf of the State to deny the said privilege to the Appellants as well.

34. Accordingly, we allow the appeal and set aside the

judgment and order of the High Court of Orissa and also the

decision of the State Government dated 9th February, 2006,

rejecting the Appellant's claim for grant of mining lease. During the course of hearing, we have been informed that Thakurani Block A has large reserves of iron ore, in which the Appellants can also be accommodated. We, accordingly, direct the State of Orissa to take appropriate steps to act in terms of the MOU dated 15 th May, 2002, as also its earlier commitments to recommend the case of the Appellants to the Central Government for grant of adequate iron ore reserves to meet the requirements of the Appellants in their steel plant at Lapanga.

35. There will be no order as to costs.

.....J.

(ALTAMAS KABIR)

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.....J.
(SURINDER SINGH NIJJAR)

New Delhi
Dated:14.03.2012

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ITEM NO.1B
(For Judgment)

COURT NO.2

SECTION XIA

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8567/2008

(From the judgement and order dated 14/12/2007 in WP No.6646/2006 of
The HIGH COURT OF ORISSA AT CUTTACK)

BHUSHAN POWER & STEEL LTD. & ORS.

Petitioner(s)

VERSUS

STATE OF ORISSA & ANR.

Respondent(s)

Date: 14/03/2012 This Appeal was called on for Judgment today.

For Petitioner(s) Mr. E.C. Agrawala, AOR

For Respondent(s) Mr. Suresh Chandra Tripathy, AOR

Mr. Sunil Kumar Jain, AOR

Mr. Satya Mitra Garg, AOR

Mr. Sanjay Jain, AOR

Mr. Shibashish Misra, AOR

Ms. Manjula Gupta, AOR

Hon'ble Mr. Justice Altamas Kabir, pronounced the
judgment of the Bench comprising His Lordship and Hon'ble
Mr. Justice Surinder Singh Nijjar.

Leave granted.

In terms of the signed judgment, the appeal is
allowed.

There will be no order as to costs.

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(Chetan Kumar)
Court Master

(Juginder Kaur)
Assistant Registrar

[Signed Reportable Judgment is placed on the file]