

F.No. 7/60/2006-MIV
MINISTRY OF MINES
GOVERNMENT OF INDIA

New Delhi dated 24/06/2009

To
The Secretaries (Mines & Geology) of the State Governments (as per list attached)

Sub: Guidelines regarding submission of mineral concession proposals under Section 5(1) of the Mines and Minerals (Development & Regulation) Act, 1957.

Sir,

I am directed to refer to the New National Mineral Policy, 2008 (NMP), enunciated by the Government on the 13th March 2008, copy available on the website of the Ministry of Mines (www.mines.nic.in) and to say that the matter has been considered in detail with reference to Para 4 of the new National Mineral Policy which states that the provisions of the Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act) and the Rules will be reviewed and harmonised with the basic features of the new National Mineral Policy. As you are aware, Para 3.3 of the Policy states that '*the procedures for grant of mineral concessions of all types, such as Reconnaissance permits (RP), Prospecting Licences (PL) and Mining leases (ML), shall be transparent and seamless and security of tenure shall be guaranteed to the concessionaires*'. Further the Policy lays down that the first-in-time principle in the case of sole applicants and the selection criteria in the case of multiple applicants will be appropriately elaborated.

2. Guidelines/Instructions of the Ministry of Mines to the State Governments vide Ministry's letters of even number dated 10th April 2006, 1st May 2006 and 15th May 2006, regarding grant of mineral concessions, processing cases on a checklist, issue of notifications and grant of priority to applicants under Section 11 of the MMDR Act, etc. have accordingly been reviewed in the light of the new Mineral Policy and the provisions of the MMDR Act and the applicable Rules, i.e. Mineral Concession Rules, 1960 (MCR) and Mineral Conservation and Development Rules, 1988 (MCDR). Draft revised guidelines were circulated to all State Government vide letter of even no. dated 25.11.2008 for comments/suggestions. A meeting was held under the chairmanship of Secretary (Mines) on 14.2.09 with Secretaries, Mining and Geology of major mining States, to consider the suggestion of the State Governments.

3. Accordingly, in supersession of all previous instruction/guidelines in this behalf the following guidelines are issued for processing of cases under the MMDR Act and Rules thereunder, and for submission of proposals as per checklist (attached for RP,PL and ML).

Section 5 of MMDR Act

3.1 Section 5(1) of MMDR Act provides that a State Government shall not grant a reconnaissance permit (RP), prospecting licence (PL) or mining lease (ML) to any person unless such person is an Indian national or a company defined in sub-section (1) of Section 3 of the Companies Act, 1956. In case of a firm or other association of individuals, all the members should be citizens of India.

3.2 The State Governments are required to check whether an applicant satisfies the provisions of Section 5(1) before recommending the proposal to the Central Government for prior approval. Adequate verification of the applicant may be carried out by the State Government while filling out Column 1 of the checklist.

Section 5(2)(a) of MMDR Act

4.1 Section 5(2) (a) of the MMDR Act provides that the State Government shall grant mining lease only if it is satisfied that there is evidence to show that the applied area has been prospected earlier or existence of mineral content therein has been established otherwise than by means of prospecting. In Para 6.2 of the National Mineral Policy, it is stated that the data filing requirements will be rigorously applied. The data filing requirements are specified in Rule 8 of MCDR. IBM is being separately instructed to issue guidelines to the prospectors on data filing, and it will be monitoring the filing process closely. In all cases of ML based on PL as per Section 11(1) (a) it may be ensured that the applicant self-certifies that he has filed PL data with the IBM in terms of Rule 8 of MCDR. The State Government should satisfy itself that the data (which will also have been filed with the State Govt. under Rule 16 of MCR) is adequate to establish mineralization of the area being applied for ML and state so in Column 3(c) of the Checklist for ML. A similar procedure will be followed in obtaining self certification with regard to filing of data with GSI and IBM in respect of PL based on RP, with reference to Rule 7 of MCR and Rule 3E of MCDR.

4.2 As per Section 5(2) (a) of the MMDR Act, the State Governments may also recommend cases for areas not prospected provided they are satisfied about the establishment of existence of mineralization. In the context of para 7.2 of the new Policy, which speaks of zero-waste mining and prevention of sub-optimal and unscientific mining, and para 7.3, which mandates that leased areas should be such as to favourably predispose them to systematically and completely extract minerals, it has been decided that in future the establishment of the existence of mineralization should not merely be indicative but should be sufficiently quantified through documentary evidence, etc., so as to enable preparation of an optimal and scientific mining plan. In other words, even if not formally prospected, the detail should be of a level akin to prospecting.

4.3 As such details indicating proven/probable reserves as per UNFC and grade of ore, along with documentary proof of mineralization are to be enclosed with the proposal as in col. 4(b) of the checklist for ML.

Section 5(2)(b) of MMDR Act

4.4 Generally in all cases, the State Government would need to ensure that an applicant for grant of mining lease obtains an approved mining plan from the IBM after the State Government has issued a grant order in his favour subsequent to the prior approval of the Central Government. However, in case of applications for grant of mining lease in Bellary-Hospet region, the State Government, after an applicant has been shortlisted, should instruct the shortlisted applicant to obtain an approved mining plan before recommending the proposal to the Central Government for prior approval. This is in terms of the recommendations of the NEERI committee on mining in Bellary-Hospet region. Accordingly in respect of Bellary-Hospet area the State Government should indicate in the checklist whether the recommended applicant has obtained an approved mining plan in col. 4(c) of the Checklist.

Section 6 (1) (b) of the MMDR Act

5.1 As per the proviso to Section 6(1) (b) of the MMDR Act, if the Central Government is of the opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded by it in writing, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the total area normally permissible under the Act.

5.2 It has been observed that generally relaxation of area is sought by State Governments mainly in respect of gold, diamond & other precious stones and limestone & gypsum. The reason generally given by the State Governments in this regard is that since the availability of gold and precious stones is very small in different areas, larger areas have to be worked out for PL and ML. For limestone the reason given is that limestone is required for captive consumption of cement units and larger areas are required keeping in view the capacity of the units. In case of gypsum the deposits are very shallow for which reason large areas are required for mining purposes. The Central Government would normally consider such reasons to be adequate to relax the maximum area norms for grant of PL/ML.

5.3 In view of the above, the Ministry will consider all such cases for relaxation of the area limits for PL/ML provided the State Government includes in col. 9 of the Checklist,

in case of minerals like limestone and gypsum, details on the end-use of the minerals, plant capacity, reserves held by the applicant and reserves available in the recommended area. In case of limestone, an assessment would need to be made regarding the requirements for captive consumption of cement unit based on its capacity and the present availability of captive mines.

Section 6(1) (c) of the MMDR Act

5.4 Section 6(1) (c) empowers the State Government to allow RP/ PL / ML on an area which is not compact or contiguous for reasons to be recorded in writing. While, normally the decision of the State Government in this regard will be accepted if reasons (generally physical or technical) are attached along with the proposal, the State Governments also need to consider and certify in the proposal that the land holding limits prescribed for different minerals as laid down in Rule 22D of the MCR, 1960, (one hectare in case of float ore deposits, two hectare in case of beach sand minerals and four hectare in case of all other types of deposits and minerals) are being complied within each of the non-contiguous and non-compact areas. The State Government should mention the same in col. 6(a) of the checklist for RP and col. 6(c) in the checklist for PL/ML.

Section 7 & 8 of the MMDR Act

6. Section 7 & 8 of the MMDR Act lay down the periods for which a mineral concession may be granted. The State Government should clearly specify in col. 3 of the checklist for RP and col. 5 of the checklist for PL/ML the period recommended for a particular applicant.

Section 11 (1) of the MMDR Act

7.1 As per provision of Section 11(1) of the MMDR Act, where a reconnaissance permit or prospecting licence has been granted in respect of any area, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person if the State

Government is satisfied that the permit holder or the licensee has undertaken reconnaissance operations or prospecting operations to establish mineral resources in such land, has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence, has not become ineligible under the provisions of this Act, and has applied for grant of prospecting licence or mining lease within three months after the expiry of reconnaissance permit or prospecting licence or within such further period as extended by the State Government. Para 3.3 of the National Mineral Policy speaks of making the procedure for grant of mineral concessions 'transparent and seamless'. Accordingly, the preferential right of the concessionaire for the next stage of concessions has to be accorded absolute weightage. Any other course of action may not be able to withstand scrutiny under Section 30 of the MMDR Act as well as of the Judicial Courts, and accordingly prior approval would normally not be granted to another party in such circumstances.

7.2 In dealing with such cases, the State Government apart from certifying in the proposal that it is satisfied with the performance of the applicant under Section 11(1) of the MMDR Act, should obtain from the applicant a self-certification that he has filed RP report with the GSI and IBM in terms of Rule 7(1) (iii) of MCR and Rule 3E of MCDR indicate in col. 3(c) of the checklist for PL/ML, in case an applicant seeks PL after RP, whether the applicant has furnished such a certificate. Similarly, in case an applicant has applied for mining lease after prospecting, the State Government would indicate whether the applicant has filed PL report with the State Government in terms of Rule 16 of MCR and obtain from the applicant a self-certification that he has filed PL data with the IBM in terms of Rule 8 of MCDR. The State Government would indicate in Col. 3(c) of the checklist for PL/ML, as the case may be, that the applicant has furnished the self-certification. IBM and GSI are being separately instructed to issue guidelines to the prospectors on data filing for PL and RP respectively. Further in col. 9 of the checklist for PL/ML, the State Government should indicate the unique reference number of the previously held RP or PL (to be indicated in all the prior approval letters issued by the Ministry henceforth), and available on the website of Ministry of Mines.

Section 11(2) of the MMDR Act

8.1 After excluding cases under Section 11(1), Section 11(2) of MMDR Act deals with two types of cases – for ‘non-notified’ areas the general principle is ‘first-in-time’. For ‘notified’ areas, the principle is ‘capacity and capability’ and provisions of Section 11(4) will need to be read harmoniously with these provisions. Provisions of Section 11(5) provide for exception to Section 11(2). Since the procedures in the two cases (‘notified’ and ‘non-notified’) are distinct, they constitute separate proposals and accordingly the procedure in each of the two cases is clarified as under.

For notified areas (section 11(3) cases)

8.2 In case an area has been notified for grant of mineral concession, then in terms of Section 11(2) and Section 11(4) of the MMDR Act, the State Government should consider all the eligible applicants and select such applicant as it deems fit in terms of the provisions of Section 11(3) of the MMDR Act.

8.3 Under Section 11(4) of MMDR Act a period of not less than 30 days is required to be specified in any Notification. In addition, the first proviso to Section 11(2) mentions the method of treating applications received prior to the publication of the Notification and not disposed off (before the date of the Notification). Separately Rule 59(1) (ii) requires a minimum of 30 days period between date of notification and date from which the area is available for regrant. In order to harmonize these provisions, it may be ensured that:

- (a) the start date of period from which area is available for grant/regrant is not less than 30 days from the date of publication; and,
- (b) the period is specified, with an end date which is not less than 30 days from the start date given in (a) above. ⁽¹⁾

8.4 Notification under Section 11 (4) would generally be for established mineralized areas while notification under Rule 59(1) would normally be for non-established areas having been relinquished (though cases under Section 59(1)(c) (d) or (e) may be for mineralized areas). As such, the time period of validity in the two types of cases would be quite different, being much longer in the case of non established cases. However, an

end date in both types of cases may be mentioned in the interest of transparency and fair play. It may be added here that the Ministry has already advised that notification for regrant should be done within 60 days of the area becoming available.

(1) For, example, if an area is notified for grant of mineral concession on 1.3.2008, the date from which the area would be available for grant/regrant should not be earlier than 1.4.2008. If it is assumed that the area is available for grant /regrant on 1.4.2008, then this date would be the starting date for receiving applications and the end date, to be specified in the Notification, for receiving the applications would be a subsequent date, but not before 1.5.2008 (see also para 8.16).

8.5 In respect of re-grant cases covered by Rule 59(1), if even after 2 notifications, no response is received, then that area need not be notified further till a response is received suo-motu and the case may be processed in terms of Rule 59 (2) on receipt of a response. Notification under Section 11(4) and Rule 59(1) could be suitably put on the State Government's website in addition to being Gazetted to meet the requirement of the MMDR Act/MCR.

8.6 It may be noted that :-

- (a) all applications received before date of notification and not disposed off prior to date of notification; and,
- (b) all applications received after the date of notification (but not later than validity period),

would need to be considered as having been received on the same day in view of the provisions of first proviso to Sec. 11(2) of the MMDR Act, and therefore, all such applications would need to be considered simultaneously in terms of Section 11(4) of the MMDR Act. In respect of regrant, provisions of Rule 60 MCR may be applied accordingly, treating all premature applications as having been disposed off in terms of Section 11(2) of the MMDR Act (since they cannot be entertained), and the applicants may be informed in each such case. Needless to add, in order to invoke Rule 60(b) of

MCR the Notification has to have specified such a period, prior to which applications are premature.

8.7 Sections 11(2) and 11(4) clearly lay down that a period, indicating an end date which is not less than 30 days from the availability of area for grant, for receipt of application would be specified in the Gazette. More often than not State Governments do not specify the period by indicating an end date which is not less than 30 days from the availability of area for grant/regrant, for receipt of applications in the notification. This leads to judicial findings of arbitrariness, rendering infructuous the entire process. The State Government, therefore, should clearly stipulate the period, giving the start date and an end date, within which the application would be received after the Gazette notification. The period should be large enough to allow a reasonable number of applicants to apply if they so choose, but not so large as to delay the purpose of the notification which is to select an applicant for grant of a concession. The State Government may take a policy decision based on the nature and size of the area.

8.8 Section 11(3) mentions various criteria for selection from amongst applications received on the same day (actual or deemed) but the inter-se weightage of these criteria is not defined. Further, if more than one applicant has the capabilities as mentioned in Section 11(3) the choice of applicant becomes difficult. Since all the eligible applicants are co-equal in terms of chronology, the choice has to be made on objective selection criteria in a transparent manner. Normally, the recommendation of a State Government in this regard is acceptable if a comparative chart (as per proforma attached) of all the applicants on the criteria enumerated in Section 11(3) of MMDR Act is available and the State Government has passed reasoned orders on file for recommending acceptance of case of a particular applicant and for not recommending the acceptance of the remaining applicants. The State Governments should, therefore, while sending the proposal to the Ministry, not only enclose the comparative chart based on the provisions of Section 11(3) of the MMDR Act but should furnish a self-contained speaking order duly signed by the competent authority.

8.9 It may be added here that Section 11 (2) categorically states in the second proviso that the State Government may grant ‘...the reconnaissance permit, prospecting licence or mining lease as the case may be to such **one** of the applicants as it may deem fit’. Clearly the intention is that an area notified for grant of a permit cannot be sub-divided further at the stage of consideration of application only to accommodate multiple applicants. It is, therefore, advised that when areas are notified for grant/regrant, they should be divided into manageable parcels (with details on a map giving khasra number or latitude-longitude as appropriate), applications invited separately and decided in respect of each parcel without breaking it up at the stage of processing.

8.10 The State Government should, accordingly, provide details in col. 7& 8 of the checklist in order to take care of the issues discussed above. The details should adequately satisfy the requirements of the Act and Rules as stated above.

For non-notified area (Section 11(2)/11(5) cases)

8.11 As per Section 11(2), in a non-notified area, the applicant whose application was received earlier will be given preference for grant of RP/PL/ML. The exception is as provided in the Section 11(5), wherein the State Government may not follow the main provision for special reasons to be recorded.

8.12 In this connection, Para 3.3 of the new National Mineral Policy states that ‘the procedures for grant of mineral concessions of all types, such as Reconnaissance permits (RP), Prospecting Licences (PL) and Mining leases (ML), shall be transparent and seamless and security of tenure shall be guaranteed to the concessionaires’. Further the Policy lays down that the first-in-time principle in the case of sole applicants and the selection criteria in the case of multiple applicants will be appropriately elaborated.

8.13 Accordingly, the first-in-time principle must be the norm and the Central Govt. would normally not favour an exception to this principle. The State Government should

clearly specify the special reasons for not choosing the earlier applicant and recommending the grant of RP/PL/ML to a subsequent applicant if it intends to do so. It has been generally noticed that the State Governments have been invoking the parameters given in Section 11(3) of MMDR Act while giving priority to later applicants under Section 11(5) of MMDR Act. It is pointed out that conditions at Section 11(3) are appropriate to choose from amongst applicants applying on the same day [real or deemed under Section 11(2)], and the conditions under Section 11(3) are not the same as the 'special reasons' mentioned in Section 11(5) of the Act. As per Section 11(2) of the MMDR Act, the 'first-in-time' principle can be swept aside only for 'special reasons' as mentioned in Section 11(5) of the Act and these special reasons have to be stronger than the matters referred to in Section 11(3) of the MMDR Act. Moreover, 'special reasons' have to be exceptional by their very nature and not routine or obvious.

8.14 In view of the express provisions in the Policy with regard to 'transparency' and 'selection criteria' in the case of multiple applicants, State Governments need to adopt and apply a uniform and publicly stated Policy on 'Special Reasons'. Special reasons could be those which form part of the State Mineral Policy or other duly notified policy document, so that the 'special reasons' are objectively founded and are not perceived as being formulated to suit requirements on a case by case basis. Since these would be State-specific, these guidelines cannot exhaustively define 'special reason'. However, the special reasons should be in the public interest and for economic development and must be capable of withstanding legal scrutiny. All States are advised to make available a copy of the applicable policy to this Ministry, and make specific reference to the policy if they seek to apply the provisions of Section 11(5) of the MMDR Act.

8.15 State Governments, if they feel such reasons exist and may be required to be applied, may consider formulating 'special reasons' under Section 11(5) separately for RP (while it is exclusive), LAPL (when it becomes available), PL and ML, and while doing so, may ensure that the special reasons are relevant to the current concession applied for and not to some future concession (or to subsequent stage) as that may be legally voidable.

8.16 In this connection, it may be noted that Para 7.5 and para 7.6 of the new National Mineral Policy state that use of equipment and machinery which improve the efficiency, productivity and economics of mining operations and safety and health of persons working in the mines and surrounding areas shall be encouraged. Further in order to improve the competitive edge of the national mining industry, emphasis shall be laid on mechanization, computerization and automation of the existing and new mining units. These provisions could serve as the guiding principles for framing 'special reasons' for the purpose of Section 11(5) of the MMDR Act provided that the State Government applies these principles uniformly in all cases. The State Government must also ensure that the 'special reasons' are duly notified, and do not keep on changing. If a new 'special reason' is to be added, it should be notified well in advance, and should apply prospectively.

8.17 It has been seen that in some cases, State Governments have been invoking the provisions of Section 11(5) of the MMDR Act in order to divide an area amongst more than one applicant. This would be against the provisions of Section 11(2) which gives preference to an earlier applicant unless there is a clear reasoned finding that the capacity or capability of the earlier applicant is not commensurate with the area applied for. The Central Government will henceforth not give prior approval to proposals for accommodating multiple applicants at the cost of the 'first-in-time' principle or the 'capacity & capability' principle as the case may be.

Recommendation to the Central Government

8.18 In the case of First Schedule minerals, a recommendation of an applicant is 'disposal' in so far as the State Government is concerned, under proviso to Rule 63A of the MCR, 1960. As such this is an order against which revision lies with Central Government under Section 30 of the MMDR Act, 1957. It is necessary, therefore, in the interest of justice and fair play, that in all cases of recommendations of an applicant, the State Government while recommending the case to the Ministry, also informs all unsuccessful applicants of the reasons why another application is being recommended under Section 11(2) or 11(3) as the case may be, and sends a complete case for the prior approval of the Ministry. The reasons must clearly address the issues in respect of 'earlier in time' and 'capacity & capability' principles as applicable. By doing so, the possibility of a revision application at a later stage after grant of prior approval by the Ministry will be reduced and the delay in execution of a mining lease agreement avoided.

Details of the status in this regard may be entered in Col. 8 of the Checklist.

For Reserved Areas

9.1 Proposals have been received recently where the State Government have recommended grant of ML/PL on an area reserved under Section 17A(2) in favour of a Public Sector Undertaking (PSU), which intends to form a joint venture (JV) with a private party, generally by calling for Expression of Interest (EOI) and selecting one of the applicants. The intention presumably is that the concession would then be transferred by the PSU to the JV.

9.2 Para 4 of the National Mineral Policy states that in mining activities, there shall be arms length distance between State agencies that mine and those that regulate. There shall be transparency and fair play in the reservation of ore bodies to State agencies on such areas where private players are not holding or have not applied for exploration or mining, unless security considerations or specific public interests are involved. Similarly, the intention of reservation of any area under the provisions of the MMDR Act is to allow PL or ML for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by Central Government or State Government. Therefore it is necessary that any JV to whom the PL / ML is proposed to

be given subsequently by transfer under Rule 37 of MCR must necessarily conform to the principles of the reservation i.e. the ownership or control of the company conducting operations lies with the State Government.

9.3 Moreover, just as selection of an applicant in grant of mineral concession, where the State Government has notified an area needs to be in terms of Section 11 (3) of the MMDR Act, in the case of reserved areas, it is necessary that if a PSU seeks to enter into any Joint Venture with a private sector company in order to exploit a concession in a reserved area that the process of selection of such joint venture partner should also satisfy the norms set out in the Section 11(3) of the MMDR Act.

9.4 State Governments should, accordingly, indicate in the forwarding proposal seeking PL/ML for PSUs in reserved areas whether the PSU intends to get into a JV, and if so, the State Government needs to also indicate the procedure adopted/proposed to be adopted to identify a JV partner, including evaluation of the EOI/RFP for selecting the JV partner in accordance with the provisions of Section 11(3) of the MMDR Act.

Col. 14 of the Checklist may be entered keeping in view the above.

Section 30 of the MMDR Act

10.1 As per the provisions of Section 30 of the MMDR Act, the Central Government may, of its own motion or on application made within the prescribed time by an aggrieved party, revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act with respect to any mineral other than a minor mineral.

10.2 The first proviso to Rule 63 A of Mineral Concession Rules, 1960 provides that disposal of applications of mineral concession means, in case of applications for grant of mineral concession for First schedule mineral, either a recommendation to the Central Government or a refusal to grant the mineral concession under Rule 5 of MCR for RP, Rule 12 of MCR for PL and Rule 26 of MCR for ML. It has been generally noticed that the State Governments have been recommending an application to the Central Government seeking prior approval, but do not communicate the same to the other applicants. In this context, it is pointed out that as per first proviso to Rule 63A of MCR,

a recommendation to the Ministry of Mines in favour of a particular applicant is a disposal of that application and for this reason it is an order of the State Government for purpose of Section 30. Clearly, any other applicant may be aggrieved by such a recommendation and as such his right under Section 30 arises from the date of the recommendation subject to knowledge. The Mines Tribunal has been condoning delay in revision for reasons of want of knowledge. As such in the interest of speedy disposal of concession applications, and to reduce the scope for a revision application, it is desirable that the State Government communicate the factum of decision to make a recommendation to the Central Government to all interested parties (i.e. other applicants) at the same time that the recommendation is forwarded to the Central Government. It may be noted here that communication of the factum of recommendation of one applicant is communication of an established fact and is not linked with rejection or non-rejection of the other applications, and as such this issue need not be linked to the communication of refusal to unsuccessful applicants under Section 10(3) of the MMDR Act. It is important to give reason at this stage itself, since non-recording of a reasoned order may result in the Tribunal exercising its revisionary power in favour of the revision-applicant.

Accordingly, in all cases where a recommendation is made to the Central Govt. under Section 5(1) of the Act, the State Government may ensure that the following actions are undertaken while dealing with and disposing off the application:

- (i) Ensure all the applicants have been given a reasonable opportunity of being heard under Rule 5(1) for RP, Rule 12 (1) for PL and Rule 26 (1) for ML, after giving due notice.
- (ii) The documents or records on the basis of which a decision will be made have been specifically asked for. In this connection the provisions of Rule 12(1B) of the MCR need to be kept in view in respect of PL; Rule 5(2) of MCR for RP, and Rule 26 (2) of MCR for mining lease.
- (iii) In case time schedules specified in Rule 63A MCR have not been adhered to, reasons for delay are given in writing as per second proviso to the Rule.
- (iv) A proper record of the intimations/ notice served on the applicants for the hearing has been kept.

- (v) Sufficient time for the applicants has been given to respond or be present in the meeting.
- (vi) Hearing has been undertaken by a competent authority. Written submission may be encouraged, and kept on record.
- (vii) Speaking orders have been prepared after the completion of the hearing process recording the decision to recommend a particular applicant, giving the reason for selecting him in preference to other applicants, within the parameters of Section 11(3) or 11(5) as the case may be.
- (viii) The speaking order has been communicated at least in brief to all the interested parties or published on the web-site.
- (ix) A copy of the speaking order has been attached alongwith the proposal forwarded to the Central Government for obtaining prior approval, clearly indicating if it has been communicated to all the interested parties and if so on what date.

10.3 State Governments are further advised that rejection of an application solely on the grounds of non-presence is not appropriate since Rule 26(1) for ML and Rule 12(1) for PL and Rule 5(1) afford an opportunity to the applicant to be heard. But this is only an opportunity, and does not cast an onus on the applicant, particularly as there is a separate provision to deal with deficiency of material in support of the application where the onus is on the State Government to issue notice for making good the deficiency. In case the applicant has not attended the hearing conducted by the State Government, the decision should be based on the documents etc. available on record.

10.4 It is emphasized here that following the above practice would not only increase the transparency in grant of mineral concessions, but also lead to reduction in revision applications. Accordingly, the State Governments, while forwarding the proposal, should also certify that the above-mentioned actions have been completed in Col. 12 of the Checklist.

10.5 Refusal orders to concerned applicants under Section 10 (3) of the MMDR Act would then be issued after the receipt of the prior approval of the Central Government in favour of the successful applicant.

Miscellaneous matters

(a) Availability of area for regrant to be notified under Rule 59 of MCR

11.1. Rule 59 of MCR lays down that no area, which was previously held or presently held under a reconnaissance permit or a prospecting licence or a mining lease, or has been reserved by the Government for any purpose other than mining, or where order granting a permit or licence or lease has been revoked, or the area has been reserved under Section 17 or 17A of the MMDR Act, shall be available for regrant of mineral concession unless the availability of the area for grant is notified in the Official Gazette specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant.

11.2 However, it has been generally noticed that State Governments, more often than not, do not issue a Gazette notification and in many cases do not de-reserve the area if it was earlier reserved for exploitation by the public sector, and approach Central Government for relaxation of the provision of Sub-Rule 59(1). The underlying principle behind notification in the official Gazette is that information is available to the public at large and people who are interested for taking the area are able to apply. The action of State Governments in many cases in not notifying the area in the Official Gazette and recommending a particular applicant for grant of RP/PL/ML is not as per the requirement of this Rule, and is open to legal challenge.

11.3 The State Government in such cases should follow the procedure laid down in Rule 59(1) of MCR rather than approaching the Central Government for relaxation of the provisions under Rule 59(2) of the MCR. It is also advised that all Notifications should be published with Map/Sketch of the area. Latitude and Longitudes should be indicated for RP cases and PL cases covering large area and khasra numbers of the area notified for

ML cases and PL cases of small area within one village. Relaxation of Rule 59(1) of MCR should only be sought on very exceptional grounds to be specified in each case, and not as a general norm.

11.4 The State Government would be required to indicate clearly in the Checklist whether the area being recommended for grant of mineral concession has been granted under a RP/PL/ML in the past, and if so, whether the State Government has notified the area in terms of Rule 59 of MCR and if not, then whether the State Government is seeking relaxation under Rule 59(2) of the MCR. Special reason need to be given if relaxation is being sought in view of the normal applicability of Rule 59(1) of MCR.

(b) Communication of prior approvals

12. In order to ensure transparency and reduce delays, where due to information being incomplete, a back reference is made to the State Government *concerned*, a copy will be endorsed to the applicant in case the information is to originate from him. Similarly disposal of recommendation cases (approval or return) will also be endorsed to the applicant.

13. In addition to endorsing communication of prior approvals for mineral concessions to IBM, the Ministry will henceforth be endorsing prior approvals for RP to GSI also. State Governments are requested to endorse a copy of the reconnaissance permit executed to the GSI and a copy of prospecting licence / mining lease to the IBM, so that data filing requirement under Rule 7 and Rule 16 of MCR and Rule 8 of MCDR are enforced by GSI/IBM. The RP/PL/ML holder should, while filing data with the State Governments, simultaneously file the data directly with GSI/IBM, as per the requirement of the Rules. Both GSI and IBM will be liaising with the State Governments in this regard in the State Geological Programming Board and other fora.

14. The data regarding mineral concession proposals approved by Ministry of Mines may be verified from time to time from the Ministry website and discrepancy if any may

be brought to the notice of Ministry of Mines. On receiving any letter conveying the prior approval of Ministry of Mines, the authenticity of the approval may be verified by cross checking the updated status displayed in the website of Ministry of Mines. The Letter of Intent (LOI) should be issued by the State Government only after verification of the prior approval and a copy of the LOI may be endorsed to the Ministry as well as IBM.

15. The Ministry will now be entering the date of grant order/letter of intent in its Internet database, and would be sending a monthly statement giving details of the names of the applicant, mineral, area details and date of issue of letter conveying prior approval to the concerned State Government. The Ministry would also enclose a list of such cases where subsequent to grant of prior approval by the Ministry of Mines, the grant order/letter of intent to grant mineral concession issued by the State Government is still awaited. This would facilitate continued reconciliation of data at both ends. The Ministry of Mines would also be monitoring such cases where discrepancy has been detected in the reconciliation exercise, and the action taken by the concerned State Government in such cases.

16. The guidelines come into force with immediate effect. The State Governments are requested to process all proposals in accordance with the above mentioned guidelines, and submit the proposals as per the revised checklist, to facilitate their expeditious disposal.

17. The Central Government will be processing all cases (including those presently pending with it) in accordance with these guidelines.

(Gaurav Kumar)
Deputy Secretary to the Government of India
Tele: 23384334

Copy to:

1. The Director General, GSI, 27, J.L. Nehru Road, Kolkata.
2. The Controller General, IBM, Indira Bhawan, Civil Lines, Nagpur.
3. DGMs of all States
4. To all JSs/Directors/DSs in Ministry of Mines