VISHWANATH S/O SITARAM AGRAWAL
v.
SAU. SARLA VISHWANATH AGRAWAL
(Civil Appeal No. 4905 of 2012)

JULY 4, 2012

[DEEPAK VERMA AND DIPAK MISRA, JJ.]

Hindu Marriage Act, 1955 - s. 13(1)(ia) - Divorce petition filed by husband - On ground of cruelty - Held: The conduct of the wife and circumstances of the case make it graphically clear that the wife had really humiliated the husband and caused him mental cruelty - Her conduct clearly exposits that it resulted in causing agony and anguish in the mind of the husband - The wife publicised in the newspapers that the husband was a womaniser and a drunkard - She made wild allegations about his character - She made an effort to prosecute him in criminal litigations which she failed to prove - The cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable - Behaviour of the wife was cruel - The husband felt humiliated both in private and public life - He was treated as an unperson - It created a dent in his reputation - With this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her - Therefore, appellant-husband entitled to decree for divorce.

Family law - Matrimonial proceedings - Divorce petition - Events subsequent to filing of divorce petition - Held: Can be taken into consideration.

Family law - Matrimonial proceedings - Divorce - Permanent Alimony - Grant of - Factors to be considered - Held: Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects - In the instant case, keeping in view the totality of the circumstances and the social strata from which the parties come from and regard being had to the business prospects of the appellant-husband, permanent alimony fixed at Rs.50 lacs.

Family law - Matrimonial proceedings - Witness - Interested/related witnesses - Testimony of - Veracity - Held: In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose - The family members and sometimes the relatives, friends and neighbours are the most natural witnesses - The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse.

Words and Phrases - Expression 'cruelty' - Meaning of - Held: The expression has an inseparable nexus with human conduct or human behaviour - It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

Constitution of India, 1950 - Article 136 - Interference by Supreme Court with concurrent findings of fact - When permissible - Held: Supreme Court in exercise of power u/ Article 136 can interfere with concurrent findings of fact, if the conclusions recorded by the High Court are manifestly perverse and unsupported by the evidence on record - Any finding not supported by evidence or inference drawn in a stretched and unacceptable manner can be said to be perverse.

The appellant-husband filed a petition for divorce under Section 13(1)(ia) of The Hindu Marriage Act, 1955 contending that the respondent-wife had treated him with cruelty. It was the case of the appellant that respondent did not know how to conduct herself as a wife and

daughter-in-law and despite persuasion, her behavioural pattern remained unchanged; that whim and irrationality reigned in her day-to-day behaviour; that the birth of their two sons had no impact on her conduct; that the behaviour of respondent with the relatives and guests endangered the social reputation of the family and that apart, she did not have the slightest respect for appellant's mother despite the old lady being a patient of diabetes and hyper tension, and that after the death of appellant's mother, the respondent made the life of the appellant all the more troublesome. The appellant contended that on certain occasions the respondent used to hide or crumple his ironed clothes or hide the keys of his motorcycle or close the main gate so that he could not go to the office of his factory to look after the business and that she also made frequent phone calls to the factory solely for the purpose of abusing him and for causing him mental agony.

During the pendency of the divorce petition, two incidents- dated 24.7.1995 and 11.10.1995 occurred, which the appellant incorporated in the divorce petition by way of amendment. On 24.7.1995, a notice issued by respondent's advocate was published in the daily "Lokmat" stating, inter alia, that the appellant was a womaniser and addicted to liquor while on 11.10.1995, at 4.00 p.m., according to the appellant, the respondent came to his house and abused him, his father and the children; and also damaged property which compelled him to lodge a complaint at the Police Station.

The asseverations made in the divorce petition were controverted by the respondent. She alleged that she was disturbed after knowing about the involvement of appellant with another lady 'N', therefore, she was compelled to make phone calls to make enquiries about his whereabouts and as the interference by the respondent was not appreciated by the appellant, he left her at her parental house and never cared to bring her back to her matrimonial home. The respondent further alleged that 'N' lived with appellant as his mistress and when respondent came to know about it, she went to ascertain the same and coming to know that 'N' was in the house of the appellant, she made an effort to enter into the house but she was assaulted and that this resulted in gathering of people of the locality and the appellant-husband, as a counter-blast, lodged a complaint at the police station. The respondent alleged that because of the involvement of appellant with the said 'N', he had concocted the story of cruelty and filed the petition for divorce.

The trial court dismissed the petition for divorce and also dismissed the application of the respondent for grant of permanent alimony. The order was upheld by the first appellate Court. The appellant preferred Second Appeal before the High Court which declined to interfere with the judgment and decree of the courts below.

In the instant appeal, this Court adverted to three questions: 1) what actually constitutes 'mental cruelty'; 2) whether the courts below had adopted an approach which was perverse, unreasonable and unsupported by the evidence on record and totally unacceptable and thus invites the discretion of this Court in exercise of power under Article 136 of the Constitution to dislodge the same and 3) whether in the case at hand, the plea of mental cruelty was established so as to entitle the appellant to get a decree for divorce.

Allowing the appeal, the Court

HELD:1. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship,

temperaments and emotions that have been conditioned by their social status. [Para 17] [627-C-D]

Sirajmohamedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and another **(1981) 4 SCC 250 : 1982 (1) SCR 695;** *Shobha Rani v. Madhukar Reddi* **(1988) 1 SCC 105: 1988 (1) SCR 1010;** *V. Bhagat v. D. Bhagat (Mrs.)* **(1994) 1 SCC 337;** *Praveen Mehta v. Inderjit Mehta* **AIR 2002 SC 2582: 2002 (5) SCC 706;** *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate* **AIR 2003 SC 2462: 2003(3) SCR 607;** *A. Jayachandra v. Aneel Kaur* **(2005) 2 SCC 22: 2004 (6) Suppl. SCR 599;** *Vinita Saxena v. Pankaj Pandit* **(2006) 3 SCC 778: 2006 (3) SCR 116;** *Samar Ghosh v. Jaya Ghosh* **(2007) 4 SCC 511: 2007 (4) SCR 428 and** *Suman Kapur v. Sudhir Kapur* **AIR 2009 SC 589: 2008 (15) SCR 972 - relied on.**

Sm. Pancho v. Ram Prasad **AIR 1956 All 41 - referred to.**

Sheldon v. Sheldon **(1966) 2 All ER 257 and** *Gollins v. Gollins* **(1963) 2 All ER 966 - referred to.**

2.1. The High Court, in a singular line, declined to interfere with the judgment and decree of the courts below stating that they are based on concurrent findings of fact. The plea of perversity of approach though raised was not adverted to. Any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse. This Court in exercise of power under Article 136 of the Constitution can interfere with concurrent findings of fact, if the conclusions recorded by the High Court are manifestly perverse and unsupported by the evidence on record. [Paras 27, 31] [633-E; 634-F-H; 635-A]

2.2. In the instant case, the trial court as well as the first appellate court disbelieved the evidence of most of the witnesses cited on behalf of the appellant-husband on the ground that they were interested witnesses. In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. Exception was taken by the courts below that the servants of the house should have been examined and that amounts to suppression of the best possible evidence. That apart, the allegations made in the written statement, the dismissal of the case instituted by the respondent-wife under Section 494 IPC, the non-judging of the material regard being had to the social status, the mental make-up, the milieu and the rejection of subsequent events on the count that they are subsequent to the filing of the petition for divorce and also giving flimsy reasons not to place reliance on the same, deserve to be tested on the anvil of "perversity of approach". Quite apart from the above, a significant question that emerges is whether the reasons ascribed by the courts below that the allegations made in the written statement alleging extra marital affair of the appellant-husband with 'N' has been established and, therefore, it would not constitute mental cruelty are perverse and unacceptable or justified on the basis of the evidence brought on record. These are the aspects which need to be scrutinized and appositely delved into. [Para 32] [635-C-H; 363-A]

Alamelu and another v. State, Represented by Inspector of Police **AIR 2011 SC 715: 2011 (2) SCR 147 and** *Heinz India Pvt. Ltd. & Anr. v. State of U.P. & Ors.* **(2012) 3 SCALE 607 - relied on.**

Kulwant Kaur v. Gurdial Singh Mann (dead) by L.Rs. and others **AIR 2001 SC 1273: 2001 (2) SCR 525;** *Govindaraju v. Mariamman* **(2005) 2 SCC 500: 2005 (1) SCR 1100;** *Major*

Singh v. Rattan Singh (Dead) by LRs and others **AIR 1997 SC 1906: 1996 (9) Suppl. SCR 828;** *Vidhyadhar v. Manikrao and another* **(1999) 3 SCC 573: 1999 (1) SCR 1168 and** *Abdul Raheem v. Karnataka Electricity Board & Ors.* **AIR 2008 SC 956: 2007 (12) SCR 389 - referred to.**

3. The appellant-husband has categorically stated that the respondent-wife used to hide the pressed clothes while he was getting ready to go to the factory. Sometimes she used to crumple the ironed clothes and hide the keys of the motorcycle or close the main gate. In the cross-examination, it is clearly stated that the respondent was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time. This being the evidence on record, one is at a loss to find that the courts below could record a finding that the appellant used to enjoy the childish and fanciful behaviour of the respondent pertaining to the aforesaid aspect. This finding is definitely based on no evidence. Such a conclusion cannot be reached even by inference. Even surmises and conjectures would not permit such a finding to be recorded. It does not require Solomon's wisdom to understand the embarrassment and harassment that might have been felt by the appellant-husband. [Para 33] [636-B-E]

4.1. The courts below opined that the publication of notice in the daily "Lokmat" and the occurrence that took place on 11.10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view was expressed that the notice was published by the respondent to safeguard the interests of the children, and the second one was a reaction on her part relating to the relationship of appellant with 'N'. This

Court is of the considered opinion that the subsequent events can be taken into consideration. [Para 36] [639-B-D]

4.2. The respondent-wife made allegation that the appellant-husband had an illicit relationship with 'N'. The evidence of respondent, when studiedly scrutinized, would show that there was more of suspicion than any kind of truth in it. The respondent had filed a complaint, RCC No. 91/95, under Section 494 IPC against the appellant. He was discharged in the said case. The said order has gone unassailed. The respondent in her evidence stated in an extremely bald manner that whenever she had telephoned to the office in the factory, the appellant was not there and further that the presence of 'N' was not liked by her in-laws and the elder son PW5. Relying upon her evidence, the trial Judge expressed the view that 'N' was having a relationship with the appellant on the basis that though he had admitted that 'N'was working in his office yet he had not produced any appointment letter to show that she was appointed as a computer operator. It is demonstrable that the trial court has been persuaded to return such a finding on the basis of the incident that took place on 11.10.1995. The trial Judge has given immense credence to the version of the social worker who, on the date of the incident, had come to the house of the appellant where a large crowd had gathered and has deposed that she had seen 'N' going and coming out of the house. On 11.10.1995, as the material on record would show, at 4.00 p.m., the respondent arrived at the house of the appellant. She has admitted that she wanted to see her father-in-law who was not keeping well. After she went in, her father-in-law got up from the chair and went upstairs. She was not permitted to go upstairs. It is testified by her that her father-in-law came down and slapped her. The fact remains that the testimony of respondent that her father-

in-law did not like the visit of 'N' does not appear to be true. Had it been so, he would not have behaved in the manner as deposed by the respondent. That apart, common sense does not give consent to the theory that both, the father of the appellant and his son, PW-5, abandoned normal perception of life and acceded to the illicit intimacy with 'N'. The respondent had made an allegation that PW5 was influenced by the appellant. The trial Judge as well as the appellate court have accepted the same. It is germane to note that PW5 was approximately 16 years of age at the time of examination in court. There is remotely no suggestion to the said witness that when 'N' used to go to the house, his grandfather expressed any kind of disapproval. The respondent has deposed that it was published in the papers that the daughter-in-law was slapped by the father-in-law and 'N' was recovered from the house but eventually the police lodged a case against the appellant, his father and other relatives under Section 498A IPC. This Court really fails to fathom how from this incident and some cryptic evidence on record, it can be concluded that the respondent had established that the appellant had an extra marital relationship with 'N'. That apart, in the application for grant of interim maintenance, she had pleaded that the appellant was a womaniser and drunkard. This pleading was wholly unwarranted and, in fact, amounts to a deliberate assault on the character. Thus, the uncalled for allegations are bound to create mental agony and anguish in the mind of the appellant-husband. [Paras 34] [636-F-H; 637-A-G]

4.3. The respondent had made allegation about the demand of dowry. RCC No. 133/95 was instituted under Section 498A of the Indian Penal Code against the appellant-husband, his father and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum.

Hence, the allegation on this count was incorrect and untruthful and it can unhesitatingly be stated that such an act creates mental trauma in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations. [Para 35] [638-G-H; 639-A]

4.4. Immense emphasis was given on the fact that after publication of the notice (issued by respondent's advocate) in the "Lokmat", the appellant had filed a caveat in the court. The filing of the caveat is wholly inconsequential. The factual matrix would reveal that the appellant comes from a respectable family engaged in business. At the time of publication of the notice, his sons were quite grown up. The respondent-wife did not bother to think what impact it would have on the reputation of the appellant and what mental discomfort it would cause. It is manifest from the material on record that the children were staying with the appellant. They were studying in the school and the appellant was taking care of everything. Such a publication in the newspaper having good circulation can cause trauma, agony and anguish in the mind of any reasonable man. The explanation given by the respondent to the effect that she wanted to protect the interests of the children is absolutely incredible and implausible. In fact, it can decidedly be said that it was malafide and the motive was to demolish the reputation of the appellant in the society by naming him as a womaniser, drunkard and a man of bad habits. [Para 38] [640-E-H; 641-A]

A. Jayachandra v. Aneel Kaur **(2005) 2 SCC 22: 2004 (6) Suppl. SCR 599 and** *Suman Kapur v. Sudhir Kapur* **AIR 2009 SC 589: 2008 (15) SCR 972 - relied on.**

5. The conduct of the respondent-wife and circumstances of the case make it graphically clear that she had really humiliated the appellant and caused

mental cruelty. Her conduct clearly exposits that it resulted in causing agony and anguish in the mind of the appellant. A normal reasonable man is bound to feel the sting and the pungency. The respondent had publicised in the newspapers that the appellant was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the appellant is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the respondent to make the life of the appellant miserable. The appellant felt humiliated both in private and public life. Indubitably, it created a dent in his reputation. The cruel behaviour of the respondent froze the emotions and snuffed out the feelings of the appellant because he was treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the appellant cannot be asked to put up with the conduct of the respondent and to continue to live with her. Therefore, he is entitled to a decree for divorce. [Para 40] [641-D-H; 642-A-C]

N.G. Dastane v. S. Dastane **(1975) 3 SCR 967 - referred to.**

6. Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. The amount already paid to respondent-wife towards alimony is to be ignored as the same had been paid by virtue of the interim orders passed by the courts. It is not expected that the respondent-wife has sustained herself without spending the said money. Keeping in view the totality of the circumstances and the social strata from which the parties come from and regard

being had to the business prospects of the appellant, permanent alimony of Rs.50 lacs (rupees fifty lacs only) should be fixed and, accordingly, this Court does so. [Paras 41, 42] [642-E; 643-B-D]

Case Law Reference:

1982 (1) SCR 695	relied on	Para 17
AIR 1956 All 41	referred to	Para 17
1988 (1) SCR 1010	relied on	Para 18
(1966) 2 All ER 257	referred to	Para 19
(1963) 2 All ER 966	referred to	Para 19
(1994) 1 SCC 337	relied on	Para 20
2002 (5) SCC 706	relied on	Para 21
2003(3) SCR 607	relied on	Para 22
2004 (6) Suppl. SCR 599	relied on	Paras 23, 36
2006 (3) SCR 116	relied on	Para 24
2007 (4) SCR 428	relied on	Para 25
2008 (15) SCR 972	relied on	Paras 26, 37
2001 (2) SCR 525	referred to	Para 28
2005 (1) SCR 1100	referred to	Para 28
1996 (9) Suppl. SCR 828	referred to	Para 29
1999 (1) SCR 1168	referred to	Para 30
2007 (12) SCR 389	referred to	Para 30
2011 (2) SCR 147	relied on	Para 31
(2012) 3 SCALE 607	relied on	Para 31
(1975) 3 SCR 967	referred to	Para 39

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4905 of 2012.

From the Judgment & Order dated 24.04.2007 of the High Court of Judicature at Bombay bench at Aurangabad in Second Appeal No. 683 of 2006.

Arvind V. Savant, Sanjay Kharde, Sachin J. Patil, Preshit V. Surshe, Chandan Ramamurthi for the Appellant.

Vivek C. Solshe, P.A. Bhat, C.G. Solshe for the Respondent.

The Judgment of the Court was delivered by

DIPAK MISRA, J. 1. Leave granted.

2. The marriage between the appellant and the respondent was solemnized on the 30th of April, 1979 as per the Hindu rites at Akola. In the wedlock, two sons, namely, Vishal and Rahul, were born on 23.9.1982 and 1.11.1984 respectively. As the appellant-husband felt that there was total discord in their marital life and compatibility looked like a mirage, he filed a petition for divorce under Section 13(1) (ia) of The Hindu Marriage Act, 1955 (for brevity 'the Act').

3. It was the case of the appellant before the court of first instance that the respondent-wife did not know how to conduct herself as a wife and daughter-in-law and despite persuasion, her behavioural pattern remained unchanged. The birth of the children had no impact on her conduct and everything worsened with the efflux of time. The behaviour of the respondent with the relatives and guests who used to come to their house was far from being desirable and, in fact, it exhibited arrogance and lack of culture and, in a way, endangered the social reputation of the family. That apart, she did not have the slightest respect for her mother-in-law. Despite the old lady being a patient of diabetes and hyper tension, it could not

invoke any sympathy from the respondent and hence, there was total absence of care or concern.

4. As pleaded, in the month of March, 1990, there was a dacoity in the house where the appellant was staying and, therefore, they shifted to the ginning factory and eventually, on 17.3.1991, shifted to their own three storeyed building situate in Gandhi Chowk. Even with the passage of time, instead of bringing maturity in the attitude of the respondent, it brought a sense of established selfishness and non-concern for the children. Whim and irrationality reigned in her day-to-day behaviour and frequent quarrels became a daily affair. As misfortune would have it, on 23.1.1994, the mother of the appellant died and the freer atmosphere at home gave immense independence to the respondent to make the life of the appellant more troublesome. The appellant and his father were compelled to do their personal work as the entire attention of the servants was diverted in a compulsive manner towards her. Her immature perception of life reached its zenith when on certain occasions she used to hide the keys of the motorcycle and close the gate so that the appellant could not go to the office of the factory to look after the business. Frequent phone calls were made to the factory solely for the purpose of abusing and causing mental agony to the appellant. As asserted, the appellant and his sons used to sleep on the second floor whereas the respondent used to sleep in the bedroom on the third floor and their relationship slowly but constantly got estranged. As the cruelty became intolerable, the appellant visited his in-laws and disclosed the same but it had no effect on her behaviour. Eventually, on 1.5.1995, the respondent was left at the house of her parents at Akola and the appellant stayed in his house with the two sons. As the factual matrix would unveil, on 24.7.1995, a notice issued by her advocate was published in the daily "Lokmat" stating, inter alia, that the appellant is a womaniser and addicted to liquor. On 11.10.1995, at 4.00 p.m., the respondent came to the house of the appellant at Gandhi Chowk and abused the father, the

children and the appellant. She, in fact, created a violent atmosphere in the house as well as in the office by damaging the property and causing mental torture to the appellant and also to the family members which compelled the appellant to lodge a complaint at the Police Station, Chopda. It was alleged that she had brought gundas and certain women to cause that incident. The said untoward incident brought the A.S.P., Jalgaon, to the spot. The publication in the newspaper and the later incident both occurred during the pendency of the divorce petition and they were incorporated by way of amendment. On the aforesaid basis, it was contended that the respondent had treated the appellant with cruelty and hence, he was entitled to a decree for divorce.

5. The asseverations made in the petition were controverted by the respondent stating that she was always respectful and cordial to her in-laws, relatives and the guests as was expected from a cultured daughter-in-law. They led a happy married life for 16 years and at no point of time she showed any arrogance or any behaviour which could remotely suggest any kind of cruelty. She attended to her mother-in-law all the time with a sense of committed service and at no point of time there was any dissatisfaction on her part. She disputed the allegation that she had hidden the keys of the motorcycle or closed the gate or repeatedly called the appellant on phone at the office to abuse him or to disturb him in his work. It is her stand that the appellant owns an oil mill, ginning factory and a petrol pump at Chopda and had sold certain non-agricultural land by demarcating it into small plots. The appellant, as alleged, joined the computer classes which were run by one Neeta Gujarathi in the name and style of "Om Computer Services" and gradually the appellant started spending much of his time at the computer centre instead of attending to his own business in the factory. When the respondent became aware of the intimacy, she took serious objection to the same and therefrom their relationship became bitter.

6. It was alleged by the respondent that she was disturbed after knowing about the involvement of the appellant with another lady despite having an established family life and two adolescent sons and, therefore, she was compelled to make phone calls to make enquiries about his whereabouts. As the interference by the respondent was not appreciated by the appellant, he took the respondent on 1.5.1995 to Akola and left her at her parental house and never cared to bring her back to her matrimonial home. Her willingness to come back and stay with the husband and children could not get fructified because of the totally indifferent attitude shown by the appellant. Her attempts to see the children in the school became an exercise in futility, as the husband, who is a trustee of the school, managed to ensure that the boys did not meet her. It was further alleged that the said Neeta lived with him as his mistress and when the respondent came to know about it, she went to Chopda to ascertain the same and coming to know that Neeta was in the house of the appellant, she made an effort to enter into the house but she was assaulted. This resulted in gathering of people of the locality and the appellant-husband, as a counter-blast, lodged a complaint at the police station. The Deputy Superintendent of Police arrived at the scene and found that Neeta was inside the house and thereafter she was taken back to her house by the police. Because of the involvement of the appellant with the said Neeta, he had concocted the story of cruelty and filed the petition for divorce.

7. The learned trial Judge framed as many as four issues. The two vital issues were whether the appellant had been able to prove the alleged cruelty and whether he was entitled to take disadvantage of his own wrong. The appellant, in order to prove the allegation of cruelty, examined ten witnesses and on behalf of the respondent, eight witnesses were examined. The learned trial Judge, analysing the evidence on record, came to hold that there was conjugal relationship till 1.5.1995; that there was no substantial material on record to demonstrate that the respondent had behaved with immaturity immediately after

marriage; that in the absence of cogent evidence, it was difficult to hold that the respondent had troubled the husband and his parents; that the evidence of PW-3, Ramesh, was not worthy of acceptance as he is close and an interested witness; that the allegation that whenever she used to go to her parental home, she was granting leave to the servants was not acceptable; that the appellant should have examined some of the servants including the maid servant but for some reason or other had withheld the best evidence; that the plea that the respondent was not looking after her mother-in-law who was suffering from paralysis from 1984 has not been proven; that the allegation that the respondent was hiding the uniforms of the children and not treating them well had not been proven because the version of Vishal could not be accepted as he was staying with the father and, therefore, it was natural for him to speak in favour of the father; that the stand that the respondent was hiding the keys of the motorcycle and crumpling the ironed clothes of the appellant did not constitute mental cruelty as the said acts, being childish, were enjoyed by the appellant-husband; that the factum of abuse by the respondent on telephone had not been established by adducing reliable evidence; that the respondent and the appellant were sleeping on the third floor of the house and hence, she was sleeping with him in the bedroom and the allegation that he was deprived of sexual satisfaction from 1991 was unacceptable; that from the witnesses cited on behalf of the respondent, it was demonstrable that her behaviour towards her sons and in-laws was extremely good; that even if the allegations made by the appellant were accepted to have been established to some extent, it could only be considered as normal wear and tear of the marital life; that the plea of mental cruelty had not been proven as none of the allegations had been established by adducing acceptable, consistent and cogent evidence; that the notice published in the daily "Lokmat" on 28.7.1995 and the later incident dated 11.10.1995 being incidents subsequent to the filing of the petition for divorce, the same were not to be taken into consideration.

8. The learned trial Judge further returned the finding that the appellant was going to learn computer and taking instructions from Neeta Gujarathi and the plea that she was engaged as a Computer Operator in his office was not believable as no appointment letter was produced; that the stand that she was paid Rs.1200/- per month was not worthy of any credence as she was operating a computer centre; that from the evidence of the witnesses of the respondent, namely, RW-3 to RW-5, it was clear that Neeta Gujarathi was living with the appellant in his house and he had developed intimacy with her and, therefore, the subsequent events, even if analysed, were to be so done on the said backdrop; that the allegation that there was a gathering and they were violent and broke the windows was really not proven by adducing credible evidence; that the testimony of the witnesses of the respondent clearly reveal that Neeta was inside the house of the appellant and effort was made to bring her out from the house and no damage was caused to the property; that on that day, the police had come in the mid night hours and taken out Neeta from the house of the appellant and left her at her house; that the notice which was published in "Lokmat" was to protect the interest of the sons in the property and basically pertained to the appellant's alienating the property; that the public notice was not unfounded or baseless and the question of defaming him and thereby causing any mental cruelty did not arise; that the allegations made in the application for grant of interim alimony that the appellant is a womaniser and is addicted to liquor cannot be considered for the purpose of arriving at the conclusion that the husband was meted with cruelty; that the allegations made in the written statement having been found to be truthful, the same could not be said to have caused any mental cruelty; that the cumulative effect of the evidence brought on record was that no mental cruelty was ever caused by the respondent; and that the husband could not take advantage of his own wrong. Being of this view, the learned trial Judge dismissed the application with costs and also dismissed the application of the respondent-wife for grant of permanent alimony.

9. Grieved by the aforesaid decision, the appellant-husband preferred Civil Appeal No. 23 of 1999. The first appellate court appreciated the evidence, dealt with the findings returned by the trial court and eventually came to hold that the cumulative effect of the evidence and the material brought on record would go a long way to show that the appellant had failed to make out a case of mental cruelty to entitle him to obtain a decree for divorce. The aforesaid conclusion by the appellate court entailed dismissal of the appeal.

10. Being dissatisfied with the judgment and decree passed by the learned appellate Judge, the husband preferred Second Appeal No. 683 of 2006 before the High Court. The learned single Judge of the High Court came to hold that there were concurrent findings of fact and no substantial question of law was involved. However, the learned single Judge observed that the sons of the parties had grown up and have been married; that the parties had no intention to patch up the matrimonial discord; and that the marriage had been irretrievably broken but that could not be considered by the High Court but only by the Apex Court under Article 142 of the Constitution. Expressing the aforesaid view, he did not admit the appeal and dismissed the same.

11. We have heard Mr. Arvind V. Sawant, learned senior counsel for the appellant-husband, and Mr. Vivek C. Solshe, learned counsel for the respondent-wife.

12. At the very outset, we would like to make it clear that though the learned single Judge of the High Court has expressed the view that the parties are at logger heads and have shown no inclination to patch the matrimonial rupture and the sons have grown up and got married and with the efflux of time, the relationship has been further shattered and hence, the marriage is irretrievably broken and only this Court can grant divorce in exercise of power under Article 142 of the

Constitution, yet we are not going to take recourse to the same and only address ourselves whether a case for divorce has really been made out.

13. At this juncture, we may note with profit that the learned senior counsel for the appellant exclusively rested his case on the foundation of mental cruelty. It is his submission that if the evidence of the husband and other witnesses are scrutinized in an apposite manner along with the stand and stance taken in the written statement, it will clearly reveal a case of mental cruelty regard being had to the social status of the appellant. It is urged by him that the trial court as well as the appellate court have not given any credence to the evidence of some of the witnesses on the ground that they are interested witnesses though they are the most natural witnesses who had witnessed the cruel behaviour meted to the appellant.

14. It is the submission of the learned senior counsel for the appellant that the court of first instance as well as the appellate court have failed to take into consideration certain material aspects of the evidence and the appreciation of evidence being absolutely perverse, the High Court would have been well advised to scan and scrutinize the same but it declined to admit the appeal on the ground that there are concurrent findings of fact. It is canvassed by him that this Court, in exercise of power under Article 136 of the Constitution, can dislodge such concurrent findings of facts which are perverse, baseless, unreasonable and contrary to the material on record.

15. The learned counsel for the respondent, resisting the aforesaid submissions, contended that the view expressed by the High Court cannot be found fault with as the courts below have, at great length, discussed the evidence and appreciated the same with utmost prudence and objectivity and there is nothing on record to show that any material part of the evidence has been ignored or something extraneous to the record has been taken into consideration. It is highlighted by him that the stand put forth by the wife in her written statement having been

established, the same cannot be construed to have constituted mental cruelty. Lastly, it is put forth that the appellant has created a dent in the institution of marriage and made a maladroit effort to take advantage of his own wrong which should not be allowed.

16. First, we shall advert to what actually constitutes 'mental cruelty' and whether in the case at hand, the plea of mental cruelty has been established and thereafter proceed to address whether the courts below have adopted an approach which is perverse, unreasonable and unsupported by the evidence on record and totally unacceptable to invite the discretion of this Court in exercise of power under Article 136 of the Constitution to dislodge the same.

17. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status. In *Sirajmohamedkhan Janmohamadkhan v. Hafizunnisa Yasinkhan and another*[1], a two-Judge Bench approved the concept of legal cruelty as expounded in *Sm. Pancho v. Ram Prasad*[2] wherein it was stated thus: -

> "Conception of legal cruelty undergoes changes according to the changes and advancement of social concept and standards of living. With the advancement of our social conceptions, this feature has obtained legislative recognition that a second marriage is a sufficient ground for separate residence and separate maintenance. Moreover, to establish legal cruelty, it is not necessary that physical violence should be used.
>
> Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the husband, and an assertion on the part of the husband that the wife is unchaste are all factors which may undermine the health of a wife."

1. (1981) 4 SCC 250.
2. AIR 1956 All 41

It is apt to note here that the said observations were made while dealing with the Hindu Married Women's Right to Separate Residence and Maintenance Act (19 of 1946). This Court, after reproducing the passage, has observed that the learned Judge has put his finger on the correct aspect and object of mental cruelty.

18. In *Shobha Rani v. Madhukar Reddi*[3], while dealing with 'cruelty' under Section 13(1)(ia) of the Act, this Court observed that the said provision does not define 'cruelty' and the same could not be defined. The 'cruelty' may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem to determine it. It is a question of fact and degree. If it is mental, the problem presents difficulty. Thereafter, the Bench proceeded to state as follows: -

> "First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

19. After so stating, this Court observed about the marked change in life in modern times and the sea change in

3. (1988) 1 SCC 105.

matrimonial duties and responsibilities. It has been observed that when a spouse makes a complaint about treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatized as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. Their Lordships referred to the observations made in *Sheldon v. Sheldon*[4] wherein Lord Denning stated, "the categories of cruelty are not closed". Thereafter, the Bench proceeded to state thus: -

> "Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.
>
> These preliminary observations are intended to emphasise that the court in matrimonial cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Ried observed in *Gollins v. Gollins*[5]:
>
>> In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman."

20. In *V. Bhagat v. D. Bhagat (Mrs.)*[6], a two-Judge Bench referred to the amendment that had taken place in Sections 10 and 13(1)(ia) after the Hindu Marriage Laws (Amendment) Act, 1976 and proceeded to hold that the earlier requirement that such cruelty has caused a reasonable apprehension in the mind of a spouse that it would be harmful or injurious for him/her to live with the other one is no longer the requirement. Thereafter, this Court proceeded to deal with what constitutes mental cruelty as contemplated in Section 13(1)(ia) and observed that mental cruelty in the said provision can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. To put it differently, the mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It was further observed, while arriving at such conclusion, that regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances. What is cruelty in one case may not amount to cruelty in another case and it has to be determined in each case keeping in view the facts and circumstances of that case. That apart, the accusations and allegations have to be scrutinized in the context in which they are made. Be it noted, in the said case, this Court quoted extensively from the allegations made in the written statement and the evidence brought on record and came to hold that the said allegations and counter allegations were not in the realm of ordinary plea of defence and did amount to mental cruelty.

21. In *Praveen Mehta v. Inderjit Mehta*[7], it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence

4. (1966) 2 All ER 257.

5. (1963) 2 All ER 966.

6. (1994) 1 SCC 337.

7. AIR 2002 SC 2582.

and it is necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

22. In *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*[8], it has been opined that a conscious and deliberate statement levelled with pungency and that too placed on record, through the written statement, cannot be so lightly ignored or brushed aside.

23. In *A. Jayachandra v. Aneel Kaur*[9], it has been ruled that the question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status and environment in which they live. If from the conduct of the spouse, it is established and/or an inference can legitimately be drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse about his or her mental welfare, then the same would amount to cruelty. While dealing with the concept of mental cruelty, enquiry must begin as to the nature of cruel treatment and the impact of such treatment in the mind of the spouse. It has to be seen whether the conduct is such that no reasonable person would tolerate it.

24. In *Vinita Saxena v. Pankaj Pandit*[10], it has been ruled that as to what constitutes mental cruelty for the purposes of

8. AIR 2003 SC 2462.

9. (2005) 2 SCC 22.

10. (2006) 3 SCC 778.

Section 13(1)(ia) will not depend upon the numerical count of such incident or only on the continuous course of such conduct but one has to really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude necessary for maintaining a conducive matrimonial home.

25. In *Samar Ghosh v. Jaya Ghosh*[11], this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that the human mind is extremely complex and human behaviour is equally complicated. Similarly, human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious belief, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances.

26. In *Suman Kapur v. Sudhir Kapur*[12], after referring to various decisions in the field, this Court took note of the fact that the wife had neglected to carry out the matrimonial obligations and further, during the pendency of the mediation proceeding, had sent a notice to the husband through her

11. (2007) 4 SCC 511.

12. AIR 2009 SC 589.

advocate alleging that he had another wife in USA whose identity was concealed. The said allegation was based on the fact that in his income-tax return, the husband mentioned the "Social Security Number" of his wife which did not belong to the wife, but to an American lady. The husband offered an explanation that it was merely a typographical error and nothing else. The High Court had observed that taking undue advantage of the error in the "Social Security Number", the wife had gone to the extent of making serious allegation that the husband had married an American woman whose "Social Security Number" was wrongly typed in the income-tax return of the husband. This fact also weighed with this Court and was treated that the entire conduct of the wife did tantamount to mental cruelty.

27. Keeping in view the aforesaid enunciation of law pertaining to mental cruelty, it is to be scrutinized whether in the case at hand, there has been real mental cruelty or not, but, a significant one, the said scrutiny can only be done if the findings are perverse, unreasonable, against the material record or based on non-consideration of relevant materials. We may note here that the High Court has, in a singular line, declined to interfere with the judgment and decree of the courts below stating that they are based on concurrent findings of fact. The plea of perversity of approach though raised was not adverted to.

28. It is worth noting that this Court, in *Kulwant Kaur v. Gurdial Singh Mann (dead) by L.Rs. and others*[13], has held that while it is true that in a second appeal, a finding of fact, even if erroneous, will generally not be disturbed but where it is found that the findings stand vitiated on wrong test and on the basis of assumptions and conjectures and resultantly there is an element of perversity involved therein, the High Court will be within its jurisdiction to deal with the issue. An issue pertaining to perversity comes within the ambit of substantial

13. AIR 2001 SC 1273.

question of law. Similar view has been stated in *Govindaraju v. Mariamman*[14].

29. In *Major Singh v. Rattan Singh (Dead) by LRs and others*[15], it has been observed that when the courts below had rejected and disbelieved the evidence on unacceptable grounds, it is the duty of the High Court to consider whether the reasons given by the courts below are sustainable in law while hearing an appeal under Section 100 of the Code of Civil Procedure.

30. In *Vidhyadhar v. Manikrao and another*[16], it has been ruled that the High Court in a second appeal should not disturb the concurrent findings of fact unless it is shown that the findings recorded by the courts below are perverse being based on no evidence or that on the evidence on record, no reasonable person could have come to that conclusion. We may note here that solely because another view is possible on the basis of the evidence, the High Court would not be entitled to exercise the jurisdiction under Section 100 of the Code of Civil Procedure. This view of ours has been fortified by the decision of this Court in *Abdul Raheem v. Karnataka Electricity Board & Ors.*[17].

31. Having stated the law relating to mental cruelty and the dictum of this Court in respect of the jurisdiction of the High Court where concurrent findings of fact are assailed, as advised at present, we will scan the evidence whether the High Court has failed to exercise the jurisdiction conferred on it despite the plea of perversity being raised. Any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse. This Court in exercise of power under Article 136 of the Constitution

14. (2005) 2 SCC 500.

15. AIR 1997 SC 1906.

16. (1999) 3 SCC 573.

17. AIR 2008 SC 956.

can interfere with concurrent findings of fact, if the conclusions recorded by the High Court are manifestly perverse and unsupported by the evidence on record. It has been so held in *Alamelu and another v. State, Represented by Inspector of Police*[18] and *Heinz India Pvt. Ltd. & Anr. v. State of U.P. & Ors.*[19]

32. Presently, to the core issue, viz, whether the appellant-husband had made out a case for mental cruelty to entitle him to get a decree for divorce. At this juncture, we may unhesitantly state that the trial court as well as the first appellate court have disbelieved the evidence of most of the witnesses cited on behalf of the husband on the ground that they are interested witnesses. In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. The family members and sometimes the relatives, friends and neighbours are the most natural witnesses. The veracity of the testimony is to be tested on objective parameters and not to be thrown overboard on the ground that the witnesses are related to either of the spouse. Exception has been taken by the courts below that the servants of the house should have been examined and that amounts to suppression of the best possible evidence. That apart, the allegations made in the written statement, the dismissal of the case instituted by the wife under Section 494 of the Indian Penal Code, the non-judging of the material regard being had to the social status, the mental make-up, the milieu and the rejection of subsequent events on the count that they are subsequent to the filing of the petition for divorce and also giving flimsy reasons not to place reliance on the same, we are disposed to think, deserve to be tested on the anvil of "perversity of approach". Quite apart from the above, a significant question that emerges is whether the reasons ascribed by the courts below that the allegations made in the written statement alleging extra marital affair of the appellant-

18. AIR 2011 SC 715.

19. (2012) 3 SCALE 607 = (2012) 2 KLT (SN) 64.

husband with Neeta Gujarathi has been established and, therefore, it would not constitute mental cruelty are perverse and unacceptable or justified on the basis of the evidence brought on record. These are the aspects which need to be scrutinized and appositely delved into.

33. The appellant-husband, examining himself as PW-1, has categorically stated that the wife used to hide the pressed clothes while he was getting ready to go to the factory. Sometimes she used to crumple the ironed clothes and hide the keys of the motorcycle or close the main gate. In the cross-examination, it is clearly stated that the wife was crumpling the ironed clothes, hiding the keys of the motorcycle and locking the gate to trouble him and the said incidents were taking place for a long time. This being the evidence on record, we are at a loss to find that the courts below could record a finding that the appellant used to enjoy the childish and fanciful behaviour of the wife pertaining to the aforesaid aspect. This finding is definitely based on no evidence. Such a conclusion cannot be reached even by inference. If we allow ourselves to say so, even surmises and conjectures would not permit such a finding to be recorded. It is apt to note here that it does not require Solomon's wisdom to understand the embarrassment and harassment that might have been felt by the husband. The level of disappointment on his part can be well visualised like a moon in a cloudless sky.

34. Now we shall advert to the allegation made in the written statement. The respondent-wife had made the allegation that the husband had an illicit relationship with Neeta Gujarathi. The learned trial Judge has opined that the said allegation having been proved cannot be treated to have caused mental cruelty. He has referred to various authorities of many High Courts. The heart of the matter is whether such an allegation has actually been proven by adducing acceptable evidence. It is worth noting that the respondent had filed a complaint, RCC No. 91/95, under Section 494 of the Indian Penal Code against

the husband. He was discharged in the said case. The said order has gone unassailed. The learned trial Judge has expressed the view that Neeta Gujarathi was having a relationship with the husband on the basis that though the husband had admitted that she was working in his office yet he had not produced any appointment letter to show that she was appointed as a computer operator. The trial Judge has relied on the evidence of the wife. The wife in her evidence has stated in an extremely bald manner that whenever she had telephoned to the office in the factory, the husband was not there and further that the presence of Neeta Gujarathi was not liked by her in-laws and the elder son Vishal. On a careful reading of the judgment of the trial court, it is demonstrable that it has been persuaded to return such a finding on the basis of the incident that took place on 11.10.1995. It is worth noting that the wife, who examined herself as RW-1, stated in her evidence that Vishal was deposing against her as the appellant had given him a scooter. The learned trial Judge has given immense credence to the version of the social worker who, on the date of the incident, had come to the house of the appellant where a large crowd had gathered and has deposed that she had seen Neeta going and coming out of the house. The evidence of the wife, when studiedly scrutinized, would show that there was more of suspicion than any kind of truth in it. As has been stated earlier, the respondent had made an allegation that her son was influenced by the appellant-husband. The learned trial Judge as well as the appellate court have accepted the same. It is germane to note that Vishal, the elder son, was approximately 16 years of age at the time of examination in court. There is remotely no suggestion to the said witness that when Neeta Gujarati used to go to the house, his grandfather expressed any kind of disapproval. Thus, the whole thing seems to have rested on the incident of 11.10.1995. On that day, as the material on record would show, at 4.00 p.m., the wife arrived at the house of the husband. She has admitted that she wanted to see her father-in-law who was not keeping well. After she went in, her father-in-law got up from the chair and went

upstairs. She was not permitted to go upstairs. It is testified by her that her father-in-law came down and slapped her. She has deposed about the gathering of people and publication in the newspapers about the incident. Vishal, PW-5, has stated that the mother had pushed the grandfather from the chair. The truthfulness of the said aspect need not be dwelled upon. The fact remains that the testimony of the wife that the father-in-law did not like the visit of Neeta does not appear to be true. Had it been so, he would not have behaved in the manner as deposed by the wife. That apart, common sense does not give consent to the theory that both, the father of the husband and his son, Vishal, abandoned normal perception of life and acceded to the illicit intimacy with Neeta. It is interesting to note that she has deposed that it was published in the papers that the daughter-in-law was slapped by the father-in-law and Neeta Gujarathi was recovered from the house but eventually the police lodged a case against the husband, the father-in-law and other relatives under Section 498A of the Indian Penal Code. We really fail to fathom how from this incident and some cryptic evidence on record, it can be concluded that the respondent-wife had established that the husband had an extra marital relationship with Neeta Gujarathi. That apart, in the application for grant of interim maintenance, she had pleaded that the husband was a womaniser and drunkard. This pleading was wholly unwarranted and, in fact, amounts to a deliberate assault on the character. Thus, we have no scintilla of doubt that the uncalled for allegations are bound to create mental agony and anguish in the mind of the husband.

35. Another aspect needs to be taken note of. She had made allegation about the demand of dowry. RCC No. 133/95 was instituted under Section 498A of the Indian Penal Code against the husband, father-in-law and other relatives. They have been acquitted in that case. The said decision of acquittal has not been assailed before the higher forum. Hence, the allegation on this count was incorrect and untruthful and it can unhesitatingly be stated that such an act creates mental trauma

in the mind of the husband as no one would like to face a criminal proceeding of this nature on baseless and untruthful allegations.

36. Presently to the subsequent events. The courts below have opined that the publication of notice in the daily "Lokmat" and the occurrence that took place on 11.10.1995 could not be considered as the said events occurred after filing of the petition for divorce. Thereafter, the courts below have proceeded to deal with the effect of the said events on the assumption that they can be taken into consideration. As far as the first incident is concerned, a view has been expressed that the notice was published by the wife to safeguard the interests of the children, and the second one was a reaction on the part of the wife relating to the relationship of the husband with Neeta Gujrathi. We have already referred to the second incident and expressed the view that the said incident does not establish that there was an extra marital relationship between Neeta and the appellant. We have referred to the said incident as we are of the considered opinion that the subsequent events can be taken into consideration. In this context, we may profitably refer to the observations made by a three-Judge Bench in the case of *A. Jayachandra* (supra) :-

> "The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct."

37. We may also usefully refer to the observations made in *Suman Kapur* (supra) wherein the wife had made a maladroit effort to take advantage of a typographical error in the written statement and issued a notice to the husband alleging that he had another wife in USA. Thus, this Court has expressed the opinion that the subsequent events can be considered.

38. Keeping in view the aforesaid pronouncement of law, we shall first appreciate the impact of the notice published in the "Lokmat". The relevant part of the said notice, as published in the newspaper, reads as follows: -

> "Shri Vishwanath Sitaram Agrawal is having vices of womanizing, drinking liquor and other bad habits. He is having monthly income of Rs.10 lacs, but due to several vices, he is short of fund. Therefore, he has started selling the property. He has sold some properties. My client has tried to make him understand which is of no use and on the contrary, he has beaten my client very badly and has driven her away and dropped her to Akola at her parent's house.
>
> In the property of Shri Vishwanath Sitaram Agrawal my client and her two sons are having shares in the capacity of members of joint family and Shri Vishwanath Sitaram Agrawal has no right to dispose of the property on any ground."

Immense emphasis has been given on the fact that after publication of the notice, the husband had filed a caveat in the court. The factual matrix would reveal that the husband comes from a respectable family engaged in business. At the time of publication of the notice, the sons were quite grown up. The respondent-wife did not bother to think what impact it would have on the reputation of the husband and what mental discomfort it would cause. It is manifest from the material on record that the children were staying with the father. They were studying in the school and the father was taking care of everything. Such a publication in the newspaper having good circulation can cause trauma, agony and anguish in the mind of any reasonable man. The explanation given by the wife to the effect that she wanted to protect the interests of the children, as we perceive, is absolutely incredible and implausible. The filing of a caveat is wholly inconsequential.

In fact, it can decidedly be said that it was mala fide and the motive was to demolish the reputation of the husband in the society by naming him as a womaniser, drunkard and a man of bad habits.

39. At this stage, we may fruitfully reminisce a poignant passage from *N.G. Dastane v. S. Dastane*[20] wherein Chandrachud, J. (as his Lordship then was) observed thus: -

"The court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures."

40. Regard being had to the aforesaid, we have to evaluate the instances. In our considered opinion, a normal reasonable man is bound to feel the sting and the pungency. The conduct and circumstances make it graphically clear that the respondent-wife had really humiliated him and caused mental cruelty. Her conduct clearly exposits that it has resulted in causing agony and anguish in the mind of the husband. She had publicised in the newspapers that he was a womaniser and a drunkard. She had made wild allegations about his character. She had made an effort to prosecute him in criminal litigations which she had failed to prove. The feeling of deep anguish, disappointment, agony and frustration of the husband is obvious. It can be stated with certitude that the cumulative effect of the evidence brought on record clearly establish a sustained attitude of causing humiliation and calculated torture on the part of the wife to make the life of the husband miserable. The husband felt humiliated both in private and public life. Indubitably, it created a dent in his reputation which is not only the salt of life, but also the purest treasure and the most

20. (1975) 3 SCR 967.

precious perfume of life. It is extremely delicate and a cherished value this side of the grave. It is a revenue generator for the present as well as for the posterity. Thus analysed, it would not be out of place to state that his brain and the bones must have felt the chill of humiliation. The dreams sweetly grafted with sanguine fondness with the passage of time reached the Everstine disaster, possibly, with a vow not to melt. The cathartic effect looked like a distant mirage. The cruel behaviour of the wife has frozen the emotions and snuffed out the bright candle of feeling of the husband because he has been treated as an unperson. Thus, analysed, it is abundantly clear that with this mental pain, agony and suffering, the husband cannot be asked to put up with the conduct of the wife and to continue to live with her. Therefore, he is entitled to a decree for divorce.

41. Presently, we shall deal with the aspect pertaining to the grant of permanent alimony. The court of first instance has rejected the application filed by the respondent-wife as no decree for divorce was granted and there was no severance of marital status. We refrain from commenting on the said view as we have opined that the husband is entitled to a decree for divorce. Permanent alimony is to be granted taking into consideration the social status, the conduct of the parties, the way of living of the spouse and such other ancillary aspects. During the course of hearing of the matter, we have heard the learned counsel for the parties on this aspect. After taking instructions from the respective parties, they have addressed us. The learned senior counsel for the appellant has submitted that till 21.2.2012, an amount of Rs.17,60,000/- has been paid towards maintenance to the wife as directed by the courts below and hence, that should be deducted from the amount to be fixed. He has further submitted that the permanent alimony should be fixed at Rs.25 lacs. The learned counsel for the respondent, while insisting for affirmance of the decisions of the High Court as well as by the courts below, has submitted that the amount that has already been paid should not be taken into consideration as the same has been paid within a span of

number of years and the deduction would affect the future sustenance. He has emphasised on the income of the husband, the progress in the business, the inflation in the cost of living and the way of life the respondent is expected to lead. He has also canvassed that the age factor and the medical aid and assistance that are likely to be needed should be considered and the permanent alimony should be fixed at Rs.75 lacs.

42. In our considered opinion, the amount that has already been paid to the respondent-wife towards alimony is to be ignored as the same had been paid by virtue of the interim orders passed by the courts. It is not expected that the respondent-wife has sustained herself without spending the said money. Keeping in view the totality of the circumstances and the social strata from which the parties come from and regard being had to the business prospects of the appellant, permanent alimony of Rs.50 lacs (rupees fifty lacs only) should be fixed and, accordingly, we so do. The said amount of Rs.50 lacs (rupees fifty lacs only) shall be deposited by way of bank draft before the trial court within a period of four months and the same shall be handed over to the respondent-wife on proper identification.

43. Consequently, the appeal is allowed, the judgments and decrees of the courts below are set aside and a decree for divorce in favour of the appellant is granted. Further, the husband shall pay Rs.50 lacs (rupees fifty lacs only) towards permanent alimony to the wife in the manner as directed hereinabove. The parties shall bear their respective costs.

B.B.B. Appeal allowed.

MONNET ISPAT & ENERGY LTD.
v.
UNION OF INDIA AND ORS.
(Civil Appeal No. 3285 of 2009 etc.)

JULY 26, 2012

[R.M. LODHA, AND H.L. GOKHALE, JJ.]

Constitution of India, 1950:

Art.294, First Schedule – State Government's ownership in mines and minerals within its territory – Held: Erstwhile State of Bihar being a part-A State specified in First Schedule and prior thereto the Province of Bihar, by virtue of Art. 294 all properties and assets which were vested in His Majesty for the purpose of the Government of Province of Bihar stood vested in corresponding State of Bihar – By the Bihar Act, 1950, all other lands, i.e. estates and tenures of whatever kind including the mines and minerals therein stood vested in the State of Bihar – Pursuant to Bihar Re-Organisation Act, 2000, all land, inter alia, belonging to the then State of Bihar and situated in the transferred territories passed to the newly created State of Jharkhand which is the owner of the subject area – Mines and minerals within its territory vest in it absolutely – Bihar Land Reforms Act, 1950 – Bihar Re-Organization Act, 2000 – Jurisprudence –' Ownership'.

Seventh Schedule – List I, Entry 54, List II, Entry 23 read with Entry 18 – Minerals – Iron ore – Right of State Government to reserve mining area for public sector exploitation – Held: The authority of State Government flows from the fact that it is the owner of the mines and the minerals within its territory – Rule 59 of 1960 Rules clearly contemplates reservation by an order of State Government – Provisions that follow s.2 of 1957 Act have left untouched the State's ownership of mines and minerals within its territory

although regulation of mines and the development of minerals have been taken under control of the Union – Therefore, reservation made by State Government under Notifications dated 21.12.1962, 28.02.1969 and 27.10.2006 is not at all contrary to or inconsistent with 1957 Act – These notifications do not impinge upon the legislative power of the Central Government – Mines and Minerals (Regulation and Development) Act, 1957 – ss. 2 to 17-A – Mineral Concession Rules1960 – rr. 58, 59 and 63A.

Arts. 19(1)(g), 39, and 299 – Right to carry on any trade or business – Government contracts – State Government of Jharkhand recommending to Union Government to grant mining lease to certain companies – Subsequently, realizing that the subject area had already been reserved for public sector exploitation, it withdrew the proposal and issued a further notification declaring that iron ore deposits in the subject area would not be thrown to private sector – Held: No person has any fundamental right or any right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to Government except under 1957 Act and the 1960 Rules – It is true that by the MOU entered into between State Government and appellants, certain commitments were made by State Government but firstly, such MOU is not a contract as contemplated under Art. 299(1) and secondly, in grant of mining lease of a property of the State, the State Government has discretion to grant or refuse to grant any mining lease – Obviously, State Government is required to exercise its discretion, subject to the requirement of law – In view of the fact that the area is reserved for exploitation of mineral in public sector, it cannot be said that the discretion exercised by State Government suffers from any legal flaw.

Mines and Minerals (Regulation and Development) Act, 1957:

s.17-A read with rr.58 and 59 of 1960 Rules – Approval

of Central Government for grant of mining lease – Held: Rule 58 as amended in 1980 expressly provided that the State Government by Notification in the official gazette can reserve any area for exploitation in public sector – The amendments have been effected only to make explicit what was implicit and they cannot be read to nullify the powers which the State Government otherwise had under the statute – On coming into force of s.17-A, r.58 has been omitted – According to s.17-A(2), the State Government with the approval of Central Government may reserve any area not already held under any mining lease, to undertake mining operations in public sector – Section 17-A is prospective in nature – The reservations made prior to insertion of s.17-A continue to be in force – Besides, approval contemplated by s.17-A may be obtained by State Government before exercise of power of reservation or after exercise of such power – It may be express or implied - Interpretation of Statutes – Prospective operation.

Interpretation of Statutes:

Prospective operation of a statutory provision – Held: Presumption of prospectivity operates unless shown to the contrary by express provision or is discernible by necessary implication – Maxim – 'Nova constitution futuris formam imponere debet non praete ritis.'

Administrative Law:

Doctrines of ***promissory estoppel*** *and* ***legitimate expectation*** *– Explained – Held: Doctrine of promissory estoppel is not attracted when promise was made in a mistaken belief – State Government had agreed to grant mineral concession as per existing Act and Rules – As a matter of fact, when the MOU was entered into, State Government was not even aware about the reservation of the subject mining area for exploitation in public sector – In view of the fact that the subject mining area had been reserved for exploitation in pubic sector under 1962 and 1969 Notifications,*

the stipulation in the MOU that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company and the commitment to grant mineral concession, cannot be enforced because firstly, the stipulation in the MOU is not unconditional – Secondly, if the State Government is asked to do what it represented to do under the MOU then that would amount to asking the State Government to do something in breach of the Notifications which continue to hold the field – Thus, the doctrines of promissory estoppel and legitimate expectation are not attracted in the instant case – There is no error in the letter of withdrawal dated 13.9.2005 issued by State of Jharkhand and the letter of rejection dated 6.3.2006 issued by Union of India.

Doctrine of desuetude *– Explained – Held: Insofar as 1962 and 1969 Notifications are concerned, the doctrine of desuetude is not attracted for the reasons: Firstly, non-implementation of such Notifications for 30-35 years is not that long a period which may satisfy the requirement of the doctrine of desuetude – Secondly, as a matter of fact, except stray grant of mining lease for a very small portion of the reserved area to one or two parties there is nothing to suggest much less to establish the contrary usage or contrary practice that the reservation made in the two Notifications has been given a complete go by – Further, since the State of Jharkhnd has not altered, repealed and/or amended the 1962 and the 1969 Notifications, the same cannot be said to have lapsed – Bihar Reorganization Act, 2000 – ss. 84, 85 and 86.*

The appellants, engaged in the business of production of iron and steel etc. were stated to have entered into Memorandums of Understanding with the State Government of Jharkhand whereunder the latter was stated to have agreed to assist them in selecting the area for iron ore and other minerals as per requirement. In August 2004, the State Government forwarded applications of ten companies, including the six appellants, with its recommendation to the Government

of India for grant of mining lease of iron ore in the subject area. However, on 17.11.2004 the District Mining Officer informed the Secretary, Department of Mines and Geology, Government of Jharkhand that the subject area was reserved for public sector exploitation under Notifications dated 21.12.1962 and 28.2.1969 issued by the Government of Bihar. Consequently, the Government of Jharkhand by its letter dated 13.9.2005 sought to withdraw nine of the said proposals including those of all the appellants. On 6.3.2006, the Central Government passed an order accepting the request of the State Government. Subsequently, by Notification dated 27.10.2006, the State Government also declared that the iron ore deposits in the subject area (where the appellants were proposed the mining leases and was at all material times kept reserved by the 1962 and 1969 Notifications issued by State of Bihar) would not be thrown open for grant of prospecting licence, mining licence or otherwise for private parties. The appellants filed writ petitions before the High Court challenging the letters dated 13.9.2005 and 6.3.2006 as also the Notification dated 21.12.1962, 28.2.1969 and 27.10.2006, and prayed for a direction to grant them mining leases as proposed. The writ petitions were dismissed by the High Court.

In the instant appeals filed by the companies, the main issue for consideration of the Court was: whether the Notifications dated 21.12.1962 and 28.2.1969 issued by the State of Bihar and the Notification dated 27.10.2006 issued by the State of Jharkhand were legal and valid.

Dismissing the appeals, the Court

HELD: <u>(Per R.M. Lodha, J.)</u>

1.1. In the Constitution of India, 1950, management

of mineral resources has been left with both the Central Government and State Governments in terms of Entry 54 in List I and Entry 23 in List II of the Seventh Schedule. In the scheme of the Constitution, the State Legislatures enjoy power to enact legislation on the topics of 'mines and mineral development'. The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says 'subject to the provisions of List I with respect to regulation and development under the control of the Union'. If Parliament by its law has declared that regulation of mines and development of minerals should in public interest be under the control of the Union, which it did by making declaration in s.2 of the Mines and Minerals (Regulation and Development) Act, 1957, to the extent of such legislation incorporating the declaration, the power of the state legislature is excluded. The declaration made by Parliament in s.2 of 1957 Act states that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act itself. The requisite declaration has the effect of taking out regulation of mines and development of minerals from Entry 23, List II to that extent. As the declaration made in s. 2 trenches upon the State Legislative power, it has to be construed strictly. By the presence of keynote expression 'to the extent hereinafter provided' in s.2, the Union has assumed control to the extent provided in 1957 Act. The 1957 Act prescribes the extent of control and specifies it. The declaration made in s.2 is, thus, not all comprehensive. Legal regime relating to regulation of mines and development of minerals is thus guided by the 1957 Act and the Mineral Concession Rules 1960 Rules. However, in order that the declaration made by Parliament should be effective, the making of rules or enforcement of rules so made is not decisive.[para 101-102, 108 and 109] [765-G-H; 766-A-H; 767-A-B; 771-E-F]

Hingir-Rampur Coal Co. Ltd. & Ors. v. *State of Orissa & Ors.* **1961 SCR 537 = AIR 1961 SC 459***; State of Orissa & Anr.* v. *M/s M.A. Tulloch & Co.* **1964 SCR 461 = AIR 1964 SC 1284;** *Baijnath Kadio* v. *State of Bihar and Others* **1970 (2) SCR 100 =1969 (3) SCC 838;** *Bharat Coking Coal* Ltd. v. *State of Bihar & Ors.* **1990 (3) SCR 744 = 1990 (4) SCC 557;** *D.K. Trivedi and Sons and Others* v. *State of Gujarat and Others* **1986 SCR 479 = 1986 Suppl. SCC 20;** *HRS Murthy* v. *Collector of Chittoor* **1964 SCR 666=AIR (1965) SC 177,** *M. Karunanidhi* v. *Union of India and Anr.* **1979 (3) SCR 254 = 1979 (3) SCC 431 ,** *Dharambir Singh vs. Union of India* **1996 (6) Suppl. SCR 566 = 1996 (6) SCC 702 13;** *Bhupatrai Maganlal Joshi and Others* v. *Union of India and another* **2001 (10) SCC 476;** *M.P. Ram Mohan Raja vs. State of T.N.& Ors.* **2007 (5) SCR 576 = 2007 (9) SCC 78;** *Sandur Manganese & Iron Ores Ltd. vs. State of Karnataka* **2010 (11) SCR 240 = 2010 (13) SCC 1 - referred to.**

1.2. Iron-ore is a mineral included in the First Schedule to the 1957 Act in respect of which no mining lease for it can be granted without the prior approval of the Central Government. No person has any fundamental right or for that matter any right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to Government, except under 1957 Act and the Mineral Concession Rules1960. [para 104] [767-H; 768-A-C]

State of Tamil Nadu v. *M/s. Hind Stone and Others* **1981 (2) SCR 742 = 1981 (2) SCC 205 – relied on**

2.1. Minerals constitute the national wealth and are vital raw-material for infrastructure, capital goods and basic industries. For proper development of economy and industry, the exploitation of natural resources cannot be permitted indiscriminately; rather nation's natural wealth has to be used judiciously. Surely, in the case of

a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. [para 103-104] [767-D-F; 768-D-E]

State Government's ownership in Mines and

Minerals and the power of reservation:

2.2. It is not in dispute that all rights and interests, including rights in mines and minerals in the subject area, had, vested absolutely in the erstwhile State of Bihar free from all encumbrances. At the time of commencement of the Constitution, the erstwhile State of Bihar was a Part-A State specified in the First Schedule to the Constitution and prior thereto the Province of Bihar. By virtue of Art. 294 all properties and assets which were vested in His Majesty for the purpose of the Government of Province of Bihar, stood vested in the corresponding State of Bihar. By the Bihar Land Reforms Act, 1950, all other lands, i.e. estates and tenures of whatever kind, including the mines and minerals therein, stood vested in the State of Bihar. Pursuant to the Bihar Re-Organization Act, 2000, all lands, *inter alia*, belonging to the then State of Bihar situated in the transferred territories, including the subject area of the instant appeals, passed to the newly created State of Jharkhand. The admitted position is that the *State Government (erstwhile Bihar and now Jharkhand) is the owner of the subject area. Mines and minerals within its territory vest in it absolutely.* **As a matter of fact it is because of this position that the appellants made their application for grant of mining lease to the State Government. [para 105] [768-F-H; 769-A-C]**

2.3. Since the State Government's paramount right over the iron ore being the owner of the mines did not get affected by 1957 Act, *the power existed with the State Government to reserve subject areas of mining for exploitation*

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in public sector undertaking. **[para 107] [770-B-C]**

2.4. It cannot be said that by 1957 Act, State Government's ownership rights in so far as 'development of minerals' was concerned, stood frozen. In the first place, the declaration made by Parliament in s.2 and the provisions that follow s.2 of 1957 Act, have left untouched the State's ownership of mines and minerals within its territory although the regulation of mines and the development of minerals have been taken under the control of the Union. Section 4 deals with activities in relation to land and does not extend to extinguish the State's right of ownership in such land. Section 4 regulates the right to transfer but does not divest ownership of minerals in a State and does not preclude the State Government from exploiting its minerals. Section 4(1) can have no application where the State Government wants to undertake itself mining operations in the area owned by it. Further, s.5 or, for that matter, ss. 6, 9, 10, 11 and 13(2)(a) also do not take away the State's ownership rights in the mines and minerals within its territory. The power to legislate for regulation of mines and development of minerals under the control of the Union may definitely imply power to acquire mines and minerals in the larger public interest by appropriate legislation, but by 1957 Act that has not been done. There is nothing in 1957 Act to suggest even remotely – and there is no express provision at all – that the mines and minerals that vested in the States have been acquired. Rather, the scheme and provisions of 1957 Act themselves show that Parliament itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government and did not intend to trench upon powers of State Legislatures under Entry 18, List II. The declaration made in s.2 of the 1957 Act is not all comprehensive. It does not contemplate acquisition of mines and minerals. Although the word 'regulation' must

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in the context receive wide interpretation, but the extent of control by the Union as specified in the 1957 Act has to be construed strictly. This Court in *Orissa Cement Limited* has emphatically asserted that in the case of a declaration under Entry 54, the legislative power of the State Legislatures is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. [para 107,108, 109 and 110] [770-C-E-H; 771-A-D-E-F; 772-F-G]

Orissa Cement Ltd. v. *State of Orissa & Others* **1991 (2) SCR 105 = 1991 (1) Suppl. SCC 430;** *State of Haryana and Another* v. *Chanan Mal and Others* **1976 (3) SCR 688 = 1977 (1) SCC 340;**, *Ishwari Khetan Sugar Mills (P) Limited & Ors*. v. *State of Uttar Pradesh and Others* **1980 (3) SCR 331 = 1980 (4) SCC 136;** *Western Coalfields Limited* v. *Special Area Development Authority Korba & Anr.* **1982 (2) SCR 1 = 1982 (1) SCC 125 – relied on**

2.5. Secondly, after enactment of 1957 Act and 1960 Rules, the Central Government has all throughout understood that the State Governments, as owners of mines and minerals within their territory, have inherent right to reserve any particular area for exploitation in the public sector. [para 111] [773-B]

Amritlal Nathubhai Shah and Ors. v. Union Government of India and Another **1977 (1) SCR 372 = 1976 (4) SCC 108;** **and** *Indian Metals and Ferro Alloys Ltd.* v. *Union of India & Ors* **1990 (2) Suppl. SCR 27 = 1992 (1) Suppl. SCC 91– relied on**

2.6. The judgment of this Court in *Amritlal Nathubhai Shah* **establishes the distinction between the power (of State Government) of reservation to exploit a mineral as its own property on the one hand and the regulation of mines and mineral development under the 1957 Act and**

the 1960 Rules on the other. The authority of the State Government to make reservation of a particular mining area within its territory for its own use is the offspring of ownership; and it is inseparable therefrom unless denied to it expressly by an appropriate law. By 1957 Act that has not been done by Parliament. Setting aside by a State of land owned by it for its exclusive use and under its dominance and control is an incident of sovereignty and ownership. It cannot be said that *Amritlal Nathubhai Shah* **is not a binding precedent being** *per incuriam* **inasmuch as earlier judgments of this Court have not been considered and applied. There is no incongruity or inconsistency in the decisions of this Court in** *Hingir-Rampur Coal Co.*, *M.A. Tulloch & Co.*, Baijnath *Kadio* and *Amritlal Nathubhai Shah*. **The Bench in** *Amritlal Nathubhai Shah* **was alive to the legal position highlighted by this Court in** *Hingir-Rampur Coal Co., M.A. Tulloch & Co. and Baijnath Kadio* **although it did not expressly refer to these decisions. The legal position exposited in *Amritlal Nathubhai Shah* is that even though the field of legislation with regard to regulation of mines and development of minerals has been covered by the declaration of Parliament in s. 2 of the 1957 Act, but that can not justify the inference that the State Government has lost its right to the minerals which vest in it as a property within its territory and hence no person has a right to exploit the mines other than in accordance with the provisions of the 1957 Act and the 1960 Rules. The authority of the State Government to order reservation flows from the fact that it is the owner of the mines and the minerals within its territory. Such authority is also traceable to Rule 59 of 1960 Rules. [para 113-114] [774-E-H; 775-A-E]**

2.7. Thus, the reservation made by 1962 and 1969 Notifications is not at all contrary or inconsistent with 1957 Act. The impugned Notifications do not impinge

upon the legislative power of the Central Government. The Government of erstwhile State of Bihar had the power to make reservation which it did by 1962 and 1969 Notifications. There was no lack of power in the State in making such reservation.[para 102] [767-B-C]

2.8. It can also not be said that in view of ss. 17 and 18 of the 1957 Act, the 1962 and the 1969 Notifications are not relatable to statutory provisions contained in 1957 Act and 1960 Rules. Section 17 is not all-comprehensive on the subject of refusal to grant prospecting licence or mining lease and it has nothing to do with public or private sector. It does not deal directly or indirectly with the State Government's right for reservation of its own mines and minerals. Its application is not general but it is confined to a specific situation where the Central Government proposes to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. Insofar as s. 18 is concerned, it basically confers additional rule making power upon the Central Government for achieving the objectives, namely, conservation and systematic development of minerals articulated therein. If the State Government makes reservation in public interest with respect to minerals which vest in it for exploitation in public sector, such reservation cannot be seen as impairing the obligation cast upon the Central Government u/s 18. [para 115-116] [775-F-H; 776-A-D]

2.9. Rule 59 continued to recognize the State Government's right to reserve any area for mining within its territory for any purpose including exploitation in public sector. [para 118] [777-E]

Amritlal Nathubhai Shah and Ors. v. *Union Government of India and Another* **1977 (1) SCR 372 = 1976 (4) SCC 108 - relied on**

Janak Lal v. *State of Maharashtra and Others* **1989 (3) SCR 830 = 1989 (4) SCC 121 – cited**

2.10. Rule 58 was amended in 1980 whereby it expressly provided that the State Government may, by Notification in the official gazette, reserve any area for exploitation by the Government, a corporation established by the Central, State or Provincial Act or a Government company within the meaning of s.617 of the Companies Act. Rule 58 has been omitted from 1960 Rules as the provision for reservation has now been expressly made by insertion of s.17A in 1957 Act. According to s.17A(2), the State Government with the approval of the Central Government may reserve any area not already held under any prospecting licence or mining lease to undertake prospecting or mining operations through a Government company or a corporation owned or controlled by it. In terms of s. 17A(2), any reservation made by the State Government after coming into force of that Section must bear approval of the Central Government. Thus, what was implied by the provisions originally contained in 1957 Act and 1960 Rules insofar as authority of the State Government to reserve any area within its territory for mining in public sector, has been made explicit first by amendment in Rule 58 in 1980 and later on by introduction of s.17A in 1957 Act by virtue of amendment effective from 1987. [para 119 and 120] [777-G-H; 778-A-D]

2.11. With regard to the impact of omission of r. 58 in 1988 from 1960 Rules and the introduction of s. 17A in 1957 Act in the context of reservation of the mining area by the State Government for public sector exploitation, this Court in ***Indian Metal and Ferro Alloys Ltd.*** **has categorically held that reservations made prior to insertion of s. 17A continue to be in force even after the introduction of s. 17A. This Court holds that s.17A is prospective. There is no indication in s.17A or in terms**

of the Amending Act that by insertion of s.17A Parliament intended to alter the pre-existing state of affairs. Parliament does not seem to have intended by bringing in s.17A to undo the reservation of any mining area made by the State Government earlier thereto for exploitation in public sector. Where an issue arises before the court whether a statute is prospective or retrospective, the court has to keep in mind presumption of prospectivity articulated in legal maxim *nova constitutio futuris formam imponere debet non praeteritis,* **i.e., 'a new law ought to regulate what is to follow, not the past'. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication. [para 122-124] [778-G-H; 779-A-B; 780-C-D]**

Keshavan Madhava Menon v. *State of Bombay* **1951 SCR 228 = AIR 1951 SC 128 – referred to.**

Colonial Sugar Refining Co. v. *Irving* **(1905) AC 369;** *Pulborough Parish School Board Election, Bourke* v. *Nutt* **(1894) 1 QB 725, p. 737 - referred to.**

Principles of Statutory Interpretation **(Seventh Edition, 1999) by Justice G.P. Singh – referred to.**

2.12. If a state government has power to reserve mineral bearing area for exploitation in public sector – and the then Government of Bihar had such power – the act of reservation by 1962 and 1969 Notifications is not rendered illegal or invalid. The aspects, namely, (i) 1993 mineral policy framed by the Central Government envisaged permission of captive consumption of minerals across the country; (ii) in 1994 Central Government asked all the state governments to de-reserve 13 minerals including iron ore and directed them to take steps accordingly; (iii) confirmation by the Government of Bihar to the Central Government in 1994

that no mining areas were reserved for public sector undertaking in the then State of Bihar; (iv) confirmation by the State Government in 2001 to Central Government that there are no reserved areas in the State and (v) in 2004, the recommendation by the State Government in favour of the appellants to the Central Government for grant of prior approval and reminder in 2005, have no impact and effect on the validity of 1962 and 1969 Notifications. The above acts of the Government of Bihar and the Government of Jharkhand in ignorance of 1962 and 1969 Notifications cannot be used as a sufficient ground for invalidating these Notifications. Lack of knowledge on the part of the State Government about the reservation of areas for exploitation in public sector by 1962 and 1969 Notifications does not affect in any manner the legality and validity of these Notifications once it has been found that these Notifications have been issued by the erstwhile State of Bihar in valid exercise of power which it had. [para 125] [780-E-H; 781-A-C]

3.1. As regards the Notification dated 27.10.2006, it states that it has been issued in the public interest and in the larger interest of the State for optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon. It mentions the factum of reservation made by 1962 and 1969 Notifications. It is founded on the policy of the State Government that such reservation will usher in maximum benefits to the State and would also generate substantial amount of employment in the State. The public interest is, thus, paramount. The State Government had authority to do that u/s 17A(2) of 1957 Act read with Rule 59(1)(e) of 1960 Rules. The mineral reserved in the said area by 2006 Notification has been decided to be utilized for exploitation by public sector undertaking or 'joint venture project' of the State Government. 2006 Notification does mention reservation

for joint venture project of the State Government but, the said expression must be understood to be confined to an instrumentality having the trappings and character of a government company or corporation owned or controlled by the State Government and not outside of such instrumentality. [para 126 and 128] [781-E-H; 782-A-D-E]

Indian Metals and Ferro Alloys Ltd. v. *Union of India & Ors* **1990 (2) Suppl. SCR 27 = 1992 (1) Suppl. SCC 91- relied on**

3.2. The approval by the Central Government contemplated in s.17A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. It may be express or implied. In a case such as the present one where the Central Government has relied upon 2006 Notification while rejecting appellants' application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by the State Government in 2006 Notification otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in 2006 Notification.Further, the 2006 Notification has not been given retrospective operation; it is prospective. Mere reference to 1962 and 1969 Notifications in the 2006 Notification does not make it retrospective. [para 129-130] [783-A-C, E-F]

4.1. The doctrine of promissory estoppel is firmly established and is well accepted in India. The following principles must guide a court where an issue of applicability of promissory estoppel arises:

(i) Where one party has by his words or conduct made to the other clear and unequivocal promise which is intended to create legal

relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

(ii) The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

(iii) The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.

(iv) For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a *sine qua non* for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

(v) In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

(vi) It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

(vii) The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation. [para 132 and 146] [784-E; 801-F-H; 802-A-H; 803-A-E]

M/s Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P. & Ors. **1979 (2) SCR 641 = 1979 (2) SCC 409;** *Union of India and Others* v. *Godfrey Philips India Limited* **1985 (3) Suppl. SCR 123 = 1985 (4) SCC 369; and** *Delhi Cloth and General Mills Limited v. Union of India* **1988 (1) SCR 383 = 1988 (1) SCC 86;** *Amrit Vanaspati Co. Ltd. vs. State of Punjab* **1992 (2) SCR 13 = 1992 (2) SCC 411;** *State of Orissa and Ors.* v. *Mangalam Timber Products Limited* **2003 Suppl. SCR 476 = 2004 (1) SCC 139;** *State of Punjab* v. *Nestle India Ltd. and Another* **2004 (2) Suppl. SCR = 2004 (6) SCC 465;** *Union of India* v. *Indo-Afghan Agencies* **[1968] 2 SCR 366;** *Collector of Bombay* v. *Municipal Corporation of the City of Bombay* **(1952) SCR 43,** *Century Spinning and Manufacturing Co. Ltd.* v. *Ulhasnagar Municipal Council* **1970 (2) SCR 854 = 1970 (1) SCC 582,** *M. Ramanatha Pillai v. State of Kerala* **(1974) 1 SCR 515,** *Assistant Custodian* v. *Brij Kishore Agarwala* **1975 (2) SCR 359 = 1975 (1) SCC 21,** *State of Kerala* v. *Gwalior Rayon Silk Manufacturing Co. Ltd.* **1974 (1) SCR 671 = 1973 (2) SCC 713 ,** *Excise Commissioner, U.P., Allahabad* v. *Ram Kumar* **1976 Suppl. SCR 535 = 1976 (3) SCC 540,** *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd.* v. *Sipahi Singh* **1978 (1) SCR 375 = 1977 (4) SCC 145 and** *Radhakrishna Agarwal* v. *State of Bihar* **1977 (3) SCR 249 = 1977 (3) SCC 457;** *Kasinka Trading & Anr. v. Union of India and Anr.* **1994 (4) Suppl. SCR 448 = 1995 (1) SCC 274;** *Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.* **(2005) 1 SCC 625 - referred to**

Central London Property Trust Ltd. v. *High Trees House Ltd.* **(1956) 1 All ER 256;** *Jorden* v. *Money* **(1854) 5 HLC 185;** *Hughes* v. *Metropolitan Railway Company* **(1877) 2 AC 439,** *Birmingham and District Land Co.*, v. *London and North Western Rail Co.* **(1889) 40 Ch D 268;** *Durham Fancy Goods Ltd.* v. *Michael Jackson (Fancy Goods) Ltd.* **(1968) 2 All ER 987,** *Evenden* v. *Guildford City Association Football Club Ltd.* **(1975) 3 All ER 269 and** *Crabb v. Arun District Council* **(1975)**

3 All ER 865; *Allengheny College* v. *National Chautauque County Bank* **57 ALR 980 and** *Orennan* v. *Star Paving Company* **(1958) 31 Cal 2d 409– referred to**

4.2. The following principles in relation to the doctrine of legitimate expectation are well established:

(i) The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

(ii) The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

(iii) Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

(iv) The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation should be justifiable, legitimate and protectable.

(v) The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. [para 153] [809-C-H; 810-A]

M.P. Oil Extraction and Another v. State of M.P. and Ors. **1997 (1) Suppl. SCR 671 = (1997) 7 SCC 592;** *J.P. Bansal v. State of Rajasthan and Anr.* **(2003) 5 SCC 134;** *Union of India and Others* v. *Hindustan Development Corporation and Others* **1993 (3) SCR 128 = (1993) 3 SCC 499;** *P.T.R. Exports (Madras) Pvt. Ltd. & Ors. v. Union of India & Ors.* **1996 (2) Suppl. SCR 662 = (1996) 5 SCC 268 - referred to.**

4.3. The State Government had agreed to grant mineral concession as per existing Act and Rules. As a matter of fact, when the MOU was entered into, the State Government was not even aware about the reservation of the subject mining area for exploitation in the public sector. It was on November 17, 2004 that the District Mining Officer informed the Secretary, Department of Mines and Geology, Government of Jharkhand that the subject area was reserved for public sector under 1962 and 1969 Notifications issued by the erstwhile State of Bihar. In view of the fact that the subject mining area had been reserved for exploitation in pubic sector under 1962 and 1969 Notifications, the stipulation in the MOU that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company and the commitment to grant mineral concession cannot be enforced. For one, the stipulation in the MOU is not unconditional. The commitment is dependent on availability and as per existing law. Two, if the State Government is asked to do what it represented to do under the MOU then that would amount to asking the State Government to do something in breach of these two Notifications which continue to hold the field. [para 159] [812-E-G; 813-A-D]

4.4. The doctrine of promissory estoppel is not

attracted in the facts, particularly, when promise was made – assuming that some of the clauses in the MOU amount to promise – in a mistaken belief and in ignorance of the position that the subject land was not available for iron ore mining in the private sector. The State Government cannot be compelled to carry out what it cannot do in the existing state of affairs in view of 1962 and 1969 Notifications. The State Government cannot be held to be bound by its commitments or assurances or representations made in the MOU because by enforcement of such commitments or assurances or representations, the object sought to be achieved by reservation of the subject area is likely to be defeated and thereby affecting the public interest. The overriding public interest also persuades this Court in not invoking the doctrines of promissory estoppel and legitimate expectation. Thus, none of the appellants is entitled to any relief based on these doctrines. [para 159] [813-D-G]

4.5. As a matter of fact, on coming to know of 1962 and 1969 Notifications, the State Government withdrew the proposals which it made to the appellants and reiterated the reservation by its Notification dated October 27, 2006 expressly "in public interest and in the larger interest of the State". The act of the State Government in withdrawing the recommendations made by it to the Central Government in the factual and legal backdrop cannot be said to be bad in law on the touchstone of doctrine of promissory estoppel as well as legitimate expectation. The act of the State Government is neither unfair nor arbitrary nor does it suffer from the principles of natural justice. [para 160-161] [813-H; 814-A-C]

5.1. As regards, the doctrine of desuetude and its applicability, the essentials of doctrine of desuetude may be summarized as follows:

I. The doctrine of desuetude denotes principle of quasi repeal but this doctrine is ordinarily seen with disfavour.

II. Although doctrine of desuetude has been made applicable in India on few occasions but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for very considerable period and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of anyone of them would not attract the doctrine of desuetude. [para 167] [816-D-G]

State of Maharashtra v. *Narayan Shamrao Puranik & Ors.* **1983 (1) SCR 655 = (1982) 3 SCC 519;** *Cantonment Board, MHOW and Anr. v. M.P. State Road Transport Corporation* **1997 (3) SCR 813 = (1997) 9 SCC 450;** *Municipal Corporation for City of Pune vs. Bharat Forge Co. Ltd.* **1995 (2) SCR 716 = 1995 (3) SCC 434 – referred to**

R. v. London County Council LR **(1931) 2 KB 215 (CA);** *Brown* v. *Magistrate of Edinburgh* **1931 SLT (Scots Law Times Reports) 456*;* and** *Buckoke* v. *Greater London Council* **(1970) 2 All ER 193 – referred to.**

Francis Bennion's Statutory Interpretation; Craies Statute Law ***(7th Edn.) and*** *" Repeal and Desuetude of Statutes" by Aubrey L. Diamond;* **referred to**

5.2. Insofar as 1962 and 1969 Notifications are concerned, the doctrine of desuetude is not attracted for more than one reason. In the first place, the Notifications are of 1962 and 1969 and non-implementation of such Notifications for 30-35 years is not that long a period which may satisfy the first requirement of the doctrine of desuetude. Moreover, State of Jharkhand came into

existence on November 15, 2000 and it can hardly be said that 1962 and 1969 Notifications remained neglected by the State Government for a very considerable period. As a matter of fact, in 2006, the State Government issued a Notification mentioning therein about the reservation made by 1962 and 1969 Notifications. Secondly, as a matter of fact, except stray grant of mining lease for a very small portion of the reserved area to one or two parties there is nothing to suggest much less establish the contrary usage or contrary practice that the reservation made in the two Notifications has been given a complete go by. [para 168] [817-B-D, F-G]

5.4. It can also not be said that 1962 and 1969 Notifications had lapsed as the State Government never adopted them. In the light of s.85 of the Bihar Reorganisation Act read with ss. 84 and 86 thereof, position that emerges is that the existing law shall have effect until it is altered, repealed and/or amended. Since the new State of Jharkhand had not altered, repealed and/ or amended 1962 and 1969 Notifications issued by the erstwhile State of Bihar, it cannot be said that 1962 and 1969 Notifications had lapsed. Moreover, in 2006 Notification, 1962 and 1969 Notifications and their effect have been mentioned and that also shows that 1962 and 1969 Notifications continued to operate. [para 131] [783-G; 784-A-C]

I.T.C. & Ors. v. State of Karnataka & Ors. **1985 Suppl. SCR 145 = 1985 Suppl. SCC 476;** *Maya Mathew* v. *State of Kerala and Ors.* **2010 (3) SCR 16 = 2010 (4) SCC 498;** *Pratik Sarkar, M.B. Suresh and Jitendra Laxman Thorve v. State of Jharkhand* **2008 (56) 1 BLJR 660;** *Lord Krishna Textile Mills* v. *Its Workmen* **1961 SCR 204 = 1961 AIR 860;** *Life Insurance Corporation of India* v. *Escorts Limited and others* **1985 (3) Suppl. SCR 909 = 1986 (1) SCC 264; and** *High Court of Judicature for Rajasthan* v. *P.P. Singh and Another* **2003 (1) SCR 593 = 2003 (4) SCC 239;** *Nagarjuna*

Construction Company Ltd. v. Government of Andhra Pradesh & Ors. **2008 (14) SCR 859 = (2008) 16 SCC 276;** *Jayalakshmi Coelho v. Oswald Joseph Coelho* **2001 (2) SCR 207 = (2001) 4 SCC 181*; and*** *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi, & Ors.,* **(1978) 1 SCC 405;** *Nazir Ahmad* v. King-*Emperor* **AIR 1936 PC 253; and** *Sir Kameshwar Singh of Darbhanga and Ors.* **1952 SCR 889; – cited.**

Per Gokhale, J

1.1. Section 3 of the Bihar Land Reforms Act, 1950 provides for issuance of notification of vesting the estates and tenures in the State. Section 4 provides for consequences of the vesting, namely, that they shall vest absolutely in the State free from all encumbrances. Ownership denotes a complex of rights. The right of the State of Jharkhand to deal with the mines and minerals within its territory including reserving the same for Public Sector Undertakings, or to direct avoidance of overlapping while granting leases of mines, obviously flows from its ownership of those mines and minerals. [para 30 and 31] [849-B; 850-C-D; 851-A-B]

State of Bihar vs. Kameshwar Singh **1952 SCR 1056= AIR 1952 SC 252, referred to.**

Salmond on Jurisprudence **(Twelfth Edn. 246) – referred to.**

1.2. Entry 54 of List I states that regulation of Mines and Minerals Development is within the power of the Union Government to the extent a declaration is made by Parliament in that behalf, and such a declaration has been made in s. 2 of the MMDR Act. [para 32(i)] [851-C]

Ishwari Khetan Sugar Mills (P) Limited & Ors. v. *State of Uttar Pradesh and Others* **1980 (3) SCR 331 = 1980 (4)**

SCC 136; *Orissa Cement Ltd.* v. *State of Orissa & Others* **1991 (2) SCR 105 = 1991 (1) Suppl. SCC 430 - referred to**

1.3. Section 4 (1) of the MMDR Act lays down that prospecting or mining operations are to be done as per the provisions of the license or lease. Section 4(3) does not restrain the State Government from undertaking these operations in the area within the State though, when it comes to the minerals in the first schedule, it has to be done after prior consultation with the Central Government. The authority to grant the reconnaissance permit, prospecting license or mining lease on the conditions which are mentioned in s.5 of the Act is specifically retained with the State Government. However, with respect to the minerals specified in the First Schedule (which include iron-ore), it is added that previous approval of the Central Government is required. [para 33 and 34] [852-F-H; 854-D]

1.4. Section 10 of the Act deals with the procedure for obtaining the necessary licences. It makes it very clear that the application is to be made to the State Government, and it is the right of the State Government either to grant or refuse to grant the permit, licence or lease. Again, it is the right of the State Government to give preferences in the matters of granting lease, though this right is regulated by the provisions of s. 11 of the Act. Thus, although the Central Government is given the authority to approve the applications with respect to the specified minerals, that does not take away the ownership and control of the State Government over the mines and minerals within its territory. [para 35-36] [855-G-H; 856-D-E; 857-E]

1.5. Section 17 (1) gives the power to the Central Government to undertake prospecting and mining operations in certain lands. However, such operations have also to be done only after consultation with the State

Government as stated in sub-s. (2) thereof. Besides, sub-s. (3) requires the Central Government also to pay the reconnaissance permit fee or prospecting fee, royalty, surface rent or dead rent as the case may be. Section 17A gives the power to the Central Government to reserve any area not held under any prospecting licence or mining lease with a view to conserving any minerals. However that power is also to be exercised in consultation with the State Government. Similarly, under sub-s.(2) of s.17A, the State Government may also reserve any such area, though with the approval of the Central Government. Thus, these sections and the duty cast on the Central Government u/s 18 do not affect the ownership of the State Government over the mines and minerals within its territory, or to deal with them as provided in the statute. [para 37] [857-H; 858-A-D]

2.1. The provisions of the MMDR Act contain certain regulations. The provisions of the Act do not in any way take away or curtail the right of the State Government to reserve the area of mines in public interest, which right flows from vesting of the mines in the State Government. It is inherent in its ownership of the mines. [para 38] [858-D-F]

2.2. The Central Government does have the power to issue a direction as contained in the letter dated 6.3.2006. As far as the notification of 27.10.2006 is concerned, the same is also clearly traceable to s.17A (2) of the Act. This sub-section requires the approval of the Central Government for reserving any new area which is not already held through a Government Company or Corporation, and where the proposal is to do so. The notification of 27.10.2006 refers to the previous notifications of 1962 and 1969 whereunder the mining areas in the subject area were already reserved, and reiterates the decision of the State Government that the

minerals which were already reserved in the area under the two notifications will continue to be utilised for exploitation by public sector undertakings or joint venture projects of the State Government. Therefore, the notification dated 27.10.2006 did not require the approval of the Central Government. [para 38] [858-G; 859-C-E]

2.3. As regards the letter dated 13.9.2005, it is seen that the State Government states therein that nine out of the ten proposals overlap the areas meant for public undertakings and two other companies and, therefore, the proposals were called back. The power to take such a decision rests in the State Government in view of its ownership of the mines, though there may not be a reference to the source of power. Absence of reference to any particular section or rule which contains the source of power will not invalidate the decision of the State Government, since there is no requirement to state the source of power. [para 39] [859-F-G]

Dr. Ram Manohar Lohia Vs. State of Bihar **1966 SCR 709 =AIR 1966 SC 740 – relied on**

2.4. The notification of 1969 is clearly protected under r.59 as amended on 9.7.1963, in as much as the rule clearly states that the State Government can refuse to grant a mining lease, should the land be reserved for any purpose. [para 43(i)] [864-D-E]

2.5. As far as the notification of 1962 is concerned, it cannot be said that because the power to reserve the land 'for any purpose' was specifically provided thereunder from 9.7.1963, such power did not exist in rr. 58 and 59 as they stood prior thereto. The provisions of the Act clearly show that the power to grant the mining leases is specifically retained with the State Government even with respect to the major minerals, though with the approval of the Central Government. The power to effect

such reservations for public undertakings, or for any purpose flows from the ownership of the mines and minerals which vests with the State Government. The amendment of r. 59 in 1963 made it clear that the State can reserve land 'for any purpose', and the amendment of rr.58 and 59 in 1980 clarified that the State can reserve it for a public corporation or a Government company. These amendments have been effected only to make explicit what was implicit, and they can not be read to nullify the powers which the State Government otherwise had under the statute. [para 43-44] [864-E; 865-D-H; 866-A]

Janak Lal v. *State of Maharashtra and Others* **1989 (3) SCR 830 = 1989 (4) SCC 121 – held inapplicable**

Indian Metals and Ferro Alloys Ltd. v. *Union of India & Ors* **1990 (2) Suppl. SCR 27 = 1992 (1) Suppl. SCC 91 – held inapplicable**

2.6. It cannot be said that in view of s.15, the State Government's power is only to regulate the minor minerals. The provisions from ss.4 to 17A clearly show the power of the State Government either to grant or not to grant the mining leases, prospecting licenses and reconnaissance permits and to regulate their operations even with respect to the major minerals specified in the First Schedule to the act though with the previous approval of the Central Government. This would include the power to effect reservations of mining areas for the public sector. [para 46] [866-G; 867-A-B]

Bharat Coking Coal Ltd. v. *State of Bihar & Ors.* **1990 (3) SCR 744 = 1990 (4) SCC 557– held inapplicable**

2.7. The power of the State flows from its ownership of the mines, and it is not in any way taken away by the law made by Parliament viz. the MMDR Act or the MC

Rules. Therefore, it cannot be said that because a regulatory regime is created under the MMDR Act giving certain role to the Central Government, the power to effect reservations is taken away from the State Government. [para 46] [867-C-D]

D.K. Trivedi and Sons and Others v. *State of Gujarat and Others* **1986 SCR 479 =1986 Suppl. SCC 20** *Hukam Chand* etc. v. *Union of India & Ors* **1973 (1) SCR 896 = 1972 (2) SCC 601– distinguished**

2.8. The action of the State cannot as well be faulted for being unreasonable to be hit by Art. 19(1) (g) of the Constitution of India since all that the State has done is to follow the Statute as per its letter and its true spirit. [para 47] [867-G-H]

2.9. As regards the plea that once the State Government had recommended the proposal to the Central Government for grant of mineral concession it becomes *functus-officio* in view of the provision of r.63 A of the MC Rules, 1960, and it cannot withdraw the same, it is significant to note that, firstly, the impugned judgment shows that this plea was not canvassed before the High Court. Besides, in any case, 'recommendation' will mean a complete and valid recommendation after an application for grant of mining lease is made under r. 22 with all full particulars in accordance with law. In the instant case, the State Government found that its own proposal was a defective one, since it was over-lapping a reserved area. In such a case, the withdrawal thereof by the State Government cannot be said to be hit by r.63A. In any case, the Central Government subsequently rejected the proposal. [para 48] [868-A-D]

2.10. As regards the plea that the appellants could not resort to their remedy of revision under r.54 against the letter of State Government dated 13.9.2005, suffice it

to say that it is the appellants who chose to file their writ petition directly to the High Court to challenge the same (along with Central Government letter dated 6.3.2006) without exhausting that remedy. The Central Government cannot be faulted for the same. Incidentally, the petition nowhere states as to how the appellant came to know about these internal communications between the State and the Central Government. [para 49] [868-F-H]

2.11. From the judgments of the Constitution Benches of this Court in *Hingir-Rampur Coal Co., M.A. Tulloch & Co. and Baijnath Kadio*, **it is evident that if there is a declaration by Parliament, to the extent of that declaration, the regulation of mines and minerals development will be outside the scope of the State legislation as provided under Entry 54 of the Centre List. In the instant matter, the Court is not concerned with the conflict of any of the provisions under the MMDR Act, either with any State Legislation or with any Executive Order under a State Legislation issued by the State Government. As regards the case of the appellants that the State Government was not competent at all to issue the notifications of 1962 and 1969 reserving the mining areas for public undertaking, in** *Amritlal Nathubhai Shah's* **case, this Court has held in clear terms that the power of the State Government arose from its ownership of the minerals, and that it had the inherent right to deal with them. [para 50,53 and 55] [869-B; 871-D-F; 872-C]**

Amritlal Nathubhai Shah Vs. Union of India **1977 (1) SCR 372 = 1976 (4) SCC 108 – relied on**

Hingir-Rampur Coal Co. Ltd. & Ors. v. *State of Orissa & Ors.* **1961 SCR 537 = AIR 1961 SC 459*;*** *State of Orissa & Anr.* v. *M/s M.A. Tulloch & Co.* **1964 SCR 461 AIR 1964 SC 1284*;*** *Baijnath Kadio* v. *State of Bihar and Others* **1970 (2) SCR 100 = 1969 (3) SCC 838 – referred to.**

2.12. The judgment in *Amritlal* **cannot be said to be stating anything contrary to the propositions in** *Hingir-Rampur Coal Co., M.A. Tulloch & Co.* and *Baijnath Kadio*, **but is a binding precedent. The notifications impugned by the appellants in the instant group of appeals were fully protected under the provisions of MMDR Act, and also as explained in** *Amritlal.* **[para 59] [875-C]**

3.1. It cannot be said that the two notifications suffer on account of desuetude. The law requires that there must be a considerable period of neglect, and it is necessary to show that there is a contrary practice of a considerable time. The appellants have not been able to show anything to that effect. The authorities of the State of Jharkhand have acted the moment the notifications were brought to their notice, and they have acted in accordance therewith. This certainly cannot amount to desuetude. [para 60] [875-D-F]

3.2. For invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case, it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification. What the appellants are seeking is in a way some kind of a specific performance when there is no concluded contract between the parties. An MOU is not a contract, and not in any case within the meaning of Art. 299 of the Constitution. Barring the appellant in C. A. No 3286 of 2009, other appellants do not appear to have taken further steps. In any case, in the absence of any promise, the appellants cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. [para 61-62] [875-F-H; 876-A-B]

3.3. The doctrine of legitimate expectation can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest. As has been reiterated by this Court in *Sandur Manganese* 'it is a well settled principle that equity stands excluded when a matter is governed by statute'. [para 62] [876-C-D]

Sandur Manganese & Iron Ores Ltd. vs. State of Karnataka **2010 (11) SCR 240 = 2010 (13) SCC 1 - relied on**

4.1. Mines and minerals are a part of the wealth of a nation. They constitute the material resources of the community. Art. 39(b) of the Directive Principles mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good. Article 39(c) mandates that the State should see to it that operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. The public interest is very much writ large in the provisions of MMDR Act and in the declaration u/s 2 thereof. The ownership of the mines vests in the State of Jharkhand in view of the declaration under the provisions of Bihar Land Reforms Act, 1950 which Act is protected by placing it in the Ninth Schedule. [para 66] [878-G-H; 879-A-B]

State of Tamil Nadu Vs. M/s Hind Stone **[1981] 2 SCR 742 =AIR 1981 SC 711; and** *Waman Rao Vs. Union of India* **1981 (2) SCR 1 = 1981 (2) SCC 362– relied on**

4.2. There is no error in the letter of withdrawal dated 13.9.2005 issued by the State of Jharkhand, and the letter of rejection dated 6.3.2006 issued by the Union of India for the reasons stated therein. The State Government

was fully justified in declining the grant of leases to the private sector operators, and in reserving the areas for the public sector undertakings on the basis of notifications of 1962, 1969 and 2006. All that the State Government has done is to act in furtherance of the policy of the statute which cannot be faulted. [para 67] [879-F-G]

Air India Vs. Union of India **1995 (2) Suppl. SCR 175=1995 (4) SCC 734;** *M/s Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P. & Ors.* **1979 (2) SCR 641 = 1979 (2) SCC 409** *State of Punjab* v. *Nestle India Ltd. and Another* **2004 (2) Suppl. SCR 135 = 2004 (6) SCC 465;** *State of Maharashtra vs. Narayan Shamrao Puranik* **1983 (1) SCR 655 =1982 (3) SCC 519;** *Municipal Corporation for City of Pune & Ors.* v. *Bharat Forge Co. Ltd. & Ors.* **1995 (2) SCR 716 = 1995 (3) SCC 434;** *Cantonment Board Mhow vs. M.P. State Road Transport Corpn.* **1997 (3) SCR 813 =1997 (9) SCC 450;** *Amrit Banaspati Ltd. and Another* v. *State of Punjab and Another* **1992 (2) SCR 13 = 1992 (2) SCC 411;** *M.P. Mathur and Others* v. *DTC and Others* **2006 (9) Suppl. SCR 519 = 2006 (13) SCC 706;** *Dharambir Singh vs. Union of India* **1996 (6) Suppl. SCR 566 = 1996 (6) SCC 702;** *M.P. Ram Mohan Raja vs. State of Tamil Nadu* **2007 (5) SCR 576 = 2007 (9) SfC 78;** *State of Kerala v. B. Six Holiday Resorts (P) Ltd.* **2010 (3) SCR 1 = 2010 (5) SCC 186 – cited.**

Case Law Reference:

Per R. M. Lodha,J.

1961 SCR 537	**referred to**	**para 21**
1964 SCR 461	**referred to**	**para 21**
1970 (2) SCR 100	**referred to**	**para 21**
1977 (1) SCR 372	**relied on**	**para 21**

1989 (1) Suppl. SCR 692	**referred to**	**para 21**
1991 (2) SCR 105	**referred to**	**para 21**
2010 (3) SCR 16	**cited**	**para 21**
2008 (56) 1 BLJR 660	**cited**	**para 21**
1990 (3) SCR 744	**referred to**	**para 23**
1989 (3) SCR 830	**referred to**	**para 26**
2010 (11) SCR 240	**referred to**	**para 28**
1986 SCR 479	**referred to**	**para 30**
1981 (2) SCR 742	**relied on**	**para 30**
1990 (2) Suppl. SCR 27	**relied on**	**para 30**
1973 (1) SCR 896	**referred to**	**para 31**
1952 SCR 889	**cited**	**para 33**
2001 (10) SCC 476	**referred to**	**para 33**
1961 SCR 204	**cited**	**para 35**
1985 (3) Suppl. SCR 909	**cited**	**para 35**
1995 (2) SCR 716	**referred to**	**para 35**
2003 (1) SCR 593	**cited**	**para 35**
1976 (3) SCR 688	**relied on**	**para 36**
1980 (3) SCR 331	**relied on**	**para 36**
1979 (2) SCR 641	**referred to**	**para 37**
1992 (2) SCR 13	**referred to**	**para 37**
2004 (2) Suppl. SCR 135	**referred to**	**para 37**
2006 (9) Suppl. SCR 519	**referred to**	**para 37**
1964 SCR 666	**referred to**	**para 94**

1979 (3) SCR 254	referred to	para 94
1985 Suppl. SCR 145	cited	para 94
1982 (2) SCR 1	relied on	para 94
1996 (6) Suppl. SCR 566	referred to	para 96
2007 (5) SCR 576	referred to	para 98
1951 SCR 228	referred to	para 123
(1905) AC 369	referred to	para 123
(1894) 1 QB 725, p. 737	referred to	para 123
(1956) 1 All ER 256	referred to	para 131
(1854) 5 HLC 185	referred to	para 131
(1877) 2 AC 439	referred to	para 131
(1889) 40 Ch D 268	referred to	para 131
(1968) 2 All ER 987	referred to	para 132
(1975) 3 All ER 269	referred to	para 132
(1975) 3 All ER 865	referred to	para 132
57 ALR 980	referred to	para 135
(1958) 31 Cal 2d 409	referred to	para 135
(1968) 2 SCR 366	referred to	para 136
(1952) SCR 43	referred to	para 136
1970 (2) SCR 854	referred to	para 136
(1974) 1 SCR 515	referred to	para 136
1975 (2) SCR 359	referred to	para 136
1974 (1) SCR 671	referred to	para 136
1976 Suppl. SCR 535	referred to	para 136

1978 (1) SCR 375	referred to	para 136
1977 (3) SCR 249	referred to	para 137
1985 (3) Suppl. SCR 123	referred to	para 138
1988 (1) SCR 383	relied on	para 139
1994 (4) Suppl. SCR 448	referred to	para 141
2003 Suppl. SCR 476	referred to	para 142
2004 (6) Suppl. SCR 264	referred to	para 144
1993 (3) SCR 128	referred to	para 148
1996 (2) Suppl. SCR 662	referred to	para 148
1997 (1) Suppl. SCR 671	referred to	para 150
2003 (2) SCR 933	referred to	para 151
1983 (1) SCR 655	referred to	para 163
(1931) 2 KB 215 (CA)	referred to	para 163
1931 SLT (Scots Law Times Reports)456	referred to	para 163
(1970) 2 All ER 193	referred to	para 163
1997 (3) SCR 813	referred to	para 166
AIR 1936 PC 253	referred to	para 172
2008 (14) SCR 859	cited	para 172
2001 (2) SCR 207	cited	para 173
1978 (2) SCR 272	referred to	para 174

<u>**As Per Gokhale, J**</u>

1961 SCR 537	**referred to**	**para 14**
1964 SCR 461	**referred to**	**para 14**
1970 (2) SCR 100	**referred to**	**para 14**
1977 (1) SCR 372	**relied on**	**para 14**
1989 (3) SCR 830	**held inapplicable**	**para 14**
1973 (1) SCR 896	**distinguished**	**para 16**
1990 (2) Suppl. SCR 27	**held inapplicable**	**para 16**
[1986] SCR 479	**distinguished**	**para 16**
1995 (2) Suppl. SCR 175	**cited**	**para 17**
1990 (3) SCR 744	**held inapplicable**	**para 18**
1979 (2) SCR 641	**cited**	**para 18**
2004 (2) Suppl. SCR 135	**cited**	**para 18**
1952 SCR 1056	**referred to**	**para 19**
1981 (2) SCR 1	**relied on**	**para 19**
1966 SCR 709	**relied on**	**para 22**
1983 (1) SCR 655	**cited**	**para 23**
1995 (2) SCR 716	**cited**	**para 23**
1997 (3) SCR 813	**cited**	**para 23**
1992 (2) SCR 13	**cited**	**para 24**
2006 (9) Suppl. SCR 519	**cited**	**para 24**
2010 (11) SCR 240	**relied on**	**para 24**
1981 (2) SCR 742	**relied on**	**para 25**
1996 (6) Suppl. SCR 566	**cited**	**para 25**
2007 (5) SCR 576	**cited**	**para 25**

2010 (3) SCR 1	**cited**	**para 25**
1980 (3) SCR 331	**referred to**	**para 32**
1991 (2) SCR 105	**referred to**	**para 32**
[1985] 2 SCR 175		

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3285 of 2009 etc.

From the Judgment & Order dated 04.04.2007 of the High Court of Jharkhand at Ranchi in Writ Petition (Civil) No. 4151 of 2006.

WITH

C.A. Nos. 3286, 3287, 3288, 3289 & 3290 of 2009.

Con. Pet. (C) No. 14 of 2009 in C.A. No. 3287 of 2009.

Dr. Abhishek M. Singhvi, Dr. Rajeev Dhawan, Dhruv Mehta, Ajit Kr. Sinha, P.S. Narasimha, T.S. Doabia, Ashok Bhan, J.K. Das, Krishnan Venugopal, Sanjiv Sen, Gaurav Goel, Sunil Mittal, Pulkit Sharma, E.C. Agrawala, Omar Ahmad, Prashant Mehta, Sunita Bankoti (for Suresh A. Shroff & Co.), Jaya Bharukha, Guru Partap, (for Devashish Bharukha), Sanjeev K. Kapoor, Zafar Inayat, Gaurav Juneja, Yogesh V. Kotemath, Rohini Misra, Rahul Chandra (for Khaitan & Co.), K.B. Rohtagi, Mahesh Kasana, Aparana Rohatgi Jain, B. Vijayalakshmi Menon, Rohit Choudhary, Preeti Khiwani, Sri Ram Krishnan, Garvesh Kabra, Gaurav Pratap (for Devashish Bharuka), Ratan Kumar Choudhary, Brahmajeet Mishra, N.N. Singh, S. Chandrashekhar, Ashwarya Sinha, Sunil Kumar Jain, Aneesh Mittal, Sachin Sharma, Sridhar Potaraju, Gaichang Ganmei, Sriram Parakkat, D. Siri Rao, Annapurna, Sandeep Grover, Siddhartha (for Luthra & Luthra), Madhurima Tatia, Sadhana Sandhu, Sunita Sharma, Gargi Khanna, S.S. Rawat (for D.S. Mahra), Avijeet Bhujabal, P.P. Nayak (for Paramanand Gaur),

S.L. Aneja, Subramonium Prasad, Mumtaz Bhalla, Arijit Mazumdar, Ajay Aggarwal, Rajan Narain, Partha Sil, Anil K. Jha, S.K. Divakar, Chhaya Kumari for the appearing parties.

The Judgments & order of the Court was delivered by

R.M. LODHA, J.

Introduction

1. This group of six appeals occupied considerable judicial time. These matters were heard on ten days between November 2, 2011 and November 29, 2011. Although the facts differ from one another in some respects but since fundamental issues appeared to be common and all these matters arise from a common judgment dated April 4, 2007 passed by the Division Bench of the Jharkhand High Court at Ranchi, we have heard all these matters together which are being disposed of by this common judgment.

Prayers

2. The prayers in the writ petitions filed by the appellants before the High Court also differ. However, principally the reliefs prayed for by the appellants in their writ petitions were for quashing (i) the decision of the Department of Mines and Geology, Government of Jharkhand contained in the letter dated September 13, 2005 whereby the State Government sought to withdraw the recommendation for grant of mining lease made in favour of the appellants in the subject iron ore bearing areas in Mauza Ghatkuri, West Singhbhum District, Jharkhand (ii) the order of the Ministry of Mines, Government of India whereunder the said Ministry returned the recommendation made by Government of Jharkhand in favour of each of the appellants (iii) for declaring the Notifications dated December 21, 1962 and February 28, 1969 issued by the Government of Bihar and the Notification dated October 27, 2006 issued by the Government of Jharkhand null and void and

(iv) directing the respondents to proceed under Rule 59(2) of the Mineral Concession Rules, 1960 (for short, '1960 Rules') for grant of mining lease to each of the appellants in the iron ore bearing areas in Ghatkuri as applied.

Bihar Land Reforms Act

3. Bihar Land Reforms Act, 1950 (for short, '1950 Bihar Act') came to be enacted by the Bihar Legislature to provide for the transference to the State of the interest of proprietors and tenure holders in land of the mortgagees and lessees of such interest including interest in mines and minerals and other matters connected therewith. It came into force on September 25, 1950. Chapter II of the 1950 Bihar Act deals with vesting of an estate or tenure in the State and its consequences. The State Government has been empowered under Section 3 to declare that the estates or tenures of a proprietor or tenure holder, as may be specified in the notification/s from time to time, to become vested in the State. Section 4 provides for consequences of vesting of an estate or tenure in the State. Section 4 has undergone amendments on few occasions. To the extent it is relevant, Section 4 of the 1950 Bihar Act reads as follows :

> "**4. Consequences of the vesting of an estate or tenure in the State.**-Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any non-compliance or irregular compliance of the provisions………….on the publication of the notification under sub-section (1), of section 3 or sub-section (1) or sub-section (2) of section 3A, the following consequences shall ensue and shall be deemed always to have ensued, namely;
>
> (a) Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure ……… as also

his interest in all sub soil including any rights in mines and minerals whether discovered or undiscovered or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate are tenure (other than the interests of raiyats or under - raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or other than the interests expressly saved by or under the provisions of this Act".

4. The brief facts relating to each of these appeals may be noticed now.

Factual features

Civil Appeal No. 3285 of 2009, Monnet Ispat and Energy Ltd. Vs.Union of India and Ors.

5. The appellant company, referred to as Monnet, is registered under the Companies Act, 1956. Monnet is engaged in the business of mining, production of steel, ferro-alloys and power. Monnet decided to set up an integrated steel plant in Hazaribagh District with a proposed investment of Rs. 1400 crores. A Memorandum of Understanding (MOU) was entered into between Monnet and the State Government on February 5, 2003. The main raw material for the integrated steel plant is iron ore. On January 29, 2004, Monnet made an application to State of Jharkhand, referred to as State Government, for mining lease of iron ore over an area of 3566.54 hectares in Mauza Ghatkuri for the purpose of the proposed steel plant.

5.1. It is the case of Monnet that after consideration of the application and following the necessary procedure contemplated under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the 1957 Act') and the 1960 Rules, the State Government in August, 2004 recommended Monnet's application to the Government of India

for grant of mining lease of iron ore over an area of 705 hectares in Mauza Ghatkuri under Section 5(1) and Section 11(5) of the 1957 Act. The recommendation was made after the State Government was satisfied that the said mining block was suitable for exploitation and met the requirement of Monnet. The recommendation was also made on priority basis as Monnet fulfilled the essential objectives of the industrial policy of the State with commitment for investment and growth of employment and social sector under its aegis.

5.2. The Ministry of Mines, Government of India, on receipt of the recommendation of the State Government, sought for certain clarifications from the State Government vide their communication dated September 6, 2004. The State Government is said to have responded to the said communication and clarified the position in their reply of November 17, 2004. The State Government reiterated the recommendation in favour of Monnet setting out the comparative merit of all such proposals.

5.3. On November 17, 2004, the District Mining Officer, Chaibasa informed the Secretary, Department of Mines and Geology, Government of Jharkhand that certain portions of Mauza Ghatkuri and the adjoining areas were reserved for public sector exploitation under the two Notifications issued by the Government of Bihar on December 21, 1962 and February 28, 1969. He further suggested that approval of the Central Government under Rule 59(2) of the 1960 Rules should be obtained by the State Government for grant of leases in this area to avoid complications.

5.4. The Central Government vide its letter dated June 15, 2005 informed that a joint meeting of officers of Ministry of Mines, Government of India and concerned officers of the State Government be held to clarify certain issues in connection with the Ghatkuri Reserve Forest.

5.5. On June 29, 2005, a joint meeting of the officials of

the Central Government and State Government on the issues relating to proposals for grant of mining leases in Ghatkuri was held wherein the Secretary of the State Government is stated to have requested the Central Government to hold on the processing of the pending applications.

5.6. On September 13, 2005, the State Government requested the Central Government to return the proposals of mining lease of nine out of ten applicants, including Monnet.

5.7. On September 14, 2005, a joint meeting of the officials of the State Government and the Central Government took place. In that meeting also the officials of the State Government informed the Central Government that it has decided to withdraw nine pending mining lease proposals, including that of Monnet.

5.8. Monnet has averred that compartment no. 5 which was recommended for allocation to it was not at all affected by reservation. Block No. D (500 acres) which is overlapping with compartment no. 5 (recommended in favour of Monnet) was earlier lease area of M/s. Rungta Sons Pvt. Ltd. (for short, 'Rungta'). The said lease was granted to Rungta for twenty years upto September 3, 1995. Monnet claims that application for renewal was not submitted by Rungta one year prior to expiry of their lease and their lease automatically expired on September 3, 1995. Moreover, only 102.25 hectares area has been overlapping with compartment no. 5 (out of the 705 hectares recommended by the State Government for Monnet). Monnet has thus, set up the case that the area recommended by the State Government for grant of mining lease to it was not under any previous reservation for any public sector undertaking.

5.9. On March 6, 2006, the Government of India passed an order accepting the request of the State Government dated September 13, 2005 for withdrawal of the mining proposals

made in favour of applicants, including Monnet.

<u>Civil Appeal No. 3286 of 2009, Adhunik Alloys & Power Ltd. Vs. Union of India and Ors.</u>

6. The appellant M/s. Adhunik Alloys & Power Limited, referred to as Adhunik, is a company registered under the provisions of the Companies Act, 1956. It carries on business of iron and steel. Adhu nik intended to set up 2.2 MTPA integrated steel plant at Kandra in the State of Jharkhand. The first phase of this integrated steel plant is said to have been completed and commissioned in June, 2005. The work for completion of phase-II has been going on. On September 1, 2003, Adhunik made an application to the State Government for grant of mining lease over an area of 8809.37 acres (3566.54 hectares) in Mauza Ghatkuri for iron ore for captive consumption of its proposed integrated steel plant at Kandra, Jharkhand.

6.1. On September 16, 2003, the Deputy Commissioner, Chaibasa forwarded Adhunik's application along with few others to the Director of Mines, Jharkhand.

6.2. As the applications were overlapping, the Director of Mines called Adhunik and other applicants for a meeting on December 26, 2003. The Director of Mines gave hearing to the applicants, including Adhunik.

6.3. On February 26, 2004, an MOU was entered into between the State Government and Adhunik in connection with an integrated steel plant at Village Kandra in the District of Seraikela - Kharswan setting out the details of the project; capacity per annum, project cost and implementation period.

6.4. On August 4, 2004, the State Government recommended Adhunik's case to the Central Government for grant of mining lease for iron ore for captive consumption over an area of 426.875 hectares. In its letter dated August 4, 2004 seeking prior approval of the Central Government for grant of

mining lease for iron ore in favour of Adhunik, the State Government gave various reasons justifying grant of mining lease to Adhunik.

6.5. Adhunik claims that substantial progress has been made in construction of its Rs. 790 crores integrated steel plant and the plant has been seriously affected due to shortage of iron ore.

Civil Appeal No. 3287 of 2009, Abhijeet Infrastructure Ltd. Vs. Union of India and Ors.

7. The appellant M/s. Abhijeet Infrastructure Limited, referred to as Abhijeet, was earlier known as Abhijeet Infrastructure Pvt. Limited. Abhijeet has been in the business of iron and steel for last many years. On November 21, 2003, Abhijeet submitted the application to the State Government for mining lease over an area of 1633.03 hectares in Mauza Ghatkuri for iron ore and manganese for captive consumption of its proposed Sponge Iron Plant and Ferro-Alloys Plant in Village Rewali, Block Katkamsandi, District Hazaribagh. On February 26, 2004, an MOU was entered into between Abhijeet and the State Government for setting up a Sponge Iron Plant and Ferro-Alloys Plant at suitable location in the State of Jharkhand.

7.1. On August 5, 2004, the State Government took a decision to grant a mining lease to Abhijeet for iron ore for captive consumption over an area of 429 hectares not overlapping with the area of any other applicant in Mauza Ghatkuri. The State Government sought prior approval of the Central Government vide its letter dated August 5, 2004 for grant of mining lease to Abhijeet.

7.2. Abhijeet has averred that based on firm and definite commitment of the State Government in the form of MOU dated February 26, 2004 it has taken all required steps including the steps for getting acquisition of land in village Kud, Rewali and

Damodih.

Civil Appeal No. 3288 of 2009, Ispat Industries Limited Vs. Union of India and Ors.

8. The appellant, Ispat Industries Limited, referred to as Ispat, is a company registered under the Companies Act, 1956. According to Ispat, it is one of the largest steel producers in the private sector and has got vast resources and technical experience. Ispat intended to set up an integrated steel plant in the State of Jharkhand and accordingly made an application to the State Government for grant of mining lease over an area of 725.32 hectares in Village Rajabeda in West Singhbhum District for iron ore.

8.1. The State Government took a decision on August 5, 2004 to grant a mining lease over an area of 470.06 hectares for captive consumption of iron ore in respect of the area not overlapping with the area of any other major mineral. The State Government on August 5, 2004 also wrote to the Central Government seeking their prior approval in the matter.

Civil Appeal No. 3289 of 2009, Jharkhand Ispat Private Limited Vs. Union of India and Ors.

9. Jharkhand Ispat Private Limited, to be referred as Jharkhand Ispat, is a registered company having their registered office in Ramgarh, District Hazaribagh, State of Jharkhand. Jharkhand Ispat runs a Sponge Iron and Steel Plant in Ramgarh.

9.1. Jharkhand Ispat applied to the State Government for grant of iron ore mining lease over an area of 950.50 hectares at Mauza Ghatkuri. It also entered into an MOU dated February 26, 2004 with the State Government for establishment of sponge iron and steel plant in the Hazaribagh District. As per para 4 of the MOU, State Government would assist Jharkhand Ispat in selecting the area for iron and other minerals as per requirement depending upon quality and quantity. The State

Government agreed to grant mineral concession as per existing law.

9.2. On August 4, 2004, the State Government prepared a report containing its decision and proposal in favour of Jharkhand Ispat for grant of mining lease over an area of 346.647 hectares at Mauza Ghatkuri and forwarded the same to the Ministry of Mines, Government of India.

Civil Appeal No. 3290 of 2009, Prakash Ispat Limited Vs. Union of India and Ors.

10. The appellant Prakash Ispat Limited, referred to as Prakash, is a company registered under the Companies Act, 1956. Prakash carries on business in steel and claims to have annual turnover of Rs.2200 crores. Prakash applied to the State Government for mining lease of iron ore over an area of 1000 hectares in Mauza Ghatkuri on January 20, 2004 for captive consumption of the proposed Steel Plant at Amadia Gaon in West Singhbhum District.

11. On March 26, 2004, the State Government entered into an MOU with Prakash for setting up Mini Blast Furnace etc., at the proposed investment of Rs. 71.40 crores. On August 4, 2004, the State Government took a decision to grant mining lease for iron ore to Prakash for captive consumption over an area of 294.06 hectares and recommended to the Central Government for their prior approval.

12. It may be mentioned here that the facts concerning various meetings between the officials of the State Government and Central Government; the communications exchanged between the two, including the communication of the State Government dated September 13, 2005; the communication of the District Mining Officer, Chaibasa dated November 17, 2004 to the Department of Mines and Geology, State of Jharkhand and the rejection of the proposal have not been repeated while narrating the facts of the appellants -Adhunik, Abhijeet, Ispat,

Jharkhand Ispat and Prakash as these facts have already been noted while narrating the facts in the matter of Monnet.

The main issue

13. The foremost point that arises for consideration is whether the Notifications dated December 21, 1962 (to be referred as 1962 Notification) and February 28, 1969 (to be referred as 1969 Notification) issued by the State of Bihar and the Notification dated October 27, 2006 (referred to as 2006 Notification) issued by the State of Jharkhand are legal and valid. It is a little complex point, because it involves threading one's way through statutory provisions contained in 1957 Act and 1960 Rules. I shall set them out to the extent these are relevant after noticing the arguments advanced on behalf of the parties.

14. Mr. Ranjit Kumar, learned senior counsel for Monnet , did initially raise the plea that 1962 and 1969 Notifications were never published in the official gazette but on production of gazette copies of these Notifications by learned senior counsel for the State of Jharkhand, the plea with regard to the non-publication of these Notifications was not carried further.

1962 Notification

15. The 1962 Notification issued by the erstwhile State of Bihar reads as under:

"NOTIFICATION

The 21st December, 1962

No. A/MM-40510/62-6209/M - It is hereby notified for the information of public that the following iron ore bearing areas in this State are reserved for exploitation of the mineral in the public sector:-

Name of the district - Shinghbhum

Description of the areas reserved.

1. Sasangda Main Block -

BOUNDARY

South - The southern boundary is the same as the northern boundary. It starts from the Bihar, Orissa boundary opposite the gorge of the southern tributary of Megnahatu nala and runs west-north-west along the gorge till the foot of the hill.

East - The boundary between the States of Bihar and Orissa.

East & South - East Bihar-Orissa boundary from 2680 upto a point 2-3/4 miles north-east of it, meeting the southern boundary of Sasangda Main Block.

North - The northern boundary is the same as the southern boundary of Sasangda Main Block and follows the gorge at just over one mile northwards of .2935.

5. Dirisumburu Block -

BOUNDARY

South and South-West Starting from the Churu Ikir Nala at about 5 furlongs east - north-east of Kiriburu Kolaiburu village (220 11'30" : 85 14'), in east-south-east direction for one mile.

South-East - From the above end towards north-east for 2-1/2 miles to reach a point ½ miles north west of Bahada village (22 11'30": 85 17'30").

North-East - From the above end north - westwards upto the gorge at coordinate location 20 13' : 85 18".

North-West - From the above location south-westwards along the fact of the hill Dirishumburu and the foot of the adjoining Hakatlataburu to meet the starting point of the Churu Ikir Nala east-north-east of Kolaiburu village.

6. Banalata Block -

BOUNDARY

South-East - A line running west-north-west-east-south-east passing through 2.20 feet contour at the south-western and of the Banlata ridge south-east - From 2 -1/2 furlongs east of 2187 north east wards upto ½ mile north-west of Pechahalu village (22 16' : 85 20') and from here north-north - east upto 3 furlongs east-south-east of 2567 Painsira Buru).

North - From the above and in west-north-west direction across the hill for five furlongs to reach the north-west slope of the hill.

West - From above end in general south-south-west directing along the flank of the hill to reach the south-west boundary at three furlongs north-west 2187.

By order of the Governor of Bihar

Sd/- (B.N. Sinha)
Secretary to Government"

1969 Notification

16. Then, on February 28, 1969 the following Notification was issued:

"GOVERNMENT OF BIHAR
DEPARTMENT OF MINES & GEOLOGY

NOTIFICATION

Patna, the 28th February, 1969
Phalgun, 1890 - S

No.B/M6-1019/68-1564/M

It is hereby notified for information of public that Iron Ore bearing areas of 416 acres (168.349 Hectares) situated in Ghatkuri Reserved Forest Block No. 10 in the district of Singhbhum are reserved for exploitation of mineral in the public sector. For full details in this regard District Mining Officer, Chaibasa should be contacted.

By order of the Governor of Bihar
Sd/- (C.P. Singh)
Dy. Secretary to Government"

2006 Notification

17. The State of Jharkhand issued a Notification on October 27, 2006 which reads as follows:

"DEPARTMENT OF MINES & GEOLOGY, RANCHI

NOTIFICATION

The 27th October, 2006

No. 3277 - It is hereby notified for the information of the general public that optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon, it has been decided by the State Govt. that the iron ore deposits at Ghatkuri would not be thrown open for grant of prospective licence, mining lease or otherwise for the private parties. The deposit was at all material times kept reserved vide gazette notification No. A/MM-40510/62-6209/M dated the 21st December, 1962 and No. B/M-6-1019/68-1564/M dated the 28th February, 1969 of the State of Bihar. The mineral reserved in the said area has now been decided to be utilized for exploitation by Public Sector undertaking or Joint Venture project of the State Govt. which will usher in maximum benefits to the State and which generate substantial amount of employment in the State.

The aforesaid notification is being issued in public interest and in the larger interest of the State.

The defining co-ordinates of the reserved area enclosed here with for reference.

By order of the Governor
S.K. Satapathy
Secretary to Government

Description of the area reserved in Ghatkuri is given below:-

District: Singhbhum

Main Block: Ghatukuri

Limiting co-ordinate points of the reserved area of Ghatkuri as per the notification dated 21st December 1962 and 28th February 1969 published in the Bihar Gazette are given below:

xxx xxx xxx

Sd/- Vijoy Kumar
Director I/c Geology Directorate"

Contentions

18. Learned senior counsel for the appellants highlighted

different aspects while setting up challenge to the 1962, 1969 and 2006 Notifications. Mr. Ranjit Kumar, learned senior counsel for Monnet focussed more on factual aspects peculiar to Monnet. I shall refer to the factual aspects highlighted by Mr. Ranjit Kumar in the later part of the judgment. While assailing validity of 1962, 1969 and 2006 Notifications, he referred to the provisions of 1957 Act and submitted that reservation was part of a regulatory regime. According to him, 'regulation of mines' means regulatory regime which has been taken over by the Central Government and that would include 'reservation'. He would submit that a proprietary right should not be mixed up with inherent right insofar as mining is concerned.

19. Mr. C.A. Sundaram, learned senior counsel for Ispat argued that the 2006 Notification was bad in law for (1) 1962 and 1969 Notifications were not valid and as such could not be relied upon to give sanctity to the 2006 Notification; (2) 2006 Notification attempted to reserve the area for exploitation by public sector undertaking or joint ventures when Section 17A of the 1957 Act only allows the State Government to reserve area for public sector undertakings and non-joint ventures; Section 17A does not envisage a private participation and (3) under Section 17A of the 1957 Act, the prior approval of the Central Government was needed before the State could reserve any area for public sector undertakings and no such prior approval was taken.

20. Mr. C.A. Sundaram would submit that 1962 and 1969 Notifications were invalid since Section 18 of the 1957 Act vests power of conservation and systematic development of minerals with Central Government; there was statutory prohibition on the State Government to make law with regard to conservation and development of minerals in India. Rule 59 as it stood in 1962 and 1969 envisaged a situation where reservation could be made only for a temporary purpose or for an emergency and it did not empower the State to reserve the area for public sector undertaking. Learned senior counsel submitted that power of

reservation by the State Government for public sector undertakings was introduced for the first time by way of amendment to Rule 58 of the 1960 Rules in 1980 and as such no power existed prior to 1980 for the State Government to reserve areas for public sector undertakings. Alternatively, he submitted that even if 1962 and 1969 Notifications were held to be validly issued with proper authority of law at that point of time, the fact that Rule 58 was omitted in 1988 without any saving clause necessarily meant that 1962 and 1969 Notifications were no longer valid and could not be relied upon. He argued that current power of reservation contained in Section 17A of the 1957 Act is consistent with the erstwhile Rules 58/59 since Section 17A expressly requires the prior approval of the Central Government before State Government issues any notification for reservation of mining area for public sector undertakings.

21. The decisions of this Court in *Hingir-Rampur Coal Co. Ltd. & Ors. v. State of Orissa & Ors.*[a]; *State of Orissa & Anr. v. M/s M.A. Tulloch & Co.*[b]; *Baijnath Kadio v. State of Bihar and Others*[c]; *Amritlal Nathubhai Shah and Ors. v. Union Government of India and Another*[d]; *India Cement Ltd. & Ors. v. State of Tamil Nadu and Others*[e]; *Orissa Cement Ltd. v. State of Orissa & Others*[f] and *Maya Mathew v. State of Kerala and Ors.*[g] were cited. Mr. C.A. Sundaram sought to distinguish *Amritlal Nathubhai Shahd*[d] and submitted that in any case Amritlal Nathubhai Shahd was not a good law.

22. Mr. L. Nageswara Rao and Dr. Abhishek Manu

a. AIR 1961 SC 459.

b. AIR 1964 SC 1284.

c. 1969 (3) SCC 838.

d. 1976 (4) SCC 108.

e. 1990 (1) SCC 12.

f. 1991 Suppl. (1) SCC 430.

g. 2010 (4) SCC 498.

Singhvi, learned senior counsel, appeared for Adhunik and argued that 1962 and 1969 Notifications were issued in contravention of law without the statutory prior approval of the Central Government under the 1957 Act. The 2006 Notification was only a reiteration of what was contained in the 1962 and 1969 Notifications. 2006 Notification is bad in law and ultra vires of Section 17A of the 1957 Act. It was submitted that the State Government never adopted the 1962 and 1969 Notifications and, therefore, these Notifications had lapsed even if passed with due authority of law. In this regard, the judgment in *Pratik Sarkar, M.B. Suresh and Jitendra Laxman Thorve v. State of Jharkhand*[h] was relied upon.

23. Mr. G.C. Bharuka, learned senior counsel appeared for Abhijeet and submitted that till July 1963, the State Government had no power to reserve any mineral bearing land for grant of prospecting licence or mining lease to any given class of persons, including the public sector undertakings. It was submitted that on declaration under Section 2 of the 1957 Act, the State Legislature was completely denuded of its power to legislate in respect of mines and minerals and consequently, the State Government had ceased to have any Executive power in respect of mines and minerals though it remained to be owner of the land and the minerals. In this regard, learned senior counsel referred to decisions of this Court in *M.A. Tulloch & Co.*[b]; *Baijnath Kadio*[c] and *Bharat Coking Coal Ltd. v. State of Bihar & Ors.*[i]. Mr. Bharuka also distinguished the decision of this Court in *Amritlal Nathubhai Shah*[d] and submitted that though there was no specific statutory provision of vesting power with the State Government for reservation, but in that case the Court inferred such power from Rule 59 of the 1960 Rules. Rule 59, as originally framed in 1960, permitted reservation only for "any purpose other than prospecting or mining for minerals". Vide Notification dated July 9, 1963, the words "other than prospecting or mining for minerals" were deleted and, therefore, on December 21, 1962 when the Notification was issued by the State of Bihar reserving the lands in dispute for exploitation by public sector, it had no power to do so. Learned senior counsel submitted that *Amritlal Nathubhai Shah*[d] dealt with situation post 1963 amendment in Rule 59 and not pre-amendment.

h. 2008 (56) 1 BLJR 660.

i. 1990 (4) SCC 557.

24. Learned senior counsel submitted that the "reservation of mineral bearing areas for exploitation by public sector" is covered under the declaration made by Parliament under Section 2 of the 1957 Act in view of List I, Entry 54 of Seventh Schedule to the Constitution of India. The topic relating to "reservation" is covered within the field of "regulating the grant of mining lease" and that would include the power to grant or not to grant mining lease to a particular person. The "reservation" would come within the scope of "regulating the grant of mining lease" for which the Central Government is given the power to make rules. The Central Government, as a delegate of the Parliament, can frame rules with respect to "regulating the grant of mining lease". By placing reliance upon *Baijnath Kadio*[c] and *Bharat Coking Coal*[i], it was submitted that whether the rules are made or not, the topic is covered by Parliamentary Legislation and to that extent the power of State Legislature ceased to exist. With reference to Rule 58, it was submitted that by amendment brought in 1960 Rules in 1980, the State Governments became competent to reserve areas for exploitation by Government or a Corporation established by any Central, State or Provincial Act or a government company within the meaning of Section 617 of the Companies Act. The Central Government could frame the above rule under its rule-making power in Section 13 of 1957 Act only because the topic of reservation was covered within the declaration under Section 2 of the 1957 Act and was well within the scope of "to the extent hereinafter provided".

25. In respect of validity of Notification dated October 27, 2006 issued by the State Government, it was submitted that

2006 Notification seeks to reserve the area for "joint venture" but that is not permissible under Section 17A of the 1957 Act. Section 17A(2) mandates that the area should be reserved "with the approval of the Central Government" and there was no approval granted to the 2006 Notification. Moreover, 2006 Notification by its own words, is nothing but merely an informatory Notification having no legal significance or consequence.

26. Dr. Rajiv Dhavan, learned senior counsel made his submissions on behalf of Jharkhand Ispat. He vehemently contended that the 1962 Notification was wholly illegal and invalid as it was totally contrary to Rule 59 of 1960 Rules as it then stood which specifically allowed reservation for any purpose other than prospecting or mining for minerals. In this connection, he relied upon a decision of this Court in *Janak Lal v. State of Maharashtra and Others*[j].

27. Learned senior counsel referred to changes that occurred in 1957 Act and 1960 Rules with effect from February 10, 1987. He submitted that by virtue of Section 17A(3) which was brought in 1987 the State Governments acquired power of reservation for specific areas with the approval of the Central Government. From April 13, 1988 under Rule 59(2) of the 1960 Rules, the Central Government could relax the provisions of sub-rule (1) in any special case. According to learned senior counsel, reservation under 1969 Notification was technically permissible because Rule 59 was amended in 1963 by removing 'no mining restriction' but reservations after 1980 and especially 1988 could be made only under a new statutory regime.

28. Dr. Rajeev Dhavan also based his argument on the doctrine of federalism and submitted that the State of Bihar had no legal power to reserve the area *de hors* the 1957 Act. He submitted that 1957 Act was wholly occupied field on the

j. 1989 (4) SCC 121

subject of mines and minerals and that ousts the state legislative and congruent executive power wholly and squarely. In support of his submissions, he referred to the decisions of this Court in *Hingir-Rampur Coal Co.*[a], *Baijnath Kadio*[c], *State of Assam and others v. Om Prakash Mehta and others*[k], *State of W.B. v. Kesoram Industries Ltd. and others*[l] and *Sandur Manganese and Iron Ores Limited v. State of Karnataka and Others*[m].

29. Dr. Rajeev Dhavan submitted that merely because State happens to be the owner of the land including mines, it does not give it power to mine or reserve outside the regime of 1957 Act and 1960 Rules. He submitted that *Amritlal Nathubhai Shah's case*[d] must be confined to its own facts. The decision in *Amritlal Nathubhai Shah*[d] was founded on the specific finding that the State's action was consistent with Rule 59; it does not test the proposition of a conflict between the State's power over land and the Union's take over of the field of mines and minerals. Moreover, learned senior counsel would submit that *Amritlal Nathubhai Shah*[d] failed to take note of earlier Constitution Bench decisions of this Court. Learned senior counsel also submitted that the decision of this Court in Kesoraml has no application as the said decision deals with the State's power to tax.

30. Mr. Dhruv Mehta, learned senior counsel for Prakash submitted that prior to November 16, 1980, there was no power with the State Governments to reserve any area for exploitation by the Government or a Corporation established by Central or State Act or a government company. It was only by way of amendment to Rule 58 on November 16, 1980 that for the first time the State Governments were conferred power to reserve any area for exploitation by the Government or a Corporation established by the Central, State or Provincial Act or a

k. 1973 (1) SCC 584.

l. 2004 (10) SCC 201.

m. 2010 (13) SCC 1.

government company. According to him, the question for consideration in the present context should be whether prior to 1980, the State had power either to 'prohibit mining' or to 'reserve mining for public sector undertaking'. In this regard, he referred to decisions of this Court in *Baijnath Kadio*[c], *D.K. Trivedi and Sons and Others v. State of Gujarat and Others*[n], *State of Tamil Nadu v. M/s. Hind Stone and Others*[o] and *Indian Metals and Ferro Alloys Ltd. v. Union of India & Ors*[p]. He submitted that in view of the above, 1962 Notification reserving iron ore area in the State of Bihar for exploitation of mineral in public sector was clearly beyond the power of the State. He submitted that the State did not have any inherent power to reserve any area for mining in view of the declaration made by Parliament under Section 2 of the 1957 Act and in any case Rule 59 of the 1960 Rules, as it originally stood, specifically excluded reservation with regard to prospecting or mining of mineral prior to June 9, 1963.

31. As regards 2006 Notification, Mr. Mehta submitted that the said Notification firstly, was not a fresh exercise of reservation as it refers to reservation already made by 1962 and 1969 Notifications. Secondly, even if it is assumed that 2006 Notification is a fresh order for reservation in exercise of the power under Section 17A(2) of the 1957 Act, yet the said Notification suffers from diverse infirmities, namely, (a) there is no approval by the Central Government and (b) being an exercise of subordinate legislation, it cannot be given retrospective effect. Reliance was placed by the learned senior counsel on *Hukam Chand etc. v. Union of India & Ors*[q].

Central Government's Stand

32. Mr. Ashok Bhan, learned senior counsel for the Union

n. 1986 (Suppl.) SCC 20.

o. 1981 (2) SCC 205.

p. 1992 Supp (1) SCC 91.

q. 1972 (2) SCC 601.

of India referred to Entry 54 of the Union List, Entry 23 of the State List, Article 246 of the Constitution, various Sections of 1957 Act and Rules of 1960 Rules and submitted that Central Government having taken power on to itself by enacting 1957 Act, the legislative field relating to 'minerals - regulation and development' is occupied and the Central Government was the sole regulator. Mr. Ashok Bhan submitted that under the scheme of law, the State Government was denuded of its power other than what flows from the 1957 Act. In matters of regulation of mines and development of minerals, according to Mr. Ashok Bhan, public interest is paramount.

Reply on behalf of the State Government

33. Mr. Ajit Kumar Sinha, learned senior counsel for the State of Jharkhand, in reply, strongly contested the contentions of learned senior counsel appearing for the appellants. He vehemently contended that the State Government had the inherent power to reserve any area for exploitation as the owner of the land and minerals vested in it. He submitted that the Bihar Legislature enacted 1950 Bihar Act which received the assent of the President and came into force on September 25, 1950. Section 4(a) thereof vested all pre-existing estates or tenures including rights in mines and minerals absolutely in the State free from all encumbrances. 1950 Bihar Act has been held to be constitutionally valid by a decision of this Court in *The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors.*[r]. In any event, Mr. Ajit Kumar Sinha, learned senior counsel submitted that 1950 Bihar Act has been put in the Ninth Schedule of the Constitution and was, therefore, beyond the pale of challenge. Moreover, the sovereign executive power of the State Government under Article 298 of the Constitution to carry on any trade or business and to acquire, hold and dispose of property for any purpose comprehends and includes the power to reserve land for exploitation of its minerals in the public sector. He heavily relied upon the decisions of this

r. 1952 SCR 889.

Court in *Amritlal Nathubhai Shah*[d], *Indian Metals* and *Ferro Alloys Ltd.*[p] and *Bhupatrai Maganlal Joshi and Others v. Union of India and another*[s].

34. Mr. Ajit Kumar Sinha, leaned senior counsel submitted that the source of power for issuance of 1962, 1969 and 2006 Notifications is clearly traceable to the relevant statutory provisions. Learned senior counsel would submit that source of 1962 and 1969 Notifications issued by the then State of Bihar was traceable to Rule 59 of 1960 Rules as it then stood followed by amendment in that rule on July 9, 1963, while 2006 Notification is traceable to Section 17A(2) of 1957 Act read with Rule 59(1)(e) as inserted with effect from April 13, 1988.

35. Mr. Ajit Kumar Sinha, learned senior counsel submitted that even otherwise there was no conflict or encroachment by the State of any occupied field. The State has neither been divested nor barred nor prohibited by 1957 Act or 1960 Rules. Instead, the unfettered power of reservation vested with the State alone under Rule 59 of 1960 Rules from 1962 to 1987 and thereafter under Section 17A(2). According to him, after 1987 there is a concurrent power of reservation both with State Governments as well as Central Government as provided in Section 17A of the 1957 Act and Rule 59(1)(e) of the 1960 Rules. He relied upon decisions of this Court in *Lord Krishna Textile Mills v. Its Workmen*[t], *Life Insurance Corporation of India v. Escorts Limited and others*[u], *Municipal Corporation for City of Pune & Ors. v. Bharat Forge Co. Ltd. & Ors.*[v] and *High Court of Judicature for Rajasthan v. P.P. Singh and Another*[w].

36. Mr. Ajit Kumar Sinha, learned senior counsel referred

s. 2001 (10) SCC 476.

t. AIR 1961 SC 860.

u. 1986 (1) SCC 264.

v. 1995 (3) SCC 434.

w. 2003 (4) SCC 239.

to the provisions of the 1957 Act, particularly Sections 2, 4(3), 4A, 10(1), 13(2)(e), 16(1)(b), 17(1), 17A(1)(A), 18A(6), 21(5), 28 and 30 to show that Parliament itself contemplated state legislation for vesting of lands containing mineral deposits in the State Government and Parliament did not intend to trench upon powers of State legislatures under Entry 18 of List II. He relied upon the decisions of this Court in *State of Haryana and Another v. Chanan Mal and Others*[x], *Ishwari Khetan Sugar Mills (P) Limited & Ors. v. State of Uttar Pradesh and Others*[y] and *Kesoram*[l]. He heavily relied upon the expression employed in Entry 54, 'to the extent to which such regulation and development under the control of Union is declared by Parliament by law' and the expression 'to the extent hereinafter provided' in Section 2 of 1957 Act and submitted that what follows from this is that only when there is a bar or a prohibition in the law declared by the Parliament in the 1957 Act and/or the Rules made thereunder and if the State encroaches on the field covered/occupied then to that extent, the act or action of the State would be ultra vires. Thus, Mr. Ajit Kumar Sinha would submit that the power or competence of the state legislatures to enact laws or of the State Government to issue notification remains unaffected if the field is neither occupied nor disclosed nor prohibited. In this regard, he referred to few decisions of this Court, namely, *Hingir-Rampur Coal Co.*[a], *M.A. Tulloch & Co*[b]., *Baijnath Kadio*[c], *India Cement Limitede, Bharat Coking Coal*[f], *Orissa Cement Limitedf and Kesoram*[l] .

37. Learned senior counsel would submit that the Central Government also upon examination of the applications made by the appellants rejected the proposals on the ground of reservation made by the then State of Bihar under 1962 and 1969 Notifications and, thus, it can be inferred that these Notifications received post facto approval from the Central Government. In this regard, learned senior counsel relied upon *M/s Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P.*

x. 1977 (1) SCC 340.

y. 1980 (4) SCC 136.

& Ors.[z], *Amrit Banaspati Ltd. and Another v. State of Punjab and Another*[aa], *State of Punjab v. Nestle India Ltd. and Another*[bb], *M.P. Mathur and Others v. DTC and Others*[cc] and *Sandur Manganese and Iron Ores Limitedm*[m].

38. Mr. Ajit Kumar Sinha, learned senior counsel submitted that 1962 and 1969 Notifications issued by the then State of Bihar have been reiterated by the State Government on its formation by 2006 Notification. He referred to Section 85 of the Bihar Reorganization Act, 2000 that provides that the appropriate government may, before the expiration of two years adapt and/or modify the law and every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature. He, thus, submitted that by virtue of Section 85 of Bihar Reorganization Act, 2000 read with Sections 84 and 86 thereof, it is clear that the existing law shall have effect till it is altered, repealed and/or amended.

Interveners' view

39. Mr. Vikas Singh, Mr. Krishnan Venugopal and Mr. P.S. Narasimha, learned senior counsel, appeared for interveners. While adopting the arguments advanced on behalf of State of Jharkhand, Mr. Vikas Singh submitted that reservation of minerals is inherent right vested in the State. Mr. Krishnan Venugopal, learned senior counsel heavily relied upon the decision of this Court in Amritlal Nathubhai Shahd and submitted that the said decision was binding and not per incuriam as contended on behalf of the appellants. He submitted that many provisions in 1957 Act and 1960 Rules acknowledge that all minerals vest in the State and that power to reservation is contemplated by Rule 59 of 1960 Rules.

z. 1979 (2) SCC 409.

aa. 1992 (2) SCC 411.

bb. 2004 (6) SCC 465.

cc. 2006 (13) SCC 706.

40. After this group of appeals was fully argued before us and the appeals were reserved for judgment, a Special Leave Petition, *Geo-Minerals and Marketing (P) Ltd. v. State of Orissa & Ors.,* arising out of the judgment of Orissa High Court in W.A. © No. 6288/2006 came up for final disposal wherein one of the issues concerning reservation of mining area by the Government of Orissa for exploitation in public sector was found to be involved. We thought fit that learned senior counsel and counsel appearing in that matter were also heard so that we can have benefit of their view-point as well. Accordingly, we heard M/s. Harish Salve, K.K. Venugopal and R.K. Dwivedi, learned senior counsel, on the common legal aspect.

41. I would have preferred not to burden this judgment with the text of Entry 54 of List I, Entry 23 of List II and the relevant provisions contained in 1957 Act and 1960 Rules but reproduction of some of the provisions is necessary for having the point under consideration in proper perspective.

Relevant Entries

42. Entry 54, List I, is as follows :

"54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

43. Entry 23, List II, is as under :

"23. Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union."

Mines and Minerals (Regulation and Development) Act, 1948

44. The Mines and Minerals (Regulation and Development) Act, 1948 (for short, '1948 Act') was enacted to provide for the

regulation of mines and oilfields and for the development of the minerals under Entry 36 of the Government of India Act, 1935. It received the assent of the Governor General on September 8, 1948 and came into effect from that date. Under 1948 Act, the Central Government framed Mineral Concession Rules, 1949.

45. 1948 Act was repealed by 1957 Act. The introduction of 1957 Act reads as follows :

> "In the Seventh Schedule of the Constitution in Union List entry 54 provides for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. On account of this provision it became imperative to have a separate legislation. In order to provide for the regulation of mines and the development of minerals, the Mines and Minerals (Regulation and Development) Bill was introduced in the Parliament."

Mines and Minerals (Regulation and Development) Act, 1957 and the Amendments

46. 1957 Act came into effect on June 1, 1958. It has been amended from time to time.

47. Section 2 of the 1957 Act reads as follows :

> "S. 2. Declaration as to the expediency of Union control.-- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

48. Section 3(a),(c),(d),(e),(f), (g) and (h) defines 'minerals', 'mining lease', 'mining operations', 'minor minerals', 'prescribed' 'prospecting licence' and 'prospecting operations' in the 1957 Act as under:

"3(a) "minerals" includes all minerals except mineral oils;

(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;

(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;

(h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;"

49. The original Section 4 in 1957 Act read as follows :

"S.4. (1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder."

50. In 1986, 1987 and 1999, Section 4 of the 1957 Act came to be amended. After these amendments, Section 4 reads as under :

"**S.4.- Prospecting or mining operations to be under licence or lease.**-(1) [dd][No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

[ee][Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [ff][the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of section 617 of the Companies Act, 1956:]

dd. Subs. by Act 38 of 1999, sec. 5, for certain words (w.e.f. 18-12-1999).

ee. Ins. by Act 37 of 1986, sec. 2 (w.e.f. 10-2-87).

ff. Subs. by Act 38 1999, sec. 5, for “the Atomic Minerals Division” (w.e.f. 18-12-1999)

[gg][Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.]

[hh][(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.]

(2) [ii][No reconnaissance permit, prospecting licence or mining lease] shall be grated otherwise than in accordance with the provisions of this Act and the rules made thereunder.

[jj][(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18, [kk][undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease]."

51. Section 5 of the 1957 Act, as originally enacted, provided that no prospecting licence or mining lease should be granted by a State Government to any person unless the conditions prescribed therein were satisfied. It mandated previous approval of the Central Government before grant of prospecting licence or mining lease by the State Government.

gg. Ins. by Act 16 of 1987, sec 14 (w.r.e.f. 1-10-1963).

hh. Ins. by Act 38 of 1999, sec. 5 (w.e.f. 18-12-1999).

ii. Subs. by Act 38 of 1999, sec 5, for “No prospecting licence of mining lease’(w.e.f. 18-12-1999).

jj. Ins. by Act 37 of 1986, sec. 2 (w.e.f. 10-12-1987)

kk. Subs. by Act 38 of 1999, sec. 5, for certain words (w.e.f. 8-12-1999).

52. The original Section 5 came to be amended in 1986, 1994 and 1999. After these amendments, Section 5 now provides that a State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless he satisfies the requisite conditions. The provision mandates that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

53. Section 6 of 1957 Act provides for maximum area for which a prospecting licence or mining lease may be granted. Section 7 makes provision for the periods for which prospecting licence may be granted or renewed and Section 8 provides for periods for which mining lease may be granted or renewed.

54. Section 10 of the 1957 Act provides that application for reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned. Inter alia, it empowers the concerned State Government to grant or refuse to grant the permit, licence or lease having regard to the provisions of 1957 Act or 1960 Rules.

55. The original Section 11 of the 1957 Act read as follows:

"S.11.(1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person:

Provided that the State Government is satisfied that the licensee has not committed any breach of the terms and conditions of the prospecting licence and is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later:

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the mattes specified in sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following :-

(a) any special knowledge of, or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) such other matters as may be prescribed.

(4) Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

56. The above provision was substituted by Act 38 of 1999

with effect from December 18, 1999. After substitution, Section 11 now reads as under :

"S.11. Preferential right of certain persons.-(1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, 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:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,-

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(c) has not become ineligible under the provisions of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the

preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), 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.

(3) The matters referred to in sub-section (2) are the following :--

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant.

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the

minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the Sate Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting license or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matter specified in sub-section (3), 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.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section."

57. Section 13 of the 1957 Act empowers Central Government to make rules in respect of minerals. By virtue of the power conferred upon the Central Government under Section 13(2)(e), 1960 Rules have been framed for regulating the grant of, inter alia, mining leases in respect of minerals and for purposes connected therewith.

58. Section 14 states that the provisions of Sections 5 to

13 (both inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Section 15 empowers State Governments to make rules in respect of minor minerals.

59. Section 16 provides for power to modify mining leases granted before 25th October, 1949. The original sub-section (1) of Section 16 mandated that all mining leases granted before October 25, 1949 shall be brought into conformity with the provisions of 1957 Act and the Rules made under Sections 13 and 18 after the commencement of 1957 Act. Then it provided that if the Central Government was of the opinion that in the interest of mineral development it was expedient so to do, it might permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in clause (b) of Section 6 or for a period exceeding that specified in sub-section (1) of Section 8. Sub-section (1) of Section 16 has been amended in 1972 and 1994.

60. By virtue of Section 17, the Central Government has been given special powers to undertake prospecting or mining operations in certain cases. Section 17(1) was amended in 1972. After amendment, Section 17(1) reads as under :

"S. 17.- Special powers of Central Government to undertake prospecting or mining operations in certain lands.-(1) The provisions of this section shall apply in respect of land in which the minerals vest in the Government of a State or any other person."

61. Section 17A was inserted in the 1957 Act by Act 37 of 1987. Thereafter, sub-section (1A) was added in Section 17A by Act 25 of 1994. Section 17A, after its amendment in 1994, reads as follows :

"S. 17A. Reservation of area for purposes of conservation.-(1) The Central Government, with a view to conserving any mineral and after consultation with the

State Government, may reserve any area not already held under any prospecting licence or mining lease and, where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

(1A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

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

(3) Where in exercise of the powers conferred by sub-section (1A) or sub-section (2) the Central Government or the State Government, as the case may be, undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable, to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence

or mining lease."

62. Section 18 states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may make rules. Sub-section (2) of Section 18 empowers the Central Government to make rules and provide for the matters stated in clause (a) to clause (q).

63. Section 18A was inserted in 1957 Act to enable the Central Government to authorize Geological Survey of India to carry out necessary investigation for the purpose of obtaining information with regard to availability of any mineral in or under any land in relation to which any prospecting licence or mining lease has been granted by a State Government or by any other person. Proviso that follows sub-section (1) of Section 18A provides that in cases of prospecting licences or mining leases granted by a State Government, no such authorization shall be made except after consultation with the State Government. To the extent Section 18A is relevant, it is reproduced as under :

"S. 18A. Power to authorize Geological Survey of India, etc., to make investigation.-(1) Where the Central Government is of opinion that for the conservation and development of minerals in India, it is necessary to collect as precise information as possible with regard to any mineral available in or under any land in relation to which any prospecting licence or mining lease has been granted, whether by the State Government or by any other person, the Central Government may authorize the Geological Survey of India, or such other authority or agency as it may specify in this behalf, to carry out such detailed investigation for the purpose of obtaining such information as may be necessary:

Provided that in the cases of prospecting licences or mining leases granted by a State Government, no such authorization shall be made except after consultation with the State Government.

xxx xxx xxx xxx xxx

(6) The costs of the investigation made under this section shall be borne by the Central Government.

Provided that where the State Government or other person in whom the minerals are vested or the holder of any prospecting licence or mining lease applies to the Central Government to furnish to it or him a copy of the report submitted under sub-section (5), that State Government or other person or the holder of a prospecting licence or mining lease, as the case may be, shall bear such reasonable part of the costs of investigation as the Central Government may specify in this behalf and shall, on payment of such part of the costs of investigation, be entitled to receive from the Central Government a true copy of the report submitted to it under sub-section (5)."

64. Section 19 provides that any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of 1957 Act or any rules or orders made thereunder shall be void and of no effect. Section 19 underwent amendments in 1994 and 1999 but these amendments are not of much relevance for the purposes of these matters.

65. By virtue of Section 29, the rules made or purporting to have been made under the 1948 Act insofar as consistent with the matters provided in 1957 Act were made to continue until superseded by the rules made under the 1957 Act. Thus, the rules framed under 1948 Act continued to operate until 1960 Rules were framed.

Mineral Concession Rules, 1960 and the Amendments

66. 1960 Rules were framed by the Central Government in exercise of the powers conferred by Section 13 of the 1957 Act. These Rules were published on November 11, 1960. As noticed above, until these Rules came into effect, the Rules framed under 1948 Act remained operative.

67. By virtue of Rule 8, the provisions of Chapters II, III and IV have been made applicable to the grant of reconnaissance permits as well as grant and renewal of prospecting licences and mining leases in respect of the land in which the minerals vest in the State Government.

68. Rule 9 provides that an application for a prospecting licence and its renewal in respect of land in which the minerals vest in Government shall be made to the State Government in Form B and Form D respectively. The State Government is empowered to relax the provisions of clause (d) of sub-rule (2) of Rule 9.

69. Chapter-IV deals with grant of mining leases in respect of land in which the minerals vest in the Government. Sub-rule (1) of Rule 22 provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I. Sub-rule (4) of Rule 22 provides that on receipt of the application for the grant of a mining lease, the State Government shall take decision to grant precise area and communicate such decision to the applicant. The applicant, on receipt of communication from the State Government of the precise areas to be granted, is required to submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. The applicant is required to submit the mining plan, duly approved by the Central Government or by an officer duly authorized by the Central Government, to the State Government to grant mining lease over that area. Sub-rule (4A) of Rule 22 is a non-obstante clause and empowers the State Government to approve mining plan of open cast mines (mines

other than the underground mines) in respect of non-metallic or industrial minerals set out in clauses (i) to (xxix) in their respective territorial jurisdiction. Such power of approval of mining plan has to be exercised by the State Government through officer or officers having qualification, experience and post and pay-scale as set out therein. Under sub-rule (4B) of Rule 22, the Central Government or the State Government has to dispose of the application for approval of mining plan within a period of ninety days from the date of receiving such application.

70. Rule 22D substituted by Notification dated January 17, 2000 makes provision for a minimum size of the mining lease.

71. Rule 26 that was substituted by Notification dated July 18, 1963 was amended in 1979, 1988, 1991 and 2002. Rule 26 now reads as under:

> "**26. Refusal of application for grant and renewal of mining lease.-** (1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.
>
> (2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d),(e),(f),(g) and (h) of clause (i) of sub-rule 22.
>
> (3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

72. Rule 31 provides for the time period within which lease is to be executed. It also provides for the date of commencement of the period.

73. Rule 58, as it originally stood, read as under:

> "**58. Availability of areas for regrant to be notified.** (1) No area which was previously held or which is being held under a prospecting licence or a mining lease as the case may be, or in respect of which the order granting licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31, shall be available for grant unless-
>
> (a) an entry to the effect made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be in ink; and
>
> (b) the date from which the area shall be available for grant is notified in the Official Gazette at least thirty days in advance.
>
> (2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case."

Rule 58 was amended on November 16, 1980 and the amended Rule 58 read as under :

> "**58. Reservation of area for exploitation in the public sector etc.-** The State Government may, by notification in the Official Gazette, reserve any area for the exploitation by the Government, a Corporation established by the Central, State or Provincial Act or a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956)."

Later on, Rule 58 has been omitted.

74. Rule 59, as originally framed in 1960 Rules, read as under:

"59. Availability of certain areas for grant to be notified.- In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, other than prospecting or mining for minerals, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in rule 58."

The original Rule 59 was amended vide Notification dated July 9, 1963. After the said amendment, the Rule read as under :

"59. - Availability of certain areas for grant to be notified.- In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in rule 58."

Rule 59 was again amended in 1980. After amendment, the said rule read as under :

"59. Availability of area for regrant to be notified-(1) No area-

(a) which was previously held or which is being held under a prospecting licence or a mining lease; or

(b) in respect of which an order had been made for the grant of a prospecting licence or mining lease, but the applicant has died before the grant of the licence or the execution of lease, as the case may be; or

(c) in respect of which the order granting a licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31; or

(d) in respect of which a notification has been issued under sub-section (2) or sub-section (4) of section 17; or

(e) which has been reserved by Government under rule 58,

shall be available for grant unless-

(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and 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:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under rule 58 is proposed to be granted to a Government Company, no notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in

any special case.

Rule 59 was further amended on April 13, 1988. The amended Rule 59 reads as under :

"59. Availability of area for regrant to be notified:- (1) No area-

(a) which was previously held or which is being held under a prospecting licence or a mining lease; or

(b) in respect of which an order had been made for the grant of a prospecting licence or mining lease, but the applicant has died before the grant of the licence or the execution of the lease, as the case may be; or

(c) in respect of which the order granting a licence or lease has been revoked, under sub-rule (1) of rule 15 or sub-rule (1) of rule 31; or

(d) in respect of which a notification has been issued under sub section (2) or sub-section (4) of section 17; or

(e) which has been reserved by State Government under Rule 58, or under section 17-A of the Act shall be available for grant unless-

(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as - the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and 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:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs

notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under Rule 58 or under section 17-A of the Act to be granted to a Government Company, no notification under clause (ii) shall be required to be issued;

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case.

75. Rule 60 of the 1960 Rules has been amended twice, first vide Notification dated January 16, 1980 and thereafter by the Notification dated January 17, 2000. After amendment, Rule 60 reads as under :

"60.Premature applications.-Applications for the grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under rule 59 shall, if-

(a) no notification has been issued, under that rule; or

(b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained."

76. Rule 63 of the 1960 Rules provides that where previous approval of the Central Government is required under the 1957 Act or the 1960 Rules, the application for such approval shall be made to the Central Government through the State Government.

77. The above provisions give us complete view of the statutory framework and legal regime with regard to regulation of mines and mineral development and the role and powers of the State Governments in that regard.

Decisions

Hingir-Rampur Coal Co. Ltd.

78. A Constitution Bench of this Court in Hingir-Rampur Coal Co. Ltd.a was concerned with the question of the validity of Orissa Mining Areas Development Fund Act, 1952. Inter-alia, the contention raised on behalf of the petitioners was that even if the cess imposed thereunder was a 'fee' relatable to Entries 23 and/or 66 of List II, the same would be ultra vires Entry 54 of List I in light of declaration made in Section 2 of the 1948 Act which read, 'it is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided' and other provisions.

79. The majority view considered the above contention as follows:

"23. The next question which arises is, even if the cess is a fee and as such may be relatable to Entries 23 and 66 in List II its validity is still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union; and that takes us to Entry 54 in List I. This Entry reads thus: "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a

Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute.

24. .... If it is held that this Act contains the declaration referred to in Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject-matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948.

25. It still remains to consider whether S. 2 of the said Act amounts in law to a declaration by Parliament as required by Article 54. When the said Act was passed in 1948 the legislative powers of the Central and the Provincial Legislatures were governed by the relevant Entries in the Seventh Schedule to the Constitution Act of 1935. Entry 36 in List I corresponds to the present Entry 54 in List I. It reads thus: "Regulation of Mines and Oil Fields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expedient in public interest". It would be noticed that the declaration required by Entry 36 is a declaration by Dominion law. Reverting then to S. 2 of the said Act it is clear that the declaration contained in the said section is put in the passive voice; but in the context there would be no difficulty in holding that the said declaration by necessary implication has been made by Dominion law. It is a declaration contained in a section passed by the Dominion Legislature and so it is obvious that it is a declaration by a Dominion law, but the question is: Can this declaration by a Dominion law be regarded constitutionally as declaration by Parliament which is required by Entry 54 in List I."

The majority view found that the declaration by Parliament required under Entry 54, List I was absent as the declaration under Section 2 of the 1948 Act by the Dominion Legislature was not held equivalent to declaration by the Parliament under Section 2 of the 1957 Act.

M.A. Tulloch & Co.

80. In *M.A. Tulloch & Co.*[b] , a Constitution Bench of this Court was concerned with legality of certain demands of fee under the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act). The Constitution Bench considered the question, 'whether the extent of control and regulation provided by the

1957 Act takes within its fold the area or the subject covered by Act 27 of 1952 Act'. The High Court had held that fee imposed by the Orissa Act was rendered ineffective in view of the 1957 Act. The State of Orissa was in appeal from that judgment. The Court in para 5 and para 6 of the Report noted as follows:

"5. Before proceeding further it is necessary to specify briefly the legislative power on the relevant topic, for it is on the precise wording of the entries in the 7th Schedule to the Constitution and the scope, purpose and effect of the State and the Central legislations which we have referred to earlier that the decision of the point turns. Article 246(1) reads:

"Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)"

and we are concerned in the present case with the State power in the State field. The relevant clause in that context is clause (3) of the Article which runs:

"Subject to clauses (1) and (2), the legislature of any State ... has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the seventh Schedule (in this Constitution referred to as the 'State List')."

Coming now to the Seventh Schedule, Entry 23 of the State List vests in the State legislature power to enact laws on the subject of 'regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union'. It would be seen that "subject" to the provisions of List I the power of the State to enact Legislation, on the

topic of "mines and mineral development" is plenary. The relevant provision in List I is, as already noticed, Entry 54 of the Union List. It may be mentioned that this scheme of the distribution of legislative power between the Centre and the States is not new but is merely a continuation of the State of affairs which prevailed under the Government of India Act, 1935 which included a provision on the lines of Entry 54 of the Union List which then bore the number Item 36 of the Federal List and an entry corresponding to Entry 23 in the State List which bore the same number in the Provincial Legislative List. There is no controversy that the Central Act has been enacted by Parliament in exercise of the legislative power contained in Entry 54 or as regards the Central Act containing a declaration in terms of what is required by Entry 54 for it enacts by Section 2:

"It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

It does not need much argument to realise that to the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made.

6. It would, however, be apparent that the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the public interest". The crucial enquiry has therefore to be directed to ascertain this "extent" for beyond it the legislative power of the State remains unimpaired. As the legislation by the State is in the case before us the earlier one in point of time, it would be logical first to examine and analyse the State Act and determine its purpose, width and scope and the area of its operation and then consider to what "extent" the Central Act cuts into it or trenches on it.

In para 9, the question under consideration was whether 'the extent of control and regulation' provided by 1957 Act took within its fold the area or the subject covered by the Orissa Act. This Court in para 11 observed that the matter was concluded by earlier decision in Hingir-Rampur Coal Co. Ltd.a. While following Hingir-Rampur Coal Co. Ltd.a, it was observed in para 12 of the Report that sub-sections (1) and (2) of Section 18 of 1957 Act were wider in scope and amplitude and conferred larger powers on the Central Government than the corresponding provisions of the 1948 Act.

Baijnath Kadio

81. In *Baijnath Kadio*[c], the validity of proviso (2) to Section 10(2) added by Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act 4 of 1965) and the operation of Rule 20(2) added on December 10, 1964 by a Notification of Governor in the Bihar Minor Mineral Concession Rules, 1964 were in issue. The Court referred to the Government of India Act, 1935, 1948 Act and 1957 Act in light of Entry 54 of List I and Entry 23 of List II and the earlier decisions in *Hingir-Rampur Coal Co. Ltd.*[a] and *M.A. Tulloch & Co.*[b] and observed as under :

"13. …………Entry 54 of the Union List speaks both of Regulation of mines and minerals development and Entry 23 is subject to Entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent

such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly made to contradict it. There are also two decisions of this Court reported in the *Hingir Rampur Coal Co. Ltd. & Ors. v. State of Orissa & Ors.* and *State of Orissa v. M.A. Tulloch and Co.* in which the matter is discussed. The only dispute, therefore, can be to what extent the declaration by Parliament leaves any scope for legislation by the State Legislature. If the impugned legislation falls within the ambit of such scope it will be valid; if outside it, then it must be declared invalid.

14. The declaration is contained in Section 2 of Act 67 of 1957 and speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act. In this connection we may notice what was decided in the two cases of this Court. In the *Hingir Rampur* case a question had arisen whether the Act of 1948 so completely covered the field of conservation and development of minerals as to leave no room for State legislation. It. was held that the declaration was effective even if the rules contemplated under the Act of 1948 had not been made. However, considering further whether a declaration made by a Dominion Law could be regarded as a declaration made by Parliament for the purpose of

Entry 54, it was held that it could not and there was thus a lacuna which the Adaptation of Laws Order, 1950 could not remove. Therefore, it was held that there was room for legislation by the State Legislature.

15. In the *M.A. Tulloch* case the firm was working a mining lease granted under the Act of 1948. The State Legislature of Orissa then passed the Orissa Mining Areas Development Fund Act, 1952 and levied a fee for the development of mining areas within the State. After the provisions came into force a demand was made for payment of fees due from July 1957 to March 1958 and the demand was challenged. The High Court held that after the coming into force of Act 67 of 1957 the Orissa Act must be held to be non existent. It was held on appeal that since Act 67 of 1957 contained the requisite declaration by Parliament under Entry 54 and that Act covered the same field as the Act of 1948 in regard to mines and mineral development, the ruling in *Hingir Rampur's* case applied and as Sections 18(1) and (2) of the Act 67 of 1957 were very wide they ruled out legislation by the State Legislature. Where a superior legislature evinced an intention to cover the whole field, the enactments of the other legislature whether passed before or after must be held to be overborne. It was laid down that inconsistency could be proved not by a detailed comparison of the provisions of the conflicting Acts but by the mere existence of two pieces of legislation. As Section 18(1) covered the entire field, there was no scope for the argument that till rules were framed under that Section, room was available."

Amritlal Nathubhai Shah

82. In *Amritlal Nathubhai Shah*[d], a three-Judge Bench of this Court was concerned with an issue similar to the controversy presented before us. That was a case relating to grant of mining leases for bauxite in the reserved areas in the State of Gujarat. On December 31, 1963, the Government of

Gujarat issued a Notification intimating that lands in all talukas of Kutch district and in Kalyanpur taluka of Jamnagar district had been reserved for exploitation of bauxite in the public sector. By another Notification of February 26, 1964 in respect of all areas of Jamnagar and Junagarh districts, the exploitation of bauxite was reserved in the public sector. The appellants therein made applications to the Government of Gujarat for grant of mining leases for bauxite in the reserved areas. Though there were no other applications, the State Government rejected the applications of the appellants on the ground that areas had already been notified as reserved for the public sector. The appellants, aggrieved by the order of the State Government moved the Central Government invoking its revisional jurisdiction. The Central Government rejected the revision applications. The appellants then moved the High Court but they were unsuccessful there and from the common judgment of the High Court and the certificate granted by it, the matter reached this Court. The Court considered Entry 54 of List I, declaration made by Parliament in Section 2 of 1957 Act and State Legislature's power under Entry 23 of List II, and observed that in pursuance of its exclusive power to make laws with respect to the matters enumerated in Entry 54 of List I, Parliament specifically declared in Section 2 of the 1957 Act that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The State Legislature's power under Entry 23 of List II was, thus, taken away and the regulation of mines and development of minerals had to be in accordance with 1957 Act and 1960 Rules. While saying so, this Court held as follows:

> "3. ....The mines and the minerals in question (bauxite) were, however, in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the "owner of minerals" within its territory, and the minerals "vest" in it.

> There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the "inherent right to reserve any particular area for exploitation in the public sector". It is therefore quite clear that, in the absence of any law or contract etc. to the contrary, bauxite, as a mineral, and the mines thereof, vest in the State of Gujarat and no person has any right to exploit it otherwise then in accordance with the provisions of the Act and the Rules. Section 10 of the Act and Chapters II, III and IV of the Rules, deal with the grant of prospecting licences and mining leases in the land in which the minerals vest in the Government of a State. That was why the appellants made their applications to the State Government."

83. In *Amritlal Nathubhai Shah*[d], this Court referred to Section 4 of the 1957 Act and held that there was nothing in 1957 Act or 1960 Rules to require that the restrictions imposed by Chapters II,III and IV of the 1960 Rules would be applicable even if State Government itself wanted to exploit a mineral for, it was its own property. The Court held :

> "4. ....There is therefore no reason why the State Government could not, if it so desired, "reserve" any land for itself, for any purpose, and such reserved land would then not be available for the grant of a prospecting licence or a mining lease to any person."

84. The Court then considered Section 10 of 1957 Act and held as follows :

> "5......The section is therefore indicative of the power of the State Government to take a decision, one way or the other, in such matters, and it does not require much argument to hold that that power included the power to refuse the grant of a licence or a lease on the ground that the land in question was not available for such grant by

reason of its having been reserved by the State Government for any purpose."

85. With reference to Section 17, particularly, sub-sections (2) and (4) thereof, the Court held that the said provisions did not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to anyone else and the State Government's authority to reserve any area for itself was not taken away. It was further held :

"6. ....As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it. But quite apart from that, we find that Rule 59 of the Rules, which have been made under Section 13 of the Act, clearly contemplates such reservation by an order of the State Government........."

86. In *Amritlal Nathubhai Shah*[d], the Court also considered Rules 58, 59 and 60 of the 1960 Rules and it was observed that it was not permissible for any person to apply for a licence or a lease in respect of a reserved area until after it becomes available for such grant. It was held on the facts of the case that the areas under consideration had been reserved by the State Government for the purpose stated in its notifications and as those lands did not become available for the grant of prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature and the Central Government was also justified in rejecting the revision applications which were filed against the orders of rejection passed by the State Government.

87. In *Chanan Mal*[k], a four-Judge Bench of this Court was concerned with constitutional validity of Haryana Minerals (Vesting of Rights) Act, 1973 (for short, 'Haryana Act;). One of the contentions in challenging the Haryana Act was that enactment was beyond the competence of the State Legislature

inasmuch as the filed in which the Haryana Act operated was necessarily occupied by the provisions of 1957 Act under Entry 54 of the Union List (List I) of the Seventh Schedule to the Constitution. The Bench considered extensively the provisions contained in the 1957 Act and earlier decisions of this Court in *Hingir-Rampur Coal Co Ltd.*[a], *M.A. Tulloch & Companyb and Baijnath Kadio*[c] . The Court then referred to Section 16(1)(b) and Section 17 of the 1957 Act and held as under :

"38. We are particularly impressed by the provisions of Sections 16 and 17 as they now stand. A glance at Section 16(1)(b) shows that the Central Act 67 of 1957 itself contemplates vesting of lands, which had belonged to any proprietor of an estate or tenure holder either on or after October 25, 1949, in a State Government under a State enactment providing for the acquisition of estates or tenures in land or for agrarian reforms. The provision lays down that mining leases granted in such land must be brought into conformity with the amended law introduced by Act 56 of 1972. It seems to us that this clearly means that Parliament itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government. It only required that rights to mining granted in such land should be regulated by the provisions of Act 67 of 1957 as amended. This feature could only be explained on the assumption that Parliament did not intend to trench upon powers of State legislatures under Entry 18 of List II, read with Entry 42 of List III. Again, Section 17 of the Central Act 67 of 1957 shows that there was no intention to interfere with vesting of lands in the States by the provisions of the Central Act."

Ishwari Khetan Sugar Mills

88. In *Ishwari Khetan Sugar Mills*[y] although question related to constitutional validity of U.P. Sugar Undertakings (Acquisition) Act, 1971 enacted by the State of U.P. and different entries in List I and List II were involved but with

reference to the declaration made in Section 2 of the Industries (Development and Regulation) Act, 1951 (for short, 'IDR Act') vis-à-vis the State Act under challenge, the majority judgment relying upon the earlier decisions of this Court in *Baijnath Kadio*[c] and *Chanan Mal*[k], held that to the extent the Union acquired control by virtue of declaration in Section 2 of the IDR Act, as amended from time to time, the power of the State Legislature under Entry 24 of List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by IDR Act would be taken away. It was held that 1957 Act only required that rights to mining granted in such land should be regulated by the provisions contained therein.

M/s. Hind Stone

89. In *M/s. Hind Stone*[o], the question under consideration was about the validity of Rule 8-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 which provided for lease for quarries in respect of black granite to the government corporation or by the government itself and that from December 7, 1977 no lease for quarrying black granite should be granted to private persons. The matter arose out of the application for renewal of lease. The Court considered Entry 23 of List II and Entry 54 of List I of Seventh Schedule and the earlier decisions of this Court in *Hingir-Rampur Coal Co.*[a], *M.A. Tulloch & Company*[b] and *Baijnath Kadio*[c]. The Court made the following general observations with regard to minerals and natural resources and the scheme of 1957 Act:

> "6. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient

> in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957. We have already referred to its salient provisions. Section 18, we have noticed, casts a special duty on the Central Government to take necessary steps for the conservation and development of minerals in India. Section 17 authorises the Central Government itself to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. Section 4-A empowers the State Government on the request of the Central Government, in the case of minerals other than minor minerals, to prematurely terminate existing mining leases and grant fresh leases in favour of a Government company or corporation owned or controlled by government, if it is expedient in the interest of regulation of mines and mineral development to do so. In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear signposts to lead and guide the subordinate legislating authority in the matter of the making of rules. Viewed in the light shed by the other provisions of the Act, particularly Sections 4-A, 17 and 18, it cannot be said that the rule-making authority under Section 15 has exceeded its powers in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may

engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government. To view such a rule made by the subordinate legislating body as a rule made to benefit itself merely because the State Government happens to be the subordinate legislating body, is, but, to take too narrow a view of the functions of that body………"

90. The Court then considered Rule 8-C in light of the statement made in the counter affidavit filed by the State of Tamil Nadu and it was held that Rule 8-C was made in bona fide exercise of the rule making power of the State Government. In paragraph 10 of the Report, the Court stated thus:

"10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well-known cases on the subject right from *Municipal Corporation of the City of Toronto v. Virgo* [1896 AC 88] and *Attorney-General for Ontario v. Attorney-General for the Dominions* [1896 AC 348] up to *State of U.P. v. Hindustan Aluminium Corporation Ltd.* [1979 (3) SCC 229] were brought to our attention. We do not think that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in *G.K. Krishnan v. State of Tamil Nadu* [1975 (1) SCC 375]: "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, "regulation" must, of necessity, receive so wide an interpretation that in

certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia v. Bank of New South Wales* [1950 AC 235]- and we agree with what was stated therein - that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act."

D.K. Trivedi and Sons

91. In *D.K. Trivedi and Sons*[n], this Court was concerned with the constitutional validity of Section 15(1) of 1957 Act; the power of the State Governments to make rules under that Section to enable them to charge dead rent and royalty in respect of leases of minor minerals granted by them and

enhance the rates of dead rent and royalty during the subsistence of such lease, the validity of Rule 21-B of the Gujarat Minor Mineral Rules, 1966 and certain notifications issued by the Government of Gujarat under Section 15 amending the said Rules so as to enhance the rates of royalty and dead rent in respect of leases of minor minerals. The Court traced the legislative history of the enactment; referred to *Baijnath Kadio*[c] and in paragraph 27 of the Report (Pgs. 46-47) observed as follows:

> "27. The 1957 Act is made in exercise of the powers conferred by Entry 54 in the Union List. The said Entry 54 and Entry 23 in the State List fell to be interpreted by a Constitution Bench of this Court in *Baijnath Kedia v. State of Bihar*. In that case this Court held that Entry 54 in the Union List speaks both of regulation of mines and mineral development and Entry 23 in the State List is subject to Entry 54. Under Entry 54 it is open to Parliament to declare that it is expedient in the public interest that the control in these matters should vest in the Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest but once such declaration is made and the extent of such regulation and development laid down the subject of the legislation to the extent so laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration which touches upon the field disclosed in the declaration would necessarily be unconstitutional because that field is extracted from the legislative competence of the State legislature. In that case the court further pointed out that the expression "under the control of the Union" occurring in Entry 54 in the Union List and Entry 23 in the State List did not mean "control of the Union Government" because the Union consists of three limbs, namely, Parliament, the Union Government and the Union Judiciary, and the control of the Union which is to be exercised under the said two entries is the one to be exercised by Parliament, namely, the legislative organ of the Union, which is, therefore, the control by the Union. The court further held that the Union had taken all the power in respect of minor minerals to itself and had authorized the State Governments to make rules for the regulation of leases and thus by the declaration made in Section 2 and the enactment of Section 15 the whole of the field relating to minor minerals came within the jurisdiction of Parliament and there was no scope left to the State legislatures to make any enactment with respect thereto. The court also held that by giving the power to the State Governments to make rules, the control of the Union was not negatived but, on the contrary, it established that the Union was exercising the control. One of the contentions raised in that case was that Section 15 was unconstitutional as the delegation of legislative power made by it to the rule-making authority was excessive. This contention was, however, not decided by the court as the appeals in that case were allowed on other points."

While dealing with the meaning of the word 'regulation', particularly the expression, 'the act of regulating, or the state of being regulated' and Entry 54 in the Union List, this Court stated in paragraph 31 of the Report (Pgs. 48-49) as follows :

> "31. Entry 54 in the Union List uses the word "regulation". "Regulation" is defined in the *Shorter Oxford English Dictionary,* 3rd Edn., as meaning "the act of regulating, or the state of being regulated". Entry 54 reproduces the language of Entry 36 in the Federal Legislative List in the Government of India Act, 1935, with the omission of the words "and oilfields". When the Constitution came to be enacted, the framers of the Constitution knew that since early days mines and minerals were being regulated by rules made by Local Governments. They also knew that under the corresponding Entry 36 in the Federal Legislative List, the 1948 Act had been enacted and was

on the statute book and that the 1948 Act conferred wide rule-making power upon the Central Government to regulate the grant of mining leases and for the conservation and development of minerals. It also knew that in the exercise of such rule-making power the Central Government had made the Mineral Concession Rules, 1949, and that by Rule 4 of the said Rules the extraction of minor minerals was left to be regulated by rules to be made by the Provincial Governments. Thus, the makers of the Constitution were not only aware of the legislative history of the topic of mines and minerals but were also aware how the Dominion legislature had interpreted Entry 36 in the Federal Legislative List in enacting the 1948 Act. When the 1957 Act came to be enacted, Parliament knew that different State Governments had, in pursuance of the provisions of Rule 4 of the Mineral Concession Rules, 1949, made rules for regulating the grant of leases in respect of minor minerals and other matters connected therewith and for this reason it expressly provided in sub-section (2) of Section 15 of the 1957 Act that the rules in force immediately before the commencement of that Act would continue in force until superseded by rules made under sub-section (1) of Section 15. Regulating the grant of mining leases in respect of minor minerals and other connected matters was, therefore, not something which was done for the first time by the 1957 Act but followed a well recognized and accepted legislative practice. In fact, even so far as minerals other than minor minerals were concerned, what Parliament did, as pointed out earlier, was to transfer to the 1957 Act certain provisions which had until then been dealt with under the rule-making power of the Central Government in order to restrict the scope of subordinate legislation………"

Then in paragraph 33 of the Report (Pgs. 50-51), the Court with reference to sub-section (2) of Section 13 of the 1957 Act further held:

"33. ………The opening clause of sub-section (2) of Section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Governments can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith". When Section 14 directs that "The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left by Parliament to

the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed "Rules for regulating the grant of prospecting licences and mining leases". These three sections have to be read together. In providing that Section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The ambit of the power under Section 13 and under Section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under Section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 to 12 while framing their own rules under Section 15(1)."

Janak Lal

92. In *Janak Lal*[j], this Court had an occasion to consider meaning and scope of Rule 59 of 1960 Rules. The Court considered Rule 59, as it stood prior to amendment in 1963, and the provision after amendment. In paragraph 6 of the Report (Pg. 123) the Court held as under :

"6. Earlier the expression "reserved for any purpose" was followed by the words "other than prospecting or mining for minerals", which were omitted by an amendment in 1963. Mr. Dholakia, learned counsel for the respondents, appearing in support of the impugned judgment, has

contended that as a result of this amendment the expression must now be confined to cases of prospecting or mining for minerals and all other cases where the earlier reservation was for agricultural, industrial or any other purpose must be excluded from the scope of the rule. We are not persuaded to accept the suggested interpretation. Earlier the only category which was excluded from the application of Rule 59 was prospecting or mining leases and the effect of the amendment is that by omitting this exception, prospecting and mining leases are also placed in the same position as the other cases. We do not see any reason as to why by including in the rule prospecting and mining leases, the other cases to which it applied earlier would get excluded. The result of the amendment is to extend the rule and not to curtail its area of operation. The words "any purpose" is of wide connotation and there is no reason to restrict its meaning."

The Court clarified that intention of amendment in 1963 was to extend the rule and not to curtail its area of operation.

Bharat Coking Coal

93. In the case of *Bharat Coking Coal*[l], the Court said that the State Legislature was competent to enact law for the regulation of mines and mineral development under Entry 23 of State List but such power was subject to the declaration which may be made by Parliament by law as envisaged by Entry 54 of the Union List. It was held that the legislative competence of the State Legislature to make law on the topic of mines and mineral was subject to parliamentary legislation. While dealing with Section 18(1) prior to its amendment by amending Act 37 of 1986 and after amendment, the Court held in paragraph 16 of the Report (Pg. 572) as under :

"16. ……..The amended and unamended sections both lay down that it shall be the duty of the Central Government to take all such steps as may be necessary "for the

conservation and development of minerals" in India and for that purpose it may make such rules as it thinks fit. The expression "for the conservation of minerals" occurring under Section 18(1) confers wide power on the Central Government to frame any rule which may be necessary for protecting the mineral from loss, and for its preservation. The expression 'conservation' means "the act of keeping or protecting from loss or injury". With reference to the natural resources, the expression in the context means preservation of mineral; the wide scope of the expression "conservation of minerals" comprehends any rule reasonably connected with the purpose of protecting the loss of coal through the waste of coal mine, such a rule may also regulate the discharge of slurry or collection of coal particles after the water content of slurry is soaked by soil. In addition to the general power to frame rules for the conservation of mineral,…………."

The Court further held in para 19 of the Report (Pgs. 575-576) as follows:

"………No doubt under Entry 23 of List II, the State legislature has power to make law but that power is subject to Entry 54 of List I with respect to the regulation and development of mines and minerals. As discussed earlier the State legislature is denuded of power to make laws on the subject in view of Entry 54 of List I and the Parliamentary declaration made under Section 2 of the Act. Since State legislature's power to make law with respect to the matter enumerated in Entry 23 of List II has been taken away by the Parliamentary declaration, the State Government ceased to have any executive power in the matter relating to regulation of mines and mineral development. Moreover, the proviso to Article 162 itself contains limitation on the exercise of the executive power of the State. It lays down that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of State shall be subject to limitation of the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authority thereof………"

Orissa Cement Ltd.

94. A three-Judge Bench of this Court in *Orissa Cement Limited*[f] was concerned with the validity of the levy of a cess based on the royalty derived from mining lands by States of Bihar, Orissa and Madhya Pradesh. The case of the petitioners therein was that similar levy had been struck down by a seven-Judge Bench of this Court in *India Cement Limited*[e] . The contention of the States, on the other hand, was that issue was different from the *India Cement Limited*[e] as the nature and character of the levies imposed by these States was different from Tamil Nadu levy. The Bench considered Entries 52 and 54 of the Union List and Entries 18, 23, 45, 49, 50 and 66 of the State List and also considered earlier decisions of this Court in *HRS Murthy v. Collector of Chittoor*[ll], *Hingir-Rampur Coal Co.*[a], *M.A. Tulloch & Co.*[b], *Ishwari Khetan Sugar Mills (P) Ltd.*[y], *Baijnath Kadio*[c], *M. Karunanidhi v. Union of India and Anr.*[mm] , *M/s. Hind Stoneo, I.T.C. & Ors. v. State of Karnataka & Ors.*[nn] and *Western Coalfields Limited v. Special Area Development Authority Korba & Anr.*[oo]. I shall cite paragraphs 49, 50, 51 and 53 (Pgs. 480-486) of the Report which read as follows:

"49. It is clear from a perusal of the decisions referred to above that the answer to the question before us depends on a proper understanding of the scope of M.M.R.D. Act, 1957, and an assessment of the encroachment made by the impugned State legislation into the field covered by it.

ll. AIR (1965) SC 177.

mm. (1979) 3 SCC 431.

nn. 1985 (Supp) SCC 476.

oo. 1982 (1) SCC 125.

Each of the cases referred to above turned on such an appreciation of the respective spheres of the two legislations. As pointed out in Ishwari Khetan, the mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of the Union under Entry 52 or entry 54 does not denude the State legislatures of their legislative powers with respect to the fields covered by the several entries in List II or List III. Particularly, in the case of a declaration under Entry 54, this legislative power is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration. While the legislation in Hingir-Rampur and Tulloch was found to fall within the pale of the prohibition, those in Chanan Mal, Ishwari Khetan and Western Coalfields were general in nature and traceable to specific entries in the State List and did not encroach on the field of the Central enactment except by way of incidental impact. The Central Act, considered in Chanan Mal, seemed to envisage and indeed permit State legislation of the nature in question."

"50. To turn to the respective spheres of the two legislations we are here concerned with, the Central Act (M.M.R.D. Act, 1957) demarcates the sphere of Union control in the matter of mines and mineral development. While concerning itself generally with the requirements regarding grants of licences and leases for prospecting and exploitation of minerals, it contains certain provisions which are of direct relevance to the issue before us. Section 9, which deals with the topic of royalties and specifies not only the quantum but also the limitations on the enhancement thereof, has already been noticed. Section 9A enacts a like provision in respect of dead rent…….."

"51. If one looks at the above provisions and bears in mind that, in assessing the field covered by the Act of Parliament in question, one should be guided (as laid down in Hingir-Rampur and Tulloch) not merely by the actual provisions of the Central Act or the rules made thereunder but should also take into account matters and aspects which can legitimately be brought within the scope of the said statute, the conclusion seems irresistible, particularly in view of Hingir-Rampur and Tulloch, that the State Act has trespassed into the field covered by the Central Act. The nature of the incursion made into the fields of the Central Act in the other cases were different. The present legislation, traceable to the legislative power under Entry 23 or Entry 50 of the State List which stands impaired by the Parliamentary declaration under Entry 54, can hardly be equated to the law for land acquisition or municipal administration which were considered in the cases cited and which are traceable to different specific entries in List 11 or List III.

"53. These observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that, fees of the nature we are concerned with squarely fall within the scope of the provisions of the Central Act. The object of Section 9 of the Central Act cannot be ignored. The terms of Section 13 of the Central Act extracted earlier empower the Union to frame rules in regard to matters concerning roads and environment. Section 18(1) empowers the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for protection of environment. These, in the very nature of things, cannot mean such amenities only in the mines but take in also the areas leading to and all around the mines. The development of mineral areas

is implicit in them. Section 25 implicitly authorises the levy of rent, royalty, taxes and fees under the Act and the rules. The scope of the powers thus conferred is very wide. Read as a whole, the purpose of the Union control envisaged by Entry 54 and the M.M.R.D. Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices ………"

Indian Metals and Ferro Alloys Ltd.

95. In Indian Metals and Ferro Alloys Ltd.p , a two-Judge Bench of this Court was concerned with the principal question as to whether the petitioners therein were entitled to obtain leases for the mining of chrome. While dealing with the principal question and other incidental questions, the Court considered Entry 54 of List I, Entry 23 of List II, the 1957 Act, particularly, Sections 2, 4, 10, 11, 17A and 19 thereof and the 1960 Rules including Rules 58, 59 and 60 thereof. While dealing with the reservation policy of the State Government in having the area reserved for exploitation in the public sectors, the Court observed in paragraphs 39 and 40 (Pg. 133) as follows :

"39. The principal obstacle in the way of ORIND as well as the other private parties getting any leases was put up by the S.G., OMC and IDCOL. They claimed that none of the private applications could at all be considered because the entire area in all the districts under consideration is reserved for exploitation in the public sector by the notification dated August 3, 1977 earlier referred to. All the private parties have therefore joined hands to fight the case of reservation claimed by the S.G., OMC and IDCOL. We have indicated earlier that the S.G. expressed its preparedness to accept the Rao report and to this extent waive the claim of reservation. Interestingly, the OMC and IDCOL have entered caveat here and claimed that as

public sector corporations they could claim, independently of the S.G.'s stand, that the leases should be given only to them and that the Rao report recommending leases to IMFA, FACOR and AIKATH should not be accepted by us.

40. The relevant provisions of the Act and the rules have been extracted by us earlier. Previously, Rule 58 did not enable the S.G. to reserve any area in the State for exploitation in the public sector. The existence and validity of such a power of reservation was upheld in *A.Kotiah Naidu v. State of A.P.* (AIR 1959 AP 485) and *Amritlal Nathubhai Shah v. Union Government of India* (AIR 1973 Guj. 117), the latter of which was approved by this Court in *Amritlal Nathubhai Shah v. Union of India* ([1977] 1 SCR 372). (As pointed out earlier, Rule 58 has been amended in 1980 to confer such a power on the S.G.). It is also not in dispute that a notification of reservation was made on August 3, 1977. The S.G., OMC and IDCOL are, therefore, right in contending that, ex facie, the areas in question are not available for grant to any person other than the S.G. or a public sector corporation [rule 59(1), proviso] unless the availability for grant is renotified in accordance with law [rule 59(1)(e)] or the C.G. decides to relax the provisions of Rule 59(1) [rule 59(2)]. None of those contingencies have occurred since except as is indicated later in this judgment. There is, therefore, no answer to the plea of reservation put forward by the S.G., OMC and IDCOL."

Then in paragraph 45 (Pgs. 136-138), while considering Section 17A (1) that was inserted in 1957 Act by amendment in 1987, the Court held :

"45. Our conclusion that the areas in question before us were all duly reserved for public sector exploitation does not, however, mean that private parties cannot be granted any lease at all in respect of these areas for, as pointed

out earlier, it is open to the C.G. to relax the reservation for recorded reasons. Nor does this mean, as contended for by OMC and IDCOL, that they should get the leases asked for by them. This is so for two reasons. In the first place, the reservation is of a general nature and does not directly confer any rights on OMC and IDCOL. This reservation is of two types. Under Section 17A (1), inserted in 1986, the C.G. may after consulting the S.G. just reserve any area- not covered by a PL or a ML-with a view to conserving any mineral. Apparently, the idea of such reservation is that the minerals in this area will not be exploited at all, neither by private parties nor in the public sector. It is not necessary to consider whether any area so reserved can be exploited in the public sector as we are not here concerned with the scope of such reservation, there having been no notification Under Section 17A(1) after 1986 and after consultation with the S.G. The second type of reservation was provided for in Rule 58 of the rules which have already been extracted earlier in this judgment. This reservation could have been made by the S.G. (without any necessity for approval by the C.G.) and was intended to reserve areas for exploitation, broadly speaking, in the public sector. The notification itself might specify the Government, Corporation or Company that was to exploit the areas or may be just general, on the lines of the rule itself. Under Rule 59(1), once a notification under Rule 58 is made, the area so reserved shall not be available for grant unless the two requirements of Sub-rule (e) are satisfied: viz. an entry in a register and a Gazette notification that the area is available for grant. It is not quite clear whether the notification of March 5, 1974 complied with these requirements but it is perhaps unnecessary to go into this question because the reservation of the areas was again notified in 1977. These notifications are general. They only say that the areas are reserved for exploitation in the public sector. Whether such areas are to be leased out to OMC

or IDCOL or some other public sector corporation or a Government Company or are to be exploited by the Government itself is for the Government to determine de hors the statute and the rules. There is nothing in either of them which gives a right to OMC or IDCOL to insist that the leases should be given only to them and to no one else in the public sector. If, therefore the claim of reservation in 1977 in favour of the public sector is upheld absolutely, and if we do not agree with the findings of Rao that neither OMC nor IDCOL deserve any grant, all that we can do is to leave it to the S.G. to consider whether any portion of the land thus reserved should be given by it to these two corporations. Here, of course, there are no competitive applications from organisations in the public sector controlled either by the S.G. or the C.G., but even if there were, it would be open to the S.G. to decide how far the lands or any portion of them should be exploited by each of such Corporations or by the C.G. or S.G. Both the Corporations are admittedly instrumentalities of the S.G. and the decision of the S.G. is binding on them. We are of the view that, if the S.G. decides not to grant a lease in respect of the reserved area to an instrumentality of the S.G., that instrumentality has no right to insist that a ML should be granted to it. It is open to the S.G. to exercise at any time, a choice of the State or any one of the instrumentalities specified in the rule. It is true that if, eventually, the S.G. decides to grant a lease to one or other of them in respect of such land, the instrumentality whose application is rejected may be aggrieved by the choice of another for the lease. In particular, where there is competition between an instrumentality of the C.G. and one of the S.G. or between instrumentalities of the C.G. inter se or between the instrumentalities of the S.G. inter se, a question may well arise how far an unsuccessful instrumentality can challenge the choice made by the S.G. But we need not enter into these controversies here. The question we are concerned with here is whether OMC or

IDCOL can object to the grant to any of the private parties on the ground that a reservation has been made in favour of the public sector. We think the answer must be in the negative in view of the statutory provisions. For the S.G. could always denotify the reservation and make the area available for grant to private parties. Or, short of actually dereserving a notified area, persuade the C.G. to relax the restrictions of Rule 59(1) in any particular case. It is. therefore, open to the S.G. to grant private leases even in respect of areas covered by a notification of the S.G. and this cannot be challenged by any instrumentality in the public sector."

The legal position post amendment in 1957 Act by Central Act 37 of 1987 was explained (para 46; Pgs. 138-139) in the following manner:

"46. Before leaving this point, we may only refer to the position after 1986. Central Act 37 of 1986 inserted Sub-section (2) which empowers the State Government to reserve areas for exploitation in the public sector. This provision differs from that in Rule 58 in some important respects-

(i) the reservation requires the approval of the C.G.;

(ii) the reservation can only be of areas not actually held under a PL or ML;

(iii) the reservation can only be for exploitation by a Government company or a public sector corporation (owned or controlled by the S.G. or C.G.) but not for exploitation by the Government as such.

Obviously, Section 17A(2) and rule 58 could not stand together as Section 17A empowers the S.G, to reserve only with the approval of the C.G. while Rule 58 contained no such restriction. There was also a slight difference in

their wording. Perhaps because of this Rule 58 has been omitted by an amendment of 1988 (G.S.R. 449E of 1988) made effective from April 13, 1988. Rule 59, however, contemplates a relaxation of the reservation only by the C.G. By an amendment of 1987 effective on February 10, 1987, (G.S.R. 86-E of 87) the words "reserved by the State Government" were substituted for the words "reserved by the Government" in Rule 59(1)(e). Later, Rule 59(1) has been amended by the insertion of the words "or Under Section 17-A of the Act" after the words "under Rule 58" in Clause (e) as well as in the second proviso. The result appears to be this:

(i) After March 13, 1988, certainly, the S.G. cannot notify any reservations without the approval of the C.G., as Rule 58 has been deleted. Presumably, the position is the same even before this date and as soon as Act 37 of 1986 came into force.

(ii) However, it is open to the S.G. to denotify a reservation made by it under Rule 58 or Section 17A. Presumably, dereservation of an area reserved by the S.G. after the 1986 amendment can be done only with the approval of the C.G. for it would be anomalous to hold that a reservation by the S.G. needs the C.G.'s approval but not the dereservation. Anyhow, it is clear that relaxation in respect of reserved areas can be permitted only by the C.G.

(iii) It is only the C.G. that can make a reservation with a view to conserve minerals generally but this has to be done with the concurrence of the S.G."

Dharambir Singh

96. In *Dharambir Singh vs. Union of India & Ors.*[pp], a

pp. 1996 (6) SCC 702.

three-Judge Bench of this Court while considering Section 10(3) and 11(2) of the 1957 Act, observed that in grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But, the State Government is required to exercise its discretion subject to the requirement of the law.

Bhupatrai Maganlal Joshi

97. In *Bhupatrai Maganlal Joshi*[s], a Constitution Bench of this Court was concerned with the correctness of the High Court's decision on the question whether the reservation of land for exploitation of mineral resources in the public sector was permissible under the 1957 Act read with 1960 Rules. The High Court had answered the question in the affirmative from which the matter reached this Court. In a very brief order this Court agreed with the reasoning and conclusion of the High Court.

M.P. Ram Mohan Raja

98. In the case of *M.P. Ram Mohan Raja vs. State of T.N.& Ors.*[qq], this Court relied upon the decision of this Court in M/s. Hind Stoneo and reiterated that so far as grant of mining and mineral lease is concerned no person has a vested right in it.

Sandur Manganese and Iron Ores Limited

99. In a comparatively recent decision in Sandur Manganese and Iron Ores Limited.,m the diverse issues which were under consideration are noted in paragraph 6 of the Report. The Court considered statutory provisions contained in the 1957 Act, 1960 Rules and decisions of this Court in *Hingir-Rampur Coal Co.*[a] , *M.A. Tulloch & Co.*[b], *Baijnath Kadio*[c],

qq. 2007 (9) SCC 78.

Bharat Coking Coal[l] and few other decisions, and it was observed with reference to Section 2 of the 1957 Act that State Legislature was denuded of its legislative power to make any law with respect to the regulation of mines and minerals development to the extent provided in the 1957 Act. In paragraphs 61, 62 and 63 (Pgs. 30-31) of the Report, the Court held as follows :

> "61.- In addition to what we have stated, it is relevant to note that Section 11(5) again carves out an exception to the preference in favour of prior applicants in the main provision of Section 11(2). It permits the State Government, with the prior approval of the Central Government, to disregard the priority in point of time in the main provision of Section 11(2) and to make a grant in favour of a latter applicant as compared to an earlier applicant for special reasons to be recorded in writing. It also gives an indication that it can have no application to cases in which a notification is issued because, in such a case, both the first proviso to Section 11(2) and Section 11(4) make it clear that all applications will be considered together as having been received on the same date. In view of our interpretation, the proceedings of the Chief Minister and the recommendation dated 06.12.2004 are contrary to the Scheme of the MMDR Act as they were based on Section 11(5) which had no application at all to the applications made pursuant to the notification dated 15.03.2003.
>
> 62. We have already extracted Rules 59 and 60 and analysis of those rules confirms the interpretation of Section 11 above and the conclusion that it is Section 11(4) which would apply to a Notification issued under Rule 59(1). Rule 59(1) provides that the categories of areas listed in it including, inter alia, areas that were previously held or being under a mining lease or which have been reserved for exploitation by the State Government or under

Section 17A of the Act, shall not be available for grant unless (i) an entry is made in the register and (ii) its availability for grant is notified in the Official Gazette specifying a date not earlier than 30 days from the date of notification. Sub-rule (2) of Rule 59 empowers the Central Government to relax the conditions set out in Rule 59(1) in respect of an area whose availability is required to be notified under Rule 59 if no application is issued or where notification is issued, the 30-days black-out period specified in the notification pursuant to Rules 59(1)(i) and (ii) has not expired, shall be deemed to be premature and shall not be entertained.

63. As discussed earlier, Section 11(4) is consistent with Rules 59 and 60 when it provides for consideration only of applications made pursuant to a Notification. On the other hand, the consideration of applications made prior to the Notification, as required by the first proviso to Section 11(2), is clearly inconsistent with Rules 59 and 60. In such circumstances, a harmonious reading of Section 11 with Rules 59 and 60, therefore, mandates an interpretation under which Notifications would be issued under Section 11(4) in the case of categories of areas covered by Rule 59(1). In these circumstances, we are unable to accept the argument of the learned senior counsel for Jindal and Kalyani with reference to those provisions."

Paragraph 7 of *Amritlal Nathubhai Shah*[d] was considered in paragraph 65 of the Report and then in paragraph 66 (Pg. 32), the Bench observed as follows :

"66.- Even thereafter, this Court has consistently taken the position that applications made prior to a Notification cannot be entertained. In our view, the purpose of Rule 59(1), which is to ensure that mining lease areas are not given by the State Governments to favour persons of their

choice without notice to the general public would be defeated. In fact, the learned single Judge correctly interpreted Section 11 read with Rules 59 and 60. The said conclusion also finds support in the decision of this Court in *State of Tamil Nadu v. Hindstone,* (1981) 2 SCC 205 at page 218, where it has been held in the context of the rules framed under the MMDR Act itself that a statutory rule, while subordinate to the parent statute, is otherwise to be treated as part of the statute and is effective. The same position has been reiterated in *State of U.P. v. Babu Ram Upadhya* (1961) 2 SCR 679 at 701 and *Gujarat Pradesh Panchayat Parishad v. State of Gujarat* (2007) 7 SCC 718."

As regards the legislative and executive power of the State under Entry 23 List II read with Article 162 of the Constitution, the Court in *Sandur Manganese* and *Iron Ores Limited*[m] in paragraph 80 (Pg. 36) stated as under :

"80. It is clear that the State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of Section 11(3) of the Act, hence it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the MMDR Act in the grant of mining leases. Furthermore, Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. As a matter of fact, the respondents have not been able to point out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments. As rightly pointed out, the State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event that the person makes investment in any project. Assuming that the State Government had made any such commitment, it could not be possible for it to take an inconsistent position and

proceed to notify a particular area. Further, having notified the area, the State Government certainly could not thereafter honour an alleged commitment by ousting other applicants even if they are more deserving on the merit criteria as provided in Section 11(3)."

Whether 1962 and 1969 Notifications are ultra vires?

100. Now, in light of the above, I have to consider whether 1962 and 1969 Notifications issued by the Government of erstwhile State of Bihar notifying for the information of public that iron ore in the subject area was reserved for exploitation in the public sector are ultra vires and de hors 1957 Act and 1960 Rules.

Constitutional philosophy about law making in relation to mines and minerals

101. Entry 36 in List I (Federal List) and Entry 23 in List II (Provincial List) in the Seventh Schedule of Government of India Act, 1935 correspond to Entry 54 in List I (Union List) and Entry 23 in List II (State List) in our Constitution. It is interesting to note that in the course of debate in respect of the above entries in the Government of India Bill, the Solicitor General in the House of Commons stated that the rationale of including only the 'regulation of mines' and 'development of minerals' and that too only to the extent it was considered expedient in the public interest by a Federal law was to ensure that the Provinces were not completely cut-out from the law relating to mines and minerals and if there was inaction at the Centre, then the Provinces could make their own laws. Thus, powers in relation to mines and minerals were accorded to both the Centre and States. The same philosophy is reflected in our Constitution. The management of the mineral resources has been left with both the Central Government and State Governments in terms of Entry 54 in List I and Entry 23 in List II. In the scheme of our Constitution, the State Legislatures enjoy power to enact legislation on the topics of 'mines and mineral development'.

The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says 'subject to the provisions of List I with respect to regulation and development under the control of the Union'. In other words, State Legislature loses its jurisdiction to the extent to which Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from Entry 23, List II to that extent. It needs no elaboration that to the extent to which the Central Government had taken under 'its control' 'the regulation of mines and development of minerals' under 1957 Act, the States had lost their legislative competence. By the presence of expression 'to the extent hereinafter provided' in Section 2, the Union has assumed control to the extent provided in 1957 Act. 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State Legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand. To find out what is left within the competence of the State Legislature on the declaration having been made in Section 2 of the 1957 Act, one does not have to look outside the provisions of 1957 Act but as observed in *Baijnath Kadio*[c] , 'have to work it out from the terms of that Act'. In order that the declaration made by the Parliament should be effective, the making of rules or enforcement of rules so made is not decisive.

102. The declaration made by Parliament in Section 2 of 1957 Act states that it is expedient in the public interest that

the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act itself. Legal regime relating to regulation of mines and development of minerals is thus guided by the 1957 Act and 1960 Rules. Whether reservation made by 1962 and 1969 Notifications is in any manner contrary or inconsistent with 1957 Act? In my view not at all. Whether the impugned Notifications impinge upon the legislative power of the Central Government? My answer is in negative. Whether the Government of erstwhile State of Bihar did not have the power to make reservation which it did by 1962 and 1969 Notifications? I think there was no lack of power in the State in making such reservation. I indicate the reasons therefor.

Management of minerals : general observations

103. First, few general observations. Minerals - like rivers and forests - are a valuable natural resource. Minerals constitute our national wealth and are vital raw-material for infrastructure, capital goods and basic industries. The conservation, preservation and intelligent utilization of minerals are not only need of the day but are also very important in the interest of mankind and succeeding generations. Management of minerals should be in a way that helps in country's economic development and which also leaves for future generations to conserve and develop the natural resources of the nation in the best possible way. For proper development of economy and industry, the exploitation of natural resources cannot be permitted indiscriminately; rather nation's natural wealth has to be used judiciously so that it may not be exhausted within a few years.

No fundamental right in mining

104. The appellants have applied for mining leases in a land belonging to Government of Jharkhand (erstwhile Bihar) and it is for iron-ore which is a mineral included in the First Schedule to the 1957 Act in respect of which no mining lease

can be granted without the prior approval of the Central Government. It goes without saying that no person can claim any right in any land belonging to Government or in any mines in any land belonging to Government except under 1957 Act and 1960 Rules. No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to the Government. It is apt to quote the following statement of O. Chinnappa Reddy, J. in *M/s. Hind Stone*[o] , albeit in the context of minor mineral, 'The public interest which induced Parliament to make the declaration contained in Section 2……. has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals'. He went on to say, 'The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed ……….at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present.'

State Government's ownership in mines and minerals within its territory and the power of reservation

105. It is not in dispute that all rights and interests, including rights in mines and minerals in the subject area, had vested absolutely in the erstwhile State of Bihar free from all encumbrances. At the commencement of Constitution, the erstwhile State of Bihar was a Part-A State specified in the First Schedule of the Constitution and prior thereto the Province of Bihar. By virtue of Article 294, all properties and assets which were vested in His Majesty for the purposes of the Government of Province of Bihar stood vested in the corresponding State of Bihar. By 1950 Bihar Act, all other lands i.e., estates and tenures of whatever kind, including the mines and minerals

therein, stood vested in the State of Bihar. Thus, all lands and minerals on or under land situate in the erstwhile State of Bihar came to vest in it. Thereafter with effect from November 15, 2000, the State of Jharkhand was carved out of the State of Bihar pursuant to the Bihar Re-Organisation Act, 2000. Accordingly, all lands, inter alia, belonging to the then State of Bihar and situated in the transferred territories of Singhbhum (East) and Singhbhum (West) Districts, passed to the newly created State of Jharkhand. The admitted position is that the State Government (erstwhile Bihar and now Jharkhand) is the owner of the subject area. Mines and minerals within its territory vest in it absolutely. As a matter of fact it is because of this position that the appellants made their application for grant of mining lease to the State Government. The question now is, the regulation of mines and development of minerals having been taken under its control by the Central Government, whether the provisions contained in 1957 Act or 1960 Rules come in the way of the State Government to reserve any particular area for exploitation in the public sector.

106. The legislation on the subject of mines and minerals as contained in 1957 Act and 1960 Rules has been extensively quoted in the earlier part of the judgment. Suffice it to say that Section 4 is a pivotal provision around which the legal framework for the regulation of mines and development of minerals as laid down in 1957 Act revolves.

107. The character of the impugned Notifications making reservation of the area set out therein for exploitation of iron ore in public sector has to be judged in light of the provisions in 1957 Act and 1960 Rules. The object and effect of declaration made by Parliament in Section 2 and the provisions that follow Section 2 in 1957 Act, which have been extensively referred to above, even remotely do not suggest that the Government of the erstwhile State of Bihar lacked authority or competence to make reservation of subject mining areas within its territory relating to iron ore which vested in it for public sector

undertaking by 1962 and 1969 Notifications. Whatever way it is seen, whether 'reservation' topic was covered by 1957 Act when 1962 and 1969 Notifications were issued and published by the State Government or whether the provisions of 1957 Act, as were then existing, enabled the State Government to reserve the subject area for its own use through the agency in public sector, I am of the opinion that since the State Government's paramount right over the iron ore being the owner of the mines did not get affected by 1957 Act, the power existed with the State Government to reserve subject areas of mining for exploitation in public sector undertaking. It was, however, argued that by 1957 Act the State's ownership rights insofar as 'development of minerals' was concerned stood frozen. 'Development' includes exploitation of mineral resources and to allow to exploit or not to allow to exploit is all covered by 1957 Act and by Section 4 the right of the State Government with regard to development of minerals was taken away and the State Government ceased to have any inherent right of reservation.

108. I do not agree. In the first place, the declaration made by Parliament in Section 2 and the provisions that follow Section 2 in 1957 Act have left untouched the State's ownership of mines and minerals within its territory although the regulation of mines and the development of minerals have been taken under the control of the Union. Section 4 deals with activities in relation to land and does not extend to extinguish the State's right of ownership in such land. Section 4 regulates the right to transfer but does not divest ownership of minerals in a State and does not preclude the State Government from exploiting its minerals. Section 4(1) can have no application where the State Government wants to undertake itself mining operations in the area owned by it. On consideration of Section 5, I am of the view that the same conclusion must follow. Section 5 or for that matter Sections 6, 9, 10, 11 and 13(2)(a) also do not take away the State's ownership rights in the mines and minerals within its territory. The power to legislate for regulation of mines

and development of minerals under the control of the Union may definitely imply power to acquire mines and minerals in the larger public interest by appropriate legislation, but by 1957 Act that has not been done. There is nothing in 1957 Act to suggest even remotely - and there is no express provision at all - that the mines and minerals that vested in the States have been acquired. Rather, the scheme and provisions of 1957 Act themselves show that Parliament itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government and that Parliament did not intend to trench upon powers of State Legislatures under Entry 18, List II. As noted above, the declaration made by Parliament in Section 2 of 1957 Act states that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals to the extent provided in the Act itself. The declaration made in Section 2 is, thus, not all comprehensive.

109. The regulation of mines and development of minerals has been taken over under its control by the Central Government to the extent it is manifested in 1957 Act which does not contemplate acquisition of mines and minerals. By the presence of keynote expression 'to the extent hereinafter provided' in Section 2, the Union has assumed control to the extent specified in the provisions following Section 2. In my view, although the word `regulation' must in the context receive wide interpretation, but the extent of control by Union as specified in 1957 Act has to be construed strictly. The decisions of this Court in *M.A. Tulloch & Co.*[b], *Baijnath Kadio*[c], *Bharat Coking Coal*[l] and few other decisions where this Court has held with reference to declaration made by Parliament in Section 2 of 1957 Act and the provisions of that Act that the whole of the legislative field was covered were in the context of specific State legislations under consideration. In the context of subject State legislation, the whole legislative field was found to be occupied by the Central law. The same is the position in the case of *Hingir-Rampur Coal Co.*[a] where whole of the

legislative field relating to 'minerals' was found to be covered by the declaration made in Section 2 of the 1948 Act in the context of the State legislation under consideration. In *Hingir-Rampur Coal Co.*[a] while examining the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952 this Court held that the State Act was covered by the 1948 Act. In *M.A. Tulloch & Company*[b] , this Court was concerned with the same Orissa Act which was under consideration in *Hingir-Rampur Coal Co.*[a] and in light of Section 18(1) of the 1957 Act which was under consideration it was held that the intention of Parliament was to cover the entire field. In *Baijnath Kadio*[c], this Court was concerned with the constitutional validity of proviso (2) to Section 10(2) added by Bihar Land Reforms (Amendment) Act, 1964. While examining the constitutional validity of the above provision, the Constitution Bench of this Court analysed 1957 Act. In light of Entry 54 in List I and Entry 23 in List II the observation that whole of the legislative field was covered by the Parliamentary declaration read with 1957 Act was with reference to the State legislations under consideration and the whole of the legislative field was found to be occupied by 1957 Act. Similar observations in various other decisions by this Court were made in the context of the topic under consideration.

110. I am supported in my view by a three-Judge Bench decision of this Court in *Orissa Cement Limited*[f] wherein it was emphatically asserted that in the case of a declaration under Entry 54, the legislative power of the State Legislatures is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The three-Judge Bench on careful consideration said, 'The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration. While the legislation in *Hingir-Rampur Coal Co.*[a] and *M.A.Tulloch & Co.*[b] was found to fall within the pale of the prohibition, those in *Chanan Mal*[x], *Ishwari Khetan Sugar Mills*[y] and *Western Coalfields*[s] Limitedoo were general in nature

and traceable to specific entries in the State List and did not encroach on the field of the Central enactment except by way of incidental impact'.

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

112. The above position held by the Central Government has been approved by this Court in *Amritlal Nathubhai Shah*[d]. I have already referred to the facts in the case of *Amritlal Nathubhai Shah*[d] and the issue involved therein - an issue similar to the controversy presented before us - in earlier part of this judgment. In *Amritlal Nathubhai Shah*[d], the Court referred to Section 4 of 1957 Act and it was held that there was nothing in 1957 Act or 1960 Rules to conclude as to why the State Government could not , if it so desired, 'reserve' any land for itself, for any purpose, and such reserved land would then not be available for the grant of a prospecting licence or a mining lease to any person. The Court then pointed out, 'the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory'. It was also held that quite apart from that, Rule 59 of 1960 Rules clearly contemplated reservation by an order of the State Government. The above legal position has been reiterated by this Court in *Indian Metals and Ferr*[o] Alloys Ltd.[p].

Whether Amritlal Nathubhai Shah is not a binding precedent

113. Learned senior counsel for the appellants, however, vehemently contended that *Amritlal Nathubhai Shah*[d] is not a binding precedent being *per incuriam* inasmuch as earlier judgments of this Court have not been considered and applied. It was argued that decision in *Amritlal Nathubhai Shah*[d] was limited to its own facts and that decision did not deal with reservation prior to amendment in Rule 59. In that case Notification was of December 31, 1963 whereunder lands in particular areas had been reserved for exploitation of bauxite in the public sector. At that time Rule 59 of 1960 Rules had been amended and, moreover, that was a case of exploitation of mineral by the State itself and in case of exploitation other than by State it could only be done in accord with the 1957 Act and 1960 Rules.

114. I am afraid that the distinguishing features highlighted by learned senior counsel for the appellants are not substantial and do not persuade me not to follow *Amritlal Nathubhai Shah*[d]. The judgment of this Court in *Amritlal Nathubhai Shah*[d] establishes the distinction between the power of reservation to exploit a mineral as its own property on the one hand and the regulation of mines and mineral development under the 1957 Act and the 1960 Rules on the other. The authority of the State Government to make reservation of a particular mining area within its territory for its own use is the offspring of ownership; and it is inseparable therefrom unless denied to it expressly by an appropriate law. By 1957 Act that has not been done by Parliament. Setting aside by a State of land owned by it for its exclusive use and under its dominance and control, in my view, is an incident of sovereignty and ownership. There is no incongruity or inconsistency in the decisions of this Court in *Hingir-Rampur Coal Co.*[a], *M.A. Tulloch & Co.*[b], *Baijnath Kadio*[c] and *Amritlal Nathubhai Shah*[d]. The Bench in *Amritlal Nathubhai Shah*[d] was alive to the legal position highlighted by

this Court in *Hingir-Rampur Coal Co.*[a], *M.A. Tulloch & Co.*[b] and *Baijnath Kadio*[c] although it did not expressly refer to these decisions. This is apparent from the observations made in para 3 wherein it has been stated that in pursuance of its exclusive power to make laws with respect to the matters enumerated in Entry 54 of List I in the Seventh Schedule, Parliament specifically declared in Section 2 of the 1957 Act that it was expedient in the public interest that the Union should take under its control, regulation of mines and the development of minerals to the extent provided therein. The Bench noticed that State Legislature's power under Entry 23 of List II was, thus, taken away and regulation of mines and mineral development had therefore to be in accordance with the 1957 Act and 1960 Rules. The legal position exposited in *Amritlal Nathubhai Shah*[d] is that even though the field of legislation with regard to regulation of mines and development of minerals has been covered by the declaration of the Parliament in Section 2 of the 1957 Act, but that can not justify the inference that the State Government has lost its right to the minerals which vest in it as a property within its territory and hence no person has a right to exploit the mines other than in accordance with the provisions of the 1957 Act and the 1960 Rules. The authority of the State Government to order reservation flows from the fact that it is the owner of the mines and the minerals within its territory. Such authority is also traceable to Rule 59 of 1960 Rules.

115. Yet another considerable point was made that 1962 and 1969 Notifications are not relatable to statutory provisions contained in 1957 Act and 1960 Rules. Reference was made to Sections 17 and 18 and Rules 58 and 59 of 1960 Rules and it was argued that these provisions are indicative of the position that reservation made by the State Government for exploitation of minerals in public sector was unsupportable and unsustainable in law.

Section 17 - not all - comprehensive provision

116. I am of the opinion that Section 17 is not all -

comprehensive on the subject of refusal to grant prospecting licence or mining lease. Section 17 has nothing to do with public or private sector. It does not deal directly or indirectly with the State Government's right for reservation of its own mines and minerals. Its application is not general but it is confined to a specific situation where the Central Government proposes to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. The above view with regard to Section 17 finds support from *Amritlal Nathubhai Shah*[d]. Insofar as Section 18 is concerned, it basically confers additional rule making power upon the Central Government for achieving the objectives, namely, conservation and systematic development of minerals articulated therein. If the State Government makes reservation in public interest with respect to minerals which vest in it for exploitation in public sector, I fail to see how such reservation can be seen as impairing the obligation cast upon the Central Government under Section 18.

Rule 59 and Janak Lal

117. It is true that Rule 58 as it existed originally did not enable the State Government to reserve any area in the State for exploitation of minerals in public sector. But Rule 59 did recognise the State Government's authority to make reservation for any purpose. It was, however, argued by Dr. Rajiv Dhavan that Rule 59, as it then stood, allowed reservation for any purpose other than prospecting or mining for minerals. He relied upon decision of this Court in *Janak Lal*[j]. In *Janak Lal*[j], admittedly the disputed area was reserved for nistar purposes. When an application for grant of mining lease was earlier made by a third party it was rejected on the ground that it was so reserved. It was also an admitted position before this Court that the procedure under Rule 58 was not followed before grant was made in favour of respondent no. 4 therein and no opportunity was given to any other person before entertaining application of respondent no. 4. In the backdrop of the above admitted

position, the Court considered the question whether Rule 59 was attracted or not. The High Court had accepted the argument of the respondents that the expression 'reserved for any purpose' in Rule 59 did not cover a case where the area was reserved for nistar purposes or for any purpose other than mining. This Court did not accept the High Court's view. While construing Rule 59 as it originally existed and the amendment brought in Rule 59 by deleting the words, 'other than prospecting or mining for minerals', the Court said that the result of the amendment was to extend the rule and not to curtail its area of operation. It was held that words 'any purpose' was of wide connotation and there was no reason to restrict its meaning.

118. *Janak Lal,*[j] in my opinion, does not help the contention canvassed on behalf of the appellants. The expression, 'other than prospecting or mining for minerals' that formed part of original Rule 59, in my view, was not of much significance and did not impede the State Government's authority to make reservation of any area for exploitation in public sector founded on its ownership over that area. It was because of this that this insignificant and inconsequential expression was later on deleted from Rule 59 in 1963. Rule 59, accordingly, continued to recognise the State Government's right to reserve any area for mining within its territory for any purpose including exploitation in public sector. In *Amritlal Nathubhai Shah*[d], this position has been expressly affirmed when it said, "but quite apart from that, we find that Rule 59 of the Rules which have been made under Section 13 of the Act, clearly contemplates such reservation by an order of the State Government".

Repeal of Rule 58 and Section 17A

119. Rule 58 was amended in 1980 whereby it expressly provided that the State Government may by Notification in the official gazette reserve any area for exploitation by the Government, a corporation established by the Central, State or Provincial Act or a Government company within the meaning of Section 617 of the Companies Act. Rule 58 has been

omitted from 1960 Rules as the provision for reservation has now been expressly made by insertion of Section 17A in 1957 Act. According to Section 17A(2), the State Government with the approval of the Central Government may reserve any area not already held under any prospecting licence or mining lease to undertake prospecting or mining operations through a Government company or a corporation owned or controlled by it. In terms of Section 17A(2), any reservation made by the State Government after coming into force of that Section must bear approval of the Central Government.

120. From the above, it becomes clear that what was implied by the provisions originally contained in 1957 Act and 1960 Rules insofar as authority of the State Government to reserve any area within its territory for mining in public sector has been made explicit first by amendment in Rule 58 in 1980 and later on by introduction of Section 17A in 1957 Act by virtue of amendment effective from 1987.

121. It was also argued by Mr. C.A. Sundaram, learned senior counsel for one of the appellants that even if 1962 and 1969 Notifications were held to be validly issued with proper authority of law at that point of time, the fact that Rule 58 was omitted in 1988 without any saving clause necessarily meant that these Notifications were no longer valid and could not be relied upon. He argued that current power of reservation contained in Section 17A of 1957 Act is consistent with erstwhile Rules 58/59 since Section 17A expressly requires the approval of the Central Government before any State Government issues any notification for reservation of mining area in public sector.

122. The impact of omission of Rule 58 in 1988 from 1960 Rules and the introduction of Section 17A in 1957 Act in the context of reservation of the mining area by the State Government for public sector exploitation came up for direct consideration by this Court in *Indian Metals and Ferro Alloys Ltd.*[p]. In the earlier part of the judgment I have already quoted

the relevant portion of the decision of this Court in *Indian Metals and Ferro Alloys Ltd.*[p]. The Court referred to the relevant amendments in 1957 Act and 1960 Rules and categorically held that reservations made prior to insertion of Section 17A continue in force even after the introduction of Section 17A. The reservations made by the State Government in 1977 before omission of Rule 58 and amendment in Rule 59 and insertion of Section 17A in 1957 Act were, thus, held to be unaffected.

123. Having carefully considered Section 17A, I have no hesitation in holding that the said provision is prospective. There is no indication in Section 17A or in terms of the Amending Act that by insertion of Section 17A the Parliament intended to alter the pre-existing state of affairs. The Parliament does not seem to have intended by bringing in Section 17A to undo the reservation of any mining area made by the State Government earlier thereto for exploitation in public sector. The Parliament has no doubt plenary power of legislation within the field assigned to it to legislate prospectively as well as retrospectively. As early as in 1951 this Court in *Keshavan Madhava Menon v. State of Bombay*[rr] had stated about a cardinal principle of construction that every statue is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. In Principles of Statutory Interpretation (Seventh Edition, 1999) by Justice G.P. Singh, the statement of Lord Blanesburg in *Colonial Sugar Refining Co. v. Irving*[ss] and the observations of Lopes, L.J. in *Pulborough Parish School Board Election, Bourke v. Nutt*[tt] have been noted as follows :

"In the words of Lord Blanesburg, "provisions which touch

rr. AIR 1951 SC 128.

ss. (1905) AC 369.

tt. (1894) 1 QB 725, p. 737.

a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." "Every statute, it has been said", observed Lopes, L.J., "which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect".

124. Where an issue arises before the Court whether a statute is prospective or retrospective, the Court has to keep in mind presumption of prospectivity articulated in legal maxim *nova constitutio futuris formam imponere debet non praeteritis,* i.e., 'a new law ought to regulate what is to follow, not the past'. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication.

125. The aspects, namely, (i) 1993 mineral policy framed by the Central Government envisaged permission of captive consumption of minerals across the country; (ii) in 1994 Central Government asked all the state governments to de-reserve 13 minerals including iron ore and directed them to take steps accordingly; (iii) confirmation by the Government of Bihar to the Central Government in 1994 that no mining areas were reserved for public sector undertaking in the then State of Bihar; (iv) confirmation by the State Government in 2001 to Central Government that there are no reserved areas in the State and (v) in 2004, the recommendation by the State Government in favour of the appellants to the Central Government for grant of prior approval and reminder in 2005, in my view, have no impact and effect on the validity of 1962 and 1969 Notifications. The above acts of the Government of Bihar and the Government of Jharkhand in ignorance of 1962 and 1969 Notifications cannot be used as a sufficient ground for invalidating these Notifications. If a state government has power to reserve

mineral bearing area for exploitation in public sector - and I have already held that the then Government of Bihar had such power - the act of reservation vide 1962 and 1969 Notifications is not rendered illegal or invalid. I am clearly of the view that lack of knowledge on the part of the State Government about the reservation of areas for exploitation in public sector vide 1962 and 1969 Notifications does not affect in any manner the legality and validity of these Notifications once it has been found that these Notifications have been issued by the erstwhile State of Bihar in valid exercise of power which it had.

Validity of 2006 Notification

126. On October 27, 2006, the State Government issued a Notification declaring its decision that the iron ore deposits at Ghatkuri would not be thrown open for grant of prospecting licence, mining licence or otherwise for private parties. In the said Notification, it was noted that the deposits were at all material times kept reserved by 1962 and 1969 Notifications issued by the State of Bihar. It was further mentioned in the Notification that mineral reserved in Ghatkuri area has now been decided to be utilized for exploitation by public sector undertaking or joint venture project of the State Government as they would usher in maximum benefits to the State and would generate substantial amount of employment in the State. 2006 Notification states that it has been issued in the public interest and in the larger interest of the State for optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon. It was argued that 2006 Notification is bad for the same reasons for which 1962 and 1969 Notifications are bad in law and invalid. The argument is noted to be rejected. For 1962 and 1969 Notifications are not and have not been found by me to suffer from any legal infirmity. 2006 Notification mentions factum of reservation made by 1962 and 1969 Notifications. It is founded on the policy of the State Government that such reservation will usher in maximum benefits to the State

and would also generate substantial amount of employment in the State. The public interest is, thus, paramount. The State Government had authority to do that under Section 17A(2) of 1957 Act read with Rule 59(1)(e) of 1960 Rules.

127. It was, however, argued on behalf of the appellants that 2006 Notification has attempted to reserve the area for exploitation by public sector undertaking or in joint venture project whereas Section 17A(2) of 1957 Act allows the State Government to reserve area for a government company or corporation owned or controlled by it and not in joint venture project. The submission was that 2006 Notification is an attempt to bring in indirectly private companies through joint venture project although, Section 17A clearly does not envisage private participation.

128. The mineral reserved in the said area by 2006 Notification has been decided to be utilized for exploitation by public sector undertaking or joint venture project of the State Government. 2006 Notification does mention reservation for joint venture project of the State Government but, in my opinion, the said expression must be understood to be confined to an instrumentality having the trappings and character of a government company or corporation owned or controlled by the State Government and not outside of such instrumentality.

129. The types of reservation under Section 17A and their scope have been considered by this Court in *Indian Metals and Ferro Alloys Ltd.*[p] in paragraphs 45 and 46 (pgs. 136-139) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17A(2) requires prior approval of the Central Government before reservation of any area by the State Government for the public sector undertaking. The argument is founded on incorrect reading of Section 17A(2). This provision does not use the expression, 'prior approval' which has been used in Section 11. On the other hand, Section 17A(2) uses the words, 'with the approval of the Central Government'. These words in Section 17A(2) can not

be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. The approval by the Central Government contemplated in Section 17A(2) may be express or implied. In a case such as the present one where the Central Government has relied upon 2006 Notification while rejecting appellants' application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by State Government in 2006 Notification otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in 2006 Notification.

130. Two more contentions advanced on behalf of the appellants, one, with regard to 2006 Notification and the other with regard to 1962 and 1969 Notifications may be briefly noticed. As regards 2006 Notification it was contended that it was not legally valid as it has been made operative with retrospective effect. In respect of 1962 and 1969 Notifications, it was argued that the State Government had never adopted these Notifications and, accordingly, these Notifications lapsed. None of these two arguments has any merit. 2006 Notification has not been given retrospective operation as contended on behalf of the appellants. I have already held that 2006 Notification is prospective. Mere reference to 1962 and 1969 Notifications in 2006 Notification does not make 2006 Notification retrospective.

131. The other argument that 1962 and 1969 Notifications had lapsed as the State Government never adopted them is also without any merit and substance. The new State of Jharkhand was carved out of the erstwhile State of Bihar and it came into existence by virtue of the Bihar Reorganisation Act, 2000. Section 85 of that Act provides that the appropriate Government may before expiration of two years adapt and/or modify the law and every such law shall have effect subject to adaptation and modification so made until altered, repealed or

amended by a competent Legislature. In light of Section 85 of the Bihar Reorganisation Act read with Sections 84 and 86 thereof, position that emerges is that the existing law shall have effect until it is altered, repealed and/or amended. Since the new State of Jharkhand had not altered, repealed and/or amended 1962 and 1969 Notifications issued by the erstwhile State of Bihar, it cannot be said that 1962 and 1969 Notifications had lapsed. Moreover, in 2006 Notification, 1962 and 1969 Notifications and their effect have been mentioned and that also shows that 1962 and 1969 Notifications continued to operate. The expression, 'the deposit was at all material times kept reserved vide Gazette Notification No. A/MM-40510/62-6209/M dated 21st December, 1962 and No. B/M-6-1019/68-1564/M dated 28th February, 1969 of the State of Bihar' leaves no manner of doubt that 1962 and 1969 Notifications continued to operate and did not lapse.

Principles of promissory estoppel

132. The doctrine of promissory estoppel is now firmly established and is well accepted in India. Its nature, scope and extent have come up for consideration before this Court time and again. One of the leading cases of this Court on the doctrine of promissory estoppel is the case of *Motilal Padampat Sugar Mills*[z] . In that case, the Court elaborately and extensively considered diverse facets and aspects of doctrine of promissory estoppel. That was a case where the appellant was primarily engaged in the business of manufacture and sale of sugar and it had also a cold storage plant and a steel foundry. On October 10, 1968 a news item was carried in the newspaper/s that the State of Uttar Pradesh had decided to give exemption from sales tax for a period of three years under Section 4-A of the U.P. Sales Tax Act to all new industrial units in the State with a view to enabling them, "to come on firm footing in developing stage". *Motilal Padampat Sugar Mills*[z] on the basis of the above news, addressed a letter to the Director of the Industries stating that in view of the Sales Tax

Holiday announced by the Government, it intended to set up a hydrogeneration plant for manufacture of vanaspati and sought confirmation whether proposed industrial unit would be entitled to sales tax holiday for a period of three years from the date it commenced production. The Director of Industries replied that there would be no sales tax for three years on the finished product of the vanaspati from the date it got power connection for commencing production. *Motilal Padampat Sugar Mills*[z] then started taking steps for establishment of the factory. It entered into agreement for procuring plant and machinery and also took diverse steps and considerable progress in the setting up of the vanaspati factory took place. Later on, the State Government had a second thought on the question of exemption of sales tax and, ultimately, the government took a policy decision that new vanaspati units in the State which go into commercial production by September 30, 1970 would be given only partial concession in sales tax for a period of three years. *Motilal Padampat Sugar Mills*[z] took up the matter with the Government and in the meanwhile its production started on July 2, 1970 which was also intimated to the functionaries of the State. Having been denied total sales tax holiday although promised earlier by the Director of Industries, it filed a writ petition before the High Court. The principal argument advanced on behalf of *Motilal Padampat Sugar Mills*[z] was that on a categorical assurance of the State Government that it would be exempted from payment of sales tax for a period of three years from the date of commencement of production that it established a hydrogeneration plant for manufacture of vanaspati. The assurance was given by the State Government intending or knowing that it would be acted on by it and in fact by acting on it, it altered its position and, therefore, the State Government was bound on the principle of promissory estoppel to honour the assurance and exempt it from sales tax for a period of three years. In backdrop of these facts, when the matter reached this Court, the Court considered the nature, scope and extent of the doctrine of promissory estoppel. In paragraph 8 of the Report, the Court considered the view of

Justice Denning, as he then was, in the *Central London Property Trust Ltd. v. High Trees House Ltd.*[uu] wherein Denning, J. had considered *Jorden v. Money*[vv]. This Court also referred to in paragraph 8, the opinions in *Hughes v. Metropolitan Railway Company*[ww], *Birmingham and District Land Co., v. London and North Western Rail Co.*[xx] which were considered by Justice Denning in the *High Trees*[uu] case. The Court also considered the decisions in *Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd.*[yy], *Evenden v. Guildford City Association Football Club Ltd.*[zz] and *Crabb v. Arun District Council*[aaa] and culled out the legal position as follows :

> "8. ...... The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

Then in para 9, the Court stated that it was a doctrine evolved by equity in order to prevent injustice. The Court pointed out

uu. (1956) 1 All ER 256.

vv. (1854) 5 HLC 185.

ww. (1877) 2 AC 439.

xx. (1889) 40 Ch D 268.

yy. (1968) 2 All ER 987.

zz. (1975) 3 All ER 269.

aaa. (1975) 3 All ER 865.

that where promise is made by a person knowing that it would be acted on by the person to whom it is made and in fact it is so acted on, it is inequitable to allow the party making the promise to go back upon it.

133. In para 13, the development of doctrine of promissory estoppel in England was noticed by observing, "that even in England where the Judges, apprehending that if a cause of action is allowed to be founded on promissory estoppel it would considerably erode, if not completely overthrow, the doctrine of consideration, have been fearful to allow promissory estoppel to be used as a weapon of offence, it is interesting to find that promissory estoppel has not been confined to a purely defensive role".

134. In *Motilal Padampat Sugar Mills*[z], the Court also referred to American law on the subject. In para 14 after observing, 'the doctrine of promissory estoppel has displayed remarkable vigour and vitality in the hands of American Judges and it is still rapidly developing and expanding in the United States", the Court referred to Article 90 of American Law Institute's "Restatement of the Law of Contracts" and the statement at page 657 of Volume 19 of American Jurisprudence.

135. The Court then considered the view of Justice Cardozo in *Allengheny College v. National Chautauque County Bank*[bbb] and *Orennan v. Star Paving Company*[ccc] and noted as follows :

> "14. There are also numerous cases where the doctrine of promissory estoppel has been applied against the Government where the interest of justice, morality and common fairness clearly dictated such a course. We shall refer to these cases when we discuss the applicability of the doctrine of equitable estoppel against the Government.

bbb. 57 ALR 980.

ccc. (1958) 31 Cal 2d 409.

> Suffice it to state for the present that the doctrine of promissory estoppel has been taken much further in the United States than in English and Commonwealth jurisdictions and in some States at least, it has been used to reduce, if not to destroy, the prestige of consideration as an essential of valid contract. Vide Spencer Bower and Turner's Estoppel by Representation (2d) p. 358.

136. The Court then considered to what extent the doctrine of promissory estoppel was applicable against the Government. After referring to few decisions of the English courts and the American courts, the decisions of this Court in *Union of India v. Indo-Afghan Agencies*[ddd], *Collector of Bombay v. Municipal Corporation of the City of Bombay*[eee], *Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council*[fff], *M. Ramanatha Pillai v. State of Kerala*[ggg], *Assistant Custodian v. Brij Kishore Agarwala*[hhh], *State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd.*[iii], *Excise Commissioner, U.P., Allahabad v. Ram Kumar*[jjj], *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh*[kkk] and *Radhakrishna Agarwal v. State of Bihar*[lll] were considered.

137. After entering into detailed consideration as noted above, in *Motilal Padampat Sugar Mills*[z], this Court exposited the legal position that the doctrine of promissory estoppel may be applied against the State even in its governmental, public

ddd. (1968) 2 SCR 366.

eee. (1952) SCR 43.

fff. (1970) 1 SCC 582.

ggg. (1974) 1 SCR 515.

hhh. (1975) 1 SCC 21.

iii. (1973) 2 SCC 713.

jjj. (1976) 3 SCC 540.

kkk. (1977) 4 SCC 145.

lll. (1977) 3 SCC 457.

or sovereign capacity where it is necessary to prevent fraud or manifest injustice. The following position was culled out:

> "The promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law.
>
> To invoke the doctrine of promissory estoppel it is not necessary for the promisee to show that he suffered any detriment as a result of acting in reliance on the promise. The detriment is not some prejudice suffered by the promisee by acting on the promise but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise.
>
> Whatever be the nature of function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied the Government can be compelled to carry out the promise made by it."

138. In *Union of India and Others v. Godfrey Philips India Limited*[mmm] (para 9, page 383 of the Report), this Court stated as follows:

> "9. Now the doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* The true principle of promissory estoppel is that where one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in *Motilal Padampat Sugar Mills v. State of U.P.* it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in *Motilal Sugar Mills* case contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision."

mmm. (1985) 4 SCC 369.

139. The doctrine of promissory estoppel also came up for consideration before this Court in *Delhi Cloth and General Mills Limited v. Union of India*[nnn]. In para 18 (page 95) of the Report the Court stated as follows :

> "18. Here the Railways Rates Tribunal apparently, appears to have gone off the track. The doctrine of promissory estoppel has not been correctly understood by the Tribunal. It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked

nnn. (1988) 1 SCC 86.

by the promisee unless he has suffered "detriment" or "prejudice". It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more."

140. A two-Judge Bench of this Court in Amrit Banaspati Company Limitedaa entered into consideration of the extent and applicability of doctrine of promissory estoppel and after considering earlier decisions of this Court in *Indo-Afghan Agencies*[ddd], *Motilal Padampat Sugar Mills*[z], *Godfrey Philips India Limited*[mmm] *and Delhi Cloth and General Mills Limited*[nnn] culled out the legal position that if a representation was made by an official on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government. However, if such representation was contrary to law then such representation was unenforceable. Then the Court stated (para 10, page 424) as follows:

"10. But promissory estoppel being an extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promisee of any injustice perpetrated due to promisor's going back on its promise, is incapable of being enforced

in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public policy……"

141. In *Kasinka Trading & Anr. v. Union of India and Anr.*[ooo], the Court was principally concerned with the invocation of the doctrine of promissory estoppel in the facts and circumstances of the case obtaining therein. The Court considered the decision of this Court in *Indo-Afghan Agencies*[ddd] and the successive decisions. The Court held in (paras 11-12, pages 283-284) as under:

"11. The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties.

12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public

ooo. 1995 (1) SCC 274.

authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation."

Then in paragraph 20 of the Report while distinguishing the facts under consideration which were not found to be analogous to the facts in *Indo-Afghan Agencies*[ddd] and *Motilal Padampat Sugar Mills,* the Court stated (Para 20-21, pages 287-288) as follows:

"20. The facts of the appeals before us are not analogous to the facts in *Indo-Afghan Agencies* or *M.P. Sugar Mills*. In the first case the petitioner therein had acted upon the unequivocal promises held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the present batch of cases neither the notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in public interest. So far as the second case (*M.P. Sugar Mills* case) is concerned the facts were totally different. In the correspondence exchanged between the State and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry.

21. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power

of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is *with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country.* Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any 'representation' much less a 'promise' to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption."

The Court went on to observe (paras 24 and 25, pages 289-290) as under:

"24. It needs no emphasis that the power of exemption under Section 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the "public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an exemption already granted, it should be allowed a free hand to do so. We are unable to agree with the learned counsel for the appellants that Notification No. 66 of 1979 could not be withdrawn before 31-3-1981. First, because the exemption notification having been issued under Section 25(1) of the Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands and secondly it is not permissible to postpone the compulsions of "public interest" till after 31-3-1981 if the Government is satisfied as to the change in the circumstances before that date. Since, the Government in the instant case was satisfied that the very public interest which had demanded a total exemption from payment of customs duty now demanded that the exemption should be withdrawn it was free to act in the manner it did. It would bear a notice that though Notification No. 66 of 1979 was initially valid only up to 31-3-1979 but that date was extended in "public interest", we see no reason why it could not be curtailed in public interest. Individual interest must yield in favour of societal interest.

25. In our considered opinion therefore the High Court was perfectly right in holding that the doctrine of promissory estoppel had no application to the impugned notification issued by the Central Government in exercise of its powers under Section 25(1) of the Act in view of the facts and circumstances, as established on the record."

142. In *State of Orissa and Ors. v. Mangalam Timber Products Limited*[ppp], this Court held that to attract applicability of the principle of estoppel it was not necessary that there must be a contract in writing entered into between the parties. Having regard to the facts of the case under consideration, the Court held that it was not satisfied even prima facie that it was a case of an error committed by the State Government of which it was not aware. While observing that the State cannot take advantage of its own omission, the Court held that having persuaded the respondent therein to establish an industry and that party having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of the raw material fixed by the State Government, the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of that party.

143. In *Nestle India Limited*[bb], the applicability of doctrine of promissory estoppel again came up for consideration before this Court. Inter alia, the Court considered the earlier decisions of this Court in *Indo-Afghan Agencies*[ddd], *Motilal Padampat Sugar Mills*[z], *Godfrey Philips India Limited*[mmm], *Mangalam Timber Products Limited*[ppp], *Amrit Banaspati Company Limited*[aa] and *Kasinka Trading*[ooo]. The Court followed *Godfrey Philips India Limited*[mmm] which was found to be close to the facts of that case. The Court did not accept the argument canvassed on behalf of the State of Punjab that the overriding public interest would make it inequitable to enforce the estoppel against the State Government.

144. In *Bannari Amman Sugars Ltd. v. Commercial Tax Officer & Ors.*[qqq], the development of doctrine of promissory estoppel was noted (paras 5-7, pages 631-633) and it was held as under:

ppp. (2004) 1 SCC 139.

qqq. (2005) 1 SCC 625.

"5. Estoppel is a rule of equity which has gained new dimensions in recent years. A new class of estoppel has come to be recognised by the courts in this country as well as in England. The doctrine of "promissory estoppel" has assumed importance in recent years though it was dimly noticed in some of the earlier cases. The leading case on the subject is *Central London Property Trust Ltd. v. High Trees House Ltd.,* (1947) 1 K.B. 130 The rule laid down in *High Trees case* again came up for consideration before the King's Bench in Combe v. Combe [(1951) 2 KB 215]. Therein the Court ruled that the principle stated in *High Trees case* is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word. But that principle does not create any cause of action, which did not exist before; so that, where a promise is made which is not supported by any consideration, the promise cannot bring an action on the basis of that promise. The principle enunciated in High Trees case was also recognised by the House of Lords in *Tool Metal Mfg. Co. Ltd. v. Tungsten Electric Co. Ltd.* [(1955) 2 All ER 657]. That principle was adopted by this Court in *Union of India v. Anglo Afghan Agencies* (AIR 1968 SC 718) and *Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd.*[(1972) 1 SCC 857]. Doctrine of "promissory estoppel" has been evolved by the courts, on the principles of equity, to avoid injustice. "Promissory estoppel" is defined in Black's Law Dictionary as an estoppel.

"which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise".

So far as this Court is concerned, it invoked the doctrine in Anglo Afghan Agencies case in which it was, inter alia, laid down that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act, 1872 (in short "the Evidence Act") which enacts the rule of estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not recorded in the form of a formal contract as required by Article 299 of the Constitution. [See *Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council,* [(1970) 1 SCC 582], *Radhakrishna Agarwal v. State of Bihar,* [(1977)3 SCC 457], *Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.,* [(1979) 2 SCC 409], *Union of India v. Godfrey Philips India Ltd.* [(1985) 4 SCC 369] and *Ashok Kumar Maheshwari (Dr.) v. State of U.P.* [(1998) 2 SCC 502].

6. In the backdrop, let us travel a little distance into the past to understand the evolution of the doctrine of "promissory estoppel". Dixon, J., an Australian jurist, in *Grundt v. Great Boulder Gold Mines Pty. Ltd.* [(1939) 59 CLR 641 (Aust HC) laid down as under:

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a

detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumptions were deserted that led to it."

The principle, set out above, was reiterated by Lord Denning in High Trees case. This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law, as noted in *Anglo Afghan Agencies* case and *Sharma Transport v. Govt. of A.P.* [(2002) 2 SCC 188]

7. No vested right as to tax-holding is acquired by a person who is granted concession. If any concession has been given it can be withdrawn at any time and no time-limit should be insisted upon before it was withdrawn. The rule of promissory estoppel can be invoked only if on the basis of representation made by the Government, the industry was established to avail benefit of exemption. In *Kasinka Trading v. Union of India* [(1995) 1 SCC 274] it was held that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice."

145. In *M.P. Mathur*[cc], the Court was concerned with the question whether on the facts of the case, the plaintiffs could compel transfer of tenements in their favour on the basis of promissory estoppel. The Court (para 14, page 716 of the Report) observed as follows :

"………The term "equity" has four different meanings, according to the context in which it is used. Usually it means "an equitable interest in property". Sometimes, it means "a mere equity", which is a procedural right ancillary

to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean "floating equity", a term which may be used to describe the interest of a beneficiary under a will. Fourthly, "the right to obtain an injunction or other equitable remedy". In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider-the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (Snell's Equity, 31st Edn., p. 366)........"

146. In my view, the following principles must guide a Court where an issue of applicability of promissory estoppel arises:

(i) Where one party has by his words or conduct made to the other clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.

(ii) The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

(iii) The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.

(iv) For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.

(v) In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.

(vi) It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.

(vii) The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the Court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.

Principles of legitimate expectation

147. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also noticed here only to appreciate the case of the appellants founded on the basis of doctrines of promissory estoppel and legitimate expectation.

148. In *Union of India and Others v. Hindustan*

Development Corporation and Others[rrr], this Court had an occasion to consider nature, scope and applicability of the doctrine of legitimate expectation. The matter related to a government contract. This Court in paragraph 35 (Pgs. 548-549) observed as follows :

"35. Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed

rrr. (1993) 3 SCC 499.

to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case: [(1990) 64 Aust LJR 327]: "To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the

court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important."

While observing as above, the Court observed that legitimacy of an expectation could be inferred only if it was founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in the conventional sense.

149. A three-Judge Bench of this Court in *P.T.R. Exports (Madras) Pvt. Ltd. & Ors. v. Union of India & Ors.*[sss] while dealing with the doctrine of legitimate expectation in paras 3, 4 and 5 (Pages. 272-273) stated as follows :

sss. (1996) 5 SCC 268.

"3.........The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be, the legislature is at liberty to evolve such policies.

4. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the court that the refusal was vitiated by the above factors.

5. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was

necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government is not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

150. In the case of *M.P. Oil Extraction and Another v. State of M.P. and Ors.*[ttt], this Court considered an earlier decision in *Hindustan Development Corporation*[rrr] and in paragraph 44 (pg. 612) of the Report held that the doctrine of legitimate expectation had been judicially recognized. It operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right.

151. In *J.P. Bansal v. State of Rajasthan and Anr.*[uuu], it was stated that both doctrines - promissory estoppel and legitimate expectation - require satisfaction of the same criteria and arise out of the principle of reasonableness.

152. A note of caution sounded in *Bannari Amman*

ttt. (1997) 7 SCC 592.

uuu. (2003) 5 SCC 134.

Sugars Ltd.[qqq] is worth noticing. The Court observed that legitimate expectation was different from anticipation; granting relief on mere disappointment of expectation would be too nebulous a ground for setting aside a public exercise by law and it would be necessary that a ground recognized under Article 14 of the Constitution was made out by a litigant.

153. It is not necessary to multiply the decisions of this Court . Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

(i) The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.

(ii) The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.

(iii) Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

(iv) The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation should be justifiable, legitimate and protectable.

(v) The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit.

Whether doctrines of promissory estoppel and legitimate expectation attracted

154. I may now examine whether the doctrines of promissory estoppel and the legitimate expectation help the appellants in obtaining the reliefs claimed by them and whether the actions of the State Government and the Central Government are liable to be set aside by applying these doctrines.

155. Each of the appellants has raised the pleas of promissory estoppel and legitimate expectation based on its own facts. It is not necessary to narrate facts in each appeal with regard to these pleas as stipulations in the MOUs entered into between the respective appellants and the State Government are broadly similar. For the sake of convenience, the broad features in the matter of Adhunik may be considered. The MOU was made between the State Government and Adhunik on February 26, 2004. Adhunik is involved in diversified activities such as production of sponge iron and steel, generating power etc. The preamble to the MOU states that the Government of Jharkhand is desirous of utilization of its natural resources and rapid industrialization of the State and has been making efforts to facilitate setting up of new industries in different locations in the State. It is stated in paragraph 2 of the MOU, *"in this context the Government of Jharkhand is willing to extend assistance to suitable promoters to set up new industries"* (emphasis supplied). Adhunik expressed desire of setting up manufacturing/generating facilities in the State of Jharkhand. Proposed Phase-I comprised of setting up Sponge Iron Plant and Pelletaisation Plant while Phase-II comprised of Sponge Iron Plant, Power Plant, Coal Washery, Mini Blast Furnace, Steel Melting/LD/IF and Iron Ore Mining and Phase-

III comprised of establishment of Power Plant. Para 4 of MOU states that Adhunik requires help and cooperation of the State Government in several areas to enable them to construct, commission and operate the project. The State Government's willingness to extend all possible help and cooperation is stated in the above MOU. Para 4.3 of MOU records that the State Government shall assist in selecting the area for Adhunik for iron ore and other minerals as per requirement of the company depending upon quality and quantity. The State Government also agreed to grant mineral concession as per existing Acts and Rules.

156. In pursuance of the above MOU, the State Government through its Deputy Secretary, Mining and Geology Department recommended to the Government of India through its Joint Director, Mining Ministry on August 4, 2004 to grant prior approval under Section 11(5) and Section 5(1) of the 1957 Act for grant of mining lease to Adhunik for a period of 30 years in the area of 426.875 hectares. The reasons for such recommendation were stated by the State Government in the above communication. In the above communication, it was stated that Adhunik had signed MOU with the State Government for making a capital investment of Rs. 790 crores in establishment of an industry based on iron ore mineral in the State. The steps taken by Adhunik were also highlighted.

157. Adhunik's case is that on the basis of definite commitment and firm promise made by the State Government for grant of captive mines as stipulated in the MOU and the State's Industrial Policy, it acted immediately on the MOU and has invested more than Rs. 100 crores to construct and commission the plant and facilities in Phase-I of the MOU and it has employed about 3500 people directly and indirectly for construction and operation of plant in Phase-I. According to Adhunik, it has ordered equipments and machinery for Phase-II and Phase-III at a cost of Rs. 25 crores and has also made further financial commitments for more than Rs. 1000 crore to

set up the expansion. Adhunik claims to have also borrowed a sum of Rs. 60 crores from banks and financial institutions and invested that sum in the proposed project.

158. According to Adhunik, no integrated steel plant can be viable in the State of Jharkhand without captive iron ore mines and without the definite promise of the State Government to grant the captive mines and it would not have acted on the MOU to make such a huge investment if the State Government were not to make available captive iron ore mines. Adhunik has also stated that in the absence of grant of captive iron ore mines, it has been suffering huge and irreparable losses due to (a) shortage in supply of iron ore due to poor availability, (b) it has to purchase from the market poor quality of iron ore and (c) extra cost due to abnormal market prices compared to the actual cost of captive iron ore.

159. What the State Government had expressed in MOU is its willingness to extend all possible help and cooperation in setting up the manufacturing/generating facilities by Adhunik. The clause in MOU states that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company depending upon quality and quantity. The State Government agreed to grant mineral concession as per existing Act and Rules. As a matter of fact, when the MOU was entered into, the State Government was not even aware about the reservation of the subject mining area for exploitation in the public sector. It was on November 17, 2004 that the District Mining Officer, Chaibasa informed the Secretary, Department of Mines and Geology, Government of Jharkhand that certain portions of Mauza Ghatkuri and the adjoining areas were reserved for public sector under 1962 and 1969 Notifications issued by the erstwhile State of Bihar. The District Mining Officer suggested to the State Government that approval of the Central Government should be obtained for grant of leases to the concerned applicants. In his communication, he stated that the fact of reservation of the subject area in public

sector vide 1962 and 1969 Notifications was brought to the knowledge of the Director of Mines, Jharkhand but he did not take any timely or adequate action in the matter. In view of the fact that the subject mining area had been reserved for exploitation in pubic sector under 1962 and 1969 Notifications, in my opinion, the stipulation in the MOU that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company and the commitment to grant mineral concession cannot be enforced. For one, the stipulation in the MOU is not unconditional. The above commitment is dependent on availability and as per existing law. Two, if the State Government is asked to do what it represented to do under the MOU then that would amount to asking the State Government to do something in breach of these two Notifications which continue to hold the field. The doctrine of promissory estoppel is not attracted in the present facts, particularly when promise was made - assuming that some of the clauses in the MOU amount to promise - in a mistaken belief and in ignorance of the position that the subject land was not available for iron ore mining in the private sector. I do not think that the State Government can be compelled to carry out what it cannot do in the existing state of affairs in view of 1962 and 1969 Notifications. In my opinion, the State Government cannot be held to be bound by its commitments or assurances or representations made in the MOU because by enforcement of such commitments or assurances or representations, the object sought to be achieved by reservation of the subject area is likely to be defeated and thereby affecting the public interest. The overriding public interest also persuades me in not invoking the doctrines of promissory estoppel and legitimate expectation. For the self-same reasons none of the appellants is entitled to any relief based on these doctrines; their case is no better.

160. As a matter of fact, on coming to know of 1962 and 1969 Notifications, the State Government withdrew the proposals which it made to the appellants and reiterated the

reservation by its Notification dated October 27, 2006 expressly "in public interest and in the larger interest of the State".

161. The act of the State Government in withdrawing the recommendations made by it to the Central Government in the above factual and legal backdrop cannot be said to be bad in law on the touchstone of doctrine of promissory estoppel as well as legitimate expectation. The act of the State Government is neither unfair nor arbitrary nor it suffers from the principles of natural justice. The Government of India upon examination of the proposals rejected them on the ground that subject area was under reservation and not available for exploitation by private parties. In these circumstances, if the clauses in the MOU are allowed to be carried out, it would tantamount to enforcement of promise, assurance or representation which is against law, public interest and public policy which I am afraid cannot be permitted.

162. On behalf of the appellants, it was also argued that the 1962 and 1969 Notifications had remained in disuse for about 40 years and it is reasonable to infer that these two Notifications no longer operated. In this regard, the doctrine of quasi repeal by desuetude was sought to be invoked.

Doctrine of desuetude

163. The doctrine of desuetude and its applicability in Indian Jurisprudence have been considered by this Court on more than one occasion. In the case of *State of Maharashtra v. Narayan Shamrao Puranik & Ors.*[vvv], the Court noted the decision of Scrutton, L.J. in *R. v. London County Council*[www] and the view of renowned author Allen in "Law in the Making" and observed that the rule concerning desuetude has always met with general disfavour. It was also held that a statute can be abrogated only by express or implied repeal; it cannot fall

vvv. (1982) 3 SCC 519.

www. LR (1931) 2 KB 215 (CA).

into desuetude or become inoperative through obsolescence or by lapse of time.

164. In *Bharat Forge Co. Ltd.*[v], inter alia, the argument was raised that the Notifications of June 17, 1918 have not been implemented till date and therefore these Notifications were dead letter and stood repealed "quasily". A three-Judge Bench of this Court entered into consideration of the doctrine of desuetude elaborately. After noticing the English law and Scots law in regard to the doctrine of desuetude, the Court noted the doctrine of desuetude explained in Francis Bennion's Statutory Interpretation; Craies Statute Law (7th Edn.) and Lord Mackay's view in *Brown v. Magistrate of Edinburgh*[xxx].

165. The Court also referred to "Repeal and Desuetude of Statutes", by Aubrey L. Diamond wherein a reference has been made to the view of Lord Denning, M.R. in *Buckoke v. Greater London Council*[yyy]. Having noticed as above, the Court in paragraph 34 (pages 446-447) of the Report stated :

> "34. Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also. Our soil is ready to accept this principle; indeed, there is need for its implantation, because persons residing in free India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law

xxx. 1931 SLT (Scots Law Times Reports) 456, 458.

yyy. (1970) 2 All ER 193.

> which has become "dead letter". A new path is, therefore, required to be laid and trodden."

166. In *Cantonment Board, MHOW and Anr. v. M.P. State Road Transport Coroporation*[zzz], this Court had an occasion to consider the doctrine of desuetude while considering the submission that the provisions of Madhya Pradesh Motor Vehicles Taxation Act, 1947 stood repealed having been in disuse. The Court considered the earlier decision in *Bharat Forge Co. Ltd.*[v] and held that to apply principle of desuetude it was necessary to establish that the statute in question had been in disuse for long and the contrary practice of some duration has evolved. It was also held that neither of these two facts has been satisfied in the case and therefore the doctrine of desuetude had no application.

167. From the above, the essentials of doctrine of desuetude may be summarized as follows :

(i) The doctrine of desuetude denotes principle of quasi repeal but this doctrine is ordinarily seen with disfavour.

(ii) Although doctrine of desuetude has been made applicable in India on few occasions but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for very considerable period and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of anyone of them would not attract the doctrine of desuetude. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice

zzz. (1997) 9 SCC 450.

contrary to such statute or legislation has been followed for a considerable long period.

Whether doctrine of desuetude attracted in respect of 1962 and 1969 Notifications

168. Insofar as 1962 and 1969 Notifications are concerned, I am of the view that doctrine of desuetude is not attracted for more than one reason. In the first place, the Notifications are of 1962 and 1969 and non-implementation of such Notifications for 30-35 years is not that long a period which may satisfy the first requirement of the doctrine of desuetude, namely, that the statute or legislation has not been in operation for a very considerable period. Moreover, State of Jharkhand came into existence on November 15, 2000 and it can hardly be said that 1962 and 1969 Notifications remained neglected by the State Government for a very considerable period. As a matter of fact, in 2006, the State Government issued a Notification mentioning therein about the reservation made by 1962 and 1969 Notifications. Thus, the first ingredient necessary for invocation of doctrine of desuetude is not satisfied. Secondly, and more importantly, even if it is assumed in favour of the appellants that 1962 and 1969 Notifications remained in disuse for a considerable period having not been implemented for more than 30-35 years, the second necessary ingredient that a practice contrary to the above Notifications has been followed for a considerable long period and such contrary practice has been firmly established is totally absent. As a matter of fact, except stray grant of mining lease for a very small portion of the reserved area to one or two parties there is nothing to suggest much less establish the contrary usage or contrary practice that the reservation made in the two Notifications has been given a complete go by.

Additional submissions on behalf of Monnet

169. The main submissions raised on behalf of the appellants having been dealt with, I may now consider certain

additional submissions made on behalf of Monnet. It was argued by Mr. Ranjit Kumar, learned senior counsel for Monnet that the State Government in its letter to recall the recommendation made in favour of the appellant set up the ground of overlapping with the lease of Rungta but it mala fide suppressed the fact of expiry of lease of Rungta in 1995 and also that the said area had been notified for regrant in the Official Gazette on July 3, 1996. He would contend that Rule 24A of the 1960 Rules provides for an application for renewal of lease to be made one year prior to the expiry of lease but no application for renewal was made by Rungta within this time and, therefore, Rungta had no legal right over the overlapping area.

170. It was submitted by Mr. Ranjit Kumar that the appellant - Monnet had produced two maps before the High Court and this Court (one was prepared by the District Mining Officer in 2004) that depicted that the area recommended for grant to the appellant was not covered by 1962 or 1969 Notifications.

171. It was submitted on behalf of Monnet that the case of Monnet was identical to the case of M/s. Bihar Sponge Iron Ltd. and the State Government had discriminated against the appellant vis-à-vis the case of M/s. Bihar Sponge Iron Ltd.

172. Mr. Ranjit Kumar also submitted that there has been violation of the statutory right of hearing in terms of Rule 26 of the 1960 Rules. He submitted that order was not communicated to Monnet by the State Government and thereby its remedy under Rule 54 of 1960 Rules was taken away. The violation of principles of natural justice goes to the root of the matter and on that ground alone the decision of the State Government to recall the recommendation and the decision of the Central Government in summarily rejecting and returning application are bad in law. Reliance in this regard was placed on a decision of Privy Council in *Nazir Ahmad v. King-Emperor*[aaaa] and also

aaaa. AIR 1936 PC 253.

a decision of this Court in Nagarjuna Construction Company Ltd. v. Government of Andhra Pradesh & Ors.[bbb]

173. Mr. Ranjit Kumar also argued that once recommendation was made by it to the Central Government, in view of proviso to Rule 63A of the 1960 Rules, the State Government had become functus officio and ceased to have any power to recall the recommendation already made on any ground whatsoever. In this regard he relied upon *Jayalakshmi Coelho v. Oswald Joseph Coelho*[cccc].

174. Relying upon the decision of this Court in *Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi, & Ors.,*[dddd] it was submitted that the reasons originally given in an administrative order cannot be supplanted by other reasons in the affidavits or pleadings before the Court. He submitted that as regards Monnet, the initial reason by the State Government was not founded on reservation but later on it tried to bring the ground of reservation in fore by supplanting reasons.

175. Mr. Ranjit Kumar vehemently contended that as per the State Government's own case initially, the land that was recommended for mining lease to Monnet was not under the reserved area and, therefore, Monnet's writ petition ought not to have been heard and decided with the group matters. He also referred to interim order passed by this Court on August 18, 2008, the meeting that took place between the Central Government and the State Government pursuant thereto and the subsequent interim order of this Court dated December 15, 2008.

176. I have carefully considered the submissions of Mr. Ranjit Kumar. Most of the above submissions were not argued

bbbb. (2008) 16 SCC 276.

cccc. (2001) 4 SCC 181.

dddd. (1978) 1 SCC 405.

on behalf of Monnet before the High Court. The submissions were confined to the issue of reservation, the legality and validity of 1962, 1969 and 2006 Notifications, consequent illegal action of the State Government in recalling the recommendation and of the Central Government in summarily rejecting the appellant's application.

177. In paragraph 17 of the impugned judgment, the arguments of the learned senior counsel for Monnet have been noticed. It transpires therefrom that many of the above arguments were not advanced including the issue of overlapping with the area of Rungta. In the list of dates/synopsis of the special leave petition, Monnet has not raised any grievance that arguments made on its behalf before the High Court were not correctly recorded or the High Court failed to consider any or some of its arguments. Criticism of the High Court judgment is thus not justified and I am not inclined to go into above submissions of Mr. Ranjit Kumar for the first time.

178. It is too late in the day for Monnet to contend that its case could not have been decided with group matters and in any case the matter should be remanded to the High Court for reconsideration on the issues, namely, (a) whether the area recommended for the appellant was overlapping with Rungta only to the extent of 102.25 hectares out of total 705 hectares recommended for appellant; (b) whether after expiry of lease Rungta's area was renotified for grant in 1996; (c) what was the reason for the State Government to withdraw the recommendation made in favour of the appellant when the alleged overlapping with Rungta was only to the extent of 102.25 hectares and (d) is withdrawal of appellant's recommendation arbitrary when reservation vide 1962 Notification did not apply to the area recommended in favour of the appellants. Monnet's writ petition was decided by the High Court with group matters as the arguments advanced on its behalf were identical to the arguments which were canvassed on behalf of other writ petitioners. The State Government

recalled its recommendations by a common communication and the Central Government returned the recommendations and rejected applications for mining lease made by the writ petitioners by a common order.

179. The State Government had full power to recall the recommendation made to the Central Government for some good reason. Once 1962 and 1969 Notifications issued by the erstwhile State of Bihar and 2006 Notification issued by the State of Jharkhand have been found by me to be valid and legal, the submissions of Mr. Ranjit Kumar noted above pale in insignificance and are not enough to invalidate the action of the State Government in recalling the recommendation made in favour of Monnet. The valid reservation of subject mining area for exploitation in public sector disentitles Monnet - as well as other appellants - to any relief.

180. It is well settled that no one has legal or vested right to the grant or renewal of a mining lease. Monnet cannot claim a legal or vested right for grant of the mining lease. It is true that by the MOU entered into between the State Government and Monnet certain commitments were made by the State Government but firstly, such MOU is not a contract as contemplated under Article 299(1) of the Constitution of India and secondly, in grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any mining lease. Obviously, the State Government is required to exercise its discretion, subject to the requirement of law. In view of the fact that area is reserved for exploitation of mineral in public sector, it cannot be said that the discretion exercised by the State Government suffers from any legal flaw.

181. The case of discrimination vis-a-vis M/s Bihar Sponge Iron Limited argued on behalf of Monnet was not pressed before High Court and is not at all established. The argument with regard to violation of principles of natural justice is also

devoid of any substance. The recommendation in favour of Monnet to the Central Government was simply a proposal with certain pre-conditions. For withdrawal of such proposal by the State Government, in my view, no notice was legally required to be given. Moreover, no prejudice has been caused to it by not giving any notice before recalling the recommendation as it had no legal or vested right to the grant of mining lease. The area is not available for grant of mining lease in the private sector. For all these reasons, I do not find that the case of Monnet stands differently from the other appellants.

Conclusion

182. In view of the foregoing reasons, there is no merit in these appeals and they are dismissed. There shall be no order as to costs.

ORDER

I find from the proceedings that no notice has been issued in the contempt petition. The proceeding of January 28, 2009 reveals that the Court only ordered copy of the contempt petition to be supplied to learned counsel appearing for the State of Jharkhand to enable it to file its response. In the order passed on January 28, 2009, the Court made it very clear that it was not inclined to issue any notice in the contempt petition. Now, since the appeal preferred by Abhijeet Infrastructure Ltd., has been dismissed, the contempt petition is also liable to be dismissed and is dismissed.

H.L. GOKHALE J. 1. All these appellants claim to be companies interested in developing iron and steel projects, and therefore sought grant of leases of iron-ore mines situated in the state of Jharkhand. Applications of ten such companies including the appellants were forwarded by the Government of Jharkhand sometime around August 2004 to the Union of India, for its consideration for grant of lease in certain areas.

Subsequently, on realising that those areas were reserved for exploitation in the public sector, the State Government by its letter dated 13.09.2005, sought to withdraw nine of these proposals including those of all the appellants. The Central Government however, did not merely return the nine proposals, but rejected the same by its letter dated 6.3.2006 addressed to the Government of Jharkhand. All these appellants therefore, along with some others filed writ petitions to challenge these two letters dated 13.9.2005 and 6.3.2006, and sought a direction to grant the mining leases to them in the proposed areas, and to seek appropriate reliefs. The Writ Petitions filed by the six appellants herein were respectively bearing following nos. (1) W.P. (C) No. 4151 of 2006, (2) W.P. (C) No. 1769 of 2006, (3) W.P. (C) No. 2629 of 2006, (4) W.P. (C) No. 5527 of 2006, (5) W.P. (C) No. 7636 of 2006 and (6) W.P. (C) No. 7363 of 2006. All those writ petitions were dismissed by a Division Bench of the Jharkhand High Court by a common judgment and order dated 4.4.2007. Being aggrieved by the same, six of them have filed these appeals to this Court.

2. An interim order came to be passed in these appeals on 7.5.2007, that until further orders no fresh leases shall be granted in respect of the disputed mining area. We may note that at one stage same workable arrangements were considered by this Court but they did not materialise. These appeals have been admitted thereafter on 30.4.2009. The Union of India and the State of Jharkhand are the main contestants in all these appeals, though a few other entities like the National Mineral Development Corporation (NMDC), Tata Iron Steel Company (TISCO) and Arclor Mittal (India) Ltd. have intervened to oppose them. Learned Senior Counsels Sarvashri C.A. Sunderam, Dr. Rajeev Dhawan, Ranjit Kumar, Dhruv Mehta, Dr. Abhishek Manu Singhvi, L. Nageswara Rao, and G.C. Bharuka have appeared in support of these appeals. Senior Counsel Shri A.K. Sinha, and Shri Ashok Bhan have appeared for the State of Jharkhand, and Union of India respectively. Shri P.S. Narasimha, Senior counsel for NMDC,

Shri Vikas Singh, Senior Counsel for TISCO, Shri Krishnan Venugopal, Senior counsel for Arclor Mittal (India) Ltd. and Shri J.K. Das, learned counsel for M/s Rungta Sons Pvt. Ltd., have appeared to oppose these appeals.

Facts leading to these appeals:-

3. The facts in all these appeals are by and large similar. We may refer to the facts of the first Civil Appeal in the case of M/s Monnet Ispat and Energy Ltd. (for short 'Monnet') as somewhat representative. It is the case of Monnet that it wanted to set-up an iron and steel plant in the State of Jharkhand. It was ready to invest an amount of Rs.1400 crores on this project, and for that purpose it was interested in the allotment of iron and manganese ore mines situated in the Ghatkhuri Forest area of West Singhbhum District (which has its headquarters at Chaibasa). A high level meeting was held in Ranchi for that purpose on 7.7.2002 between the officers of Monnet and Jharkhand Government, subsequent to which, minutes of the meeting were drawn recording the discussion between the two parties. Thereafter, a memorandum of understanding (MOU) was arrived at between the Government of Jharkhand and Monnet on 5.2.2003, for the establishment of an integrated steel plant. The MOU reaffirmed the commitment of Monnet to establish the integrated steel plant, and that of the Government of Jharkhand to provide therefor the land containing iron and manganese ore mines, a coal block and other facilities. The MOU recorded that the plant will produce sponge iron of the capacity of 4 lac tonnes per annum, and mild steel of 2 lac tonnes and alloy steel of 2 lac tonnes. It was expected to provide employment to 10,000 persons. The MOU recorded that the State Government agrees to recommend the proposal of Monnet to Government of India, for the allotment of areas containing iron ore and manganese ore deposits and coal blocks situated in Ghatkhuri Forest area of West Singhbhum District. This clause reads as follows:-

III. MINES:

COAL:……..

IRON ORE AND MANGANESE ORE: The State Government agrees to recommend to Government of India for the allotment of iron ore and manganese ore deposits expected to contain sufficient reserves to cater the needs of the project. The iron ore reserves suitable for sponge iron making as identified are Ghatkhuri area in Chaibasa District. The State Government also agrees to recommend to Government of India for allotment of additional mines able deposits in West Singhbhum area to cater the project need."

We may as well note that paragraph VII (d) of the MOU stated as follows:-

In the event of non-implementation of the project, support/ commitment of the State Government in the MOU shall be deemed to be withdrawn.

4. Accordingly, the Jharkhand Government vide its letter dated 6.8.2004 recommended the proposal of Monnet to Union of India under Section 5 (1) and 11 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to "MMDR Act"). The letter stated that some 58 applications were received, seeking grant of the mining leases over an area of 3566.54 hectares in Ghatkhuri reserved forest. All applicants were given sufficient opportunity of hearing. As far as Monnet is concerned, State Government had recommended the amended area of 705 hectares for the consent of the Central Government for grant of lease under Section 5 (1) of the Act. The letter also stated that priority was being given to Monnet in terms of Section 11 (3) of the Act on the basis of its technical mineral based industry and financial capacity.

5. On receiving that application and after considering that the mining lease was to be granted for a period of 30 years, the Central Government asked the State Government, vide its letter dated 6.9.2004, to forward its justification in support of the proposal, since in its view an adequate justification, in the interest of mineral development, had not been sent. The State Government explained its position, vide its reply dated 17.11.2004, as to why priority was given to Monnet, and sought the approval of Government of India under Sections 5 (1) and 11 (5) of MMDR Act. It enclosed therewith a comparative statement of the claims of 58 applicants who had applied for grant of mining leases of iron ore on 3566.54 hectares area in the reserved forest at Mauza Ghatkhuri in West Singhbhum District.

6. It so happened that at that stage the District Mining Officer of Chaibasa brought it to the notice of the concerned authorities of State Government, by his letter dated 17.11.2004, that the undivided state of Bihar (when Jharkhand was a part of it) had reserved certain areas for the exploitation of minerals in the public sector, by its notification dated 21.12.1962, and it included the recommended area of Singhbhum District. This notification had been followed by another notification of the undivided State of Bihar dated 28.2.1969 which reiterated that an area of 168.349 hectares in Ghatkhuri reserved forest block no.10 in district of Singhbhum was reserved for exploitation of minerals in public sector. A copy of the said notification had been marked to the District Mining Officer, Chhaibasa.

7. The two notifications read as follows:-

(1) Government of Bihar
Department of Industries & Mines (Mines)

NOTIFICATION:

Patna, the 21 December, 1962
30th Agrahand, 1884-S

Memo No. A/MM-40510/6209/M. It is hereby notified for the information of public that the following iron ore bearing areas in this State are reserved for exploitation of the mineral in the public sector.

Name of the the District		Description of the areas reserved
Singhbhum	1.	Sasangda Main Block:- Boundary
	South	The southern boundary is the same as the northern boundary. It starts from the Bihar, Orissa Bound Opposite the George of southern tributary of Meghahatu nala and runs west-north-west along with the gorge till the foot of the hill.
	East	The boundary between the States of Bihar and Orissa.
	North and North-West	The south western boundary of the property of Shri M.L. Jain (M.L. 20) which starts from Bihar-Orissa boundary south. South-West of 3039 and runs in a north-west direction upto 8 miles north west of 2939. From here the boundary reaches the sadly south of 2069.
	West	From saddle south of 2069, southwards along the foot of the main hill, meeting the north-west corner of Kiriburu Block.
	Sasangda North-East Block South	Bihar, Orissa boundary
	East North West	Property of Shri W.V. Upto northern corner of M.L. No. 20
	6.	Bhalata Block
	Boundary South-West	A line running west-north-west-east-south each passing the ugh 2200 feet contour at the south-western and of the Bhanalata ridge south-east-From 21 furlongs east of 2181 north-east wards upto north-west pochanalu village (22016'850 20') and from here north-north-east upto 3 furlongs east-sough-east of 2567 (Painsira Buru)
	North	From the above end in west north west direction across the hill for five furlongs to reach the north west sloped the hill
	West	From above and in general south-south-west direction along the flank of the hill to reach the south-west boundary at three furlongs north-west 2187.

By the order of the
Governor of Bihar
Sd/-
B.N. Sinha
Secretary to Government

Memo No. 6209/M Patna, the 21st Dec., 1962
30 Agrah

Copy forwarded to the Superintendent, Secretariat Press, Gulzarbagh, Patna for publication of the notification in the next

issue of the Bihar Gazette.

2. He is also requested to kindly supply two hundred copies of the Gazette notification to this Department.

Sd/-
B.N. Sinha
Secretary to Government

Memo No. 6209/M Patna, the 21st Dec., 1962
30 Agrahan, 1884-S

Copy forwarded to the Commissioner of Chhotanagpur Division, Ranchi/All District Officers/All District Mining Officers for information.

Sd/-
B.N. Sinha
Secretary to Government

(2) GOVERNMENT OF BIHAR
DEPARTMENT OF MINES AND GEOLOGY

NOTIFICATION

Patna, the 28th February, 1969
Phalgun, 1890-S

No. B/M6-1019/68-1564/M. It is hereby notified for information of public that Iron Ore bearing areas of 416 acres (168.348 hectares) situated in Ghatkuri Reserved Forest Block No. 10 in the district of Singhbhum are reserved for exploitation of mineral in the public sector. For full details in this regard District Mining Officer, Chaibasa should be contacted.

By the order of Governor of Bihar
Sd/-
C.P. Singh
Dy. Secretary to Government

Memo No. 1564/M Patna, the 28th February, 1969.

Copy forwarded to the Superintendent, Secretariat Press, Gulzarbagh, for favour of public of the Notification in the Extra-

ordinary issue of the Bihar Gazette at any early date.

2. 100 spare copies of the notification may also be sent to this Department immediately.

Sd/-
Dy. Secretary to Government

Memo No. 1564/M Patna, the 28th February, 1969

Copy forwarded to the Dy. Commissioner, Singhbhum/Dy. Director of Mines, 2, College Road, Circuit House Area, Jamshedpur 7/ District Mining Officer, Singhbhum, Chaibasa/ Director, Mines, Bihar/Dy. Director of Geology, Bihar/Advisor in Geology, Bihar for information.

Sd/-
C.P. Singh
Dy. Secretary to Government

8. Thereafter, in continuation with the correspondence with the State Government, the Central Ministry of Mines by its letter dated 15.6.2005, wrote to the Secretary to the State Government, Department of Mines, seeking a meeting of the concerned officers of the State Government and the Ministry of Mines of the Central Government for the clarification on the following issues:-

(i) The State Government had rejected even those applicants who were prior applicants but were not willing to set up the mineral based industry in the State. This stipulated condition of State Government is not as per the National Mineral Policy.

(ii) As against the applicants at Sl. Nos.18, 20, 23, 29, 33, 41, 44 and 58, the State Government had stated that they had not submitted any solid proposals. The Central Government wanted to know what the State Government meant by 'solid proposals'.

(iii) There was wide variation between the area recommended and the proposed plant capacity.

(iv) The total area of the ten proposals came to 3693.05 hectares whereas the total area reported to be available in Ghatkhuri was 3566.54 hectares. It was also stated that in the case of the proposal of M/s Bihar Sponge Iron Ltd., the total area in Ghatkhuri reserve forest was shown as 4692.46 hectares.

9. It was in this background that the Government of Jharkhand called back nine out of the ten proposals (excluding the one in favour of Bihar Sponge Iron Ltd.), by its letter dated 13.9.2005. The letter specifically stated that the proposals overlapped the areas reserved for the public undertakings and the areas already held by two other companies. This was one of the two letters impugned in the writ petitions to the High Court. This letter reads as follows:-

"Government of Jharkhand
Mines and geological department
No.Khni (Chaya)-78/03 (Part)-501/M-C Ranchi

Dated 13.09.2005

From: Arun Kumar Singh
Secretary to the Government

To,

Sh. Anil Subramaniam
Under Secretary
Ministry of Mines
Government of India
Shastri Bhawan,
New Delhi - 110 001.

Sub: In connection with return of recommendations sent for mining lease of Iron ore in the reserved Forest Land in Mauza Ghat Khuri, under the West Singhbhum District.

Sir,

Kindly refer to your letter No.5/40/2004/MIV dated 30.08.2005 on the above mentioned subject. Proposal was sent by the mines and mineral department Jharkhand, for sanction of mining lease to 10 companies for mining of iron ore and Manganese Mineral, in the reserved Forest Land in Mauza Ghat Kuri (West Singhbhu District), in the light of Section 5(1) and 11(5) of the Mines and Mineral (Regulation and Development) Act, 1957.

Sl. No.	Name of the company
1.	S/Shri Bihar Sponge Iron Ltd.
2.	S/Shri Ispat Industriest Ltd.
3.	S/Shri Vimal Deep Steel Pvt. Ltd.
4.	S/Shri Abhijeet Infrastructure Pvt. Ltd.
5.	S/Shri Ujjwal Minerals Pvt. Ltd.
6.	S/Shri Adhunik Alloy and Power Ltd.
7.	S/Shri Prakash Ispat Ltd.
8.	S/Shri Monnet Ispat Ltd.
9.	S/Shri Steeko Power Ltd.
10.	S/Shri Jharkhand Ispat Pvt. Ltd.

On analysis in the department, it has become clear that out of the 10 proposals above said sent in the past, leaving apart Bihar Sponge and Iron Ltd. at Sl. No.1, the rest of the nine proposals over-lap the public undertaking/ S/Shri General Produce Company Madhu Bazar Chhaibasa and S/Shri Rungta Sons Ltd. Chhaibasa.

After complete consideration, the Government has taken

this decision that out of the ten proposals sent in the past, leaving apart the proposal of S/Shri Bihar Sponge Iron Ltd., in connection with the rest of the nine proposals, for consideration as per law, they may be called back from the ministry of mines Government of India.

In the light of the above said it is requested that kindly return the above said mines proposals to the mines and minerals department Jharkhand Ranchi, so that by reconsidering on them, further action could be taken at the level of the State Government.

Yours faithfully
Sd/-
(Arun Kumar Singh)
Secretary to the Government"

10. The Government of India, however, did not merely return those nine proposals, but summarily rejected the same on the very grounds stated in the letter of Government of Jharkhand. It sent a letter accordingly to the Government of Jharkhand on 6.3.2006. This is the other letter which was under challenge in the writ petitions to the High Court. The letter reads as follows:-

"REGISTERED

GOVERNMENT OF INDIA
MINISTRY OF MINES

No. 5/55/2004-M.IV New Delhi, the 6th March, 2006

To

The Secretary to the Government of Jharkhand,
Deptt. of Mines and Geology
Ranchi (Jharkhand)

Sub: Request made by State Government to return various proposals for grant of mining lease for iron and manganese ore in Mauza Bokna, District West Singhbhum, Jharkhad.

Sir,

I am directed to refer to the request made by the State Government vide its letter no. 501/M dated 13.9.2005 on the subject mentioned above and to summarily reject and return (in original) the following nine proposals which had been earlier sent to this Ministry for grant of prior approval under section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 on the ground that the recommended areas in said the nine proposals either fall in areas or overlap areas which are either reserved for exploitation by Public Sector Undertaking (PSU) or held by the other applicants namely M/s Rungta Sons Pvt. Ltd. and M/s General Produce Company:-

S. No	Name of applicant Company	State Government Ref/ date	Area (in hects.) in Mauja Ghatkuri Dist. West Singhbhum	Details of overlapping areas
1.	M/s Ispat Industries Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/03-115/D.S.M./M dated 5.8.2004 ii) 1516/M dt. 24.11.2004	470.06	Held by M/s General Produce Company
2.	M/s Bimal Deep Steel Pvt. Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/03-131/D.S.M./M dated 4.8.2005 ii) 519/M dated 24.11.2004	112.072	Reserved for PSU
3.	M/s Abhijeet Infrastructure Pvt. Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/03-117/D.S.M. /M dated	429.00	Reserved for PSU

		4.8.2004 ii) 519/M dated 24.11.2004		
4.	M/s Ujjawal Mineral Pvt. Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/ 03-114/D.S.M./M dated 4.8.2004 ii) 1520/M dated 24.11.2004	103.00	Reserved for PSU
5.	M/s Adunik Alloya & Power Ltd.	i) Kh. Ni. (Pa. Singhbhum)- 78/03-111/D.S.M./M dated 4.8.2004 ii) 1518/M dated 24.11.2004	426.875	Reserved for PSU
6.	M/s Prakash Ispat Ltd.	i) Kh. Ni. (Pa. Singhbhum)- 78/03-110/D.S.M./M dated 4.8.2005 ii) 1515/M dated 24.11.2004	294.06	Reserved for PSU
7.	M/s Monnet Ispat	i) Kh. Ni. (Pa. Singhbhum)- 78/03-118/D.S.M./M dated 6.8.2005 ii) 1497/M dated 17.11.2004	705.00	Held by M/s Rungta Sons Pvt. Ltd.
8.	M/s Steco Power Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/ 03-101/03-134/M dated 16.10.2004 ii) 1515/M dated 22.1.2005	400.00	Held by M/s Rungta Sons Pvt. Ltd.
9.	M/s Jharkhand Ispat Pvt. Ltd.	i) Kh. Ni. (Pa. Singhbhum)-78/03- 12/D.S./M dated 4.8.2004	346.647	Held by M/s General Produce company

Yours faithfully
Sd/-
(Anil Subramaniam)

Under Secretary to the Government of India"

11. In these appeals we are basically concerned with the legality of the decision of the State Government seeking to withdraw its recommendations for mining leases, and the subsequent decision of the Central Government to reject those very recommendations. We may record that the Government of Jharkhand had issued one more notification subsequently, dated 27.10.2006, by which it was decided that the areas described in the 1962 and 1969 notifications will not be given to anyone, except to the public sector undertakings or joint venture projects of the State. The appellants amended their Writ Petitions in the High Court and challenged the subsequent notification also. This notification reads as follows:-

THE JHARKHAND GAZETTE
EXTRA ORDINARY
PUBLISHED BY AUTHORITY

No. 581 8 Kartik 1928 (S) Ranchi, Monday the 30th October, 2006

DEPARTMENT OF MINES & GEOLOGY, RANCHI
NOTIFICATION

The 27th October, 2006

No. 3277 It is hereby notified for the information of the general public that for optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon, it has been decided by the State Government that the iron ore deposits at Ghatkuri would not be thrown open for grant of prospecting licence, mining lease or otherwise for the private parties. The deposit was at all material times kept reserved vide gazette notification No. A/MM-40510/62-6209/M dated the 21st December, 1962 and no. B/M-6-1019/68-1564/M dated the 28th February, 1969 of the State of Bihar. The mineral reserved in the said area has now been decided to be utilized for exploitation by Public Sector undertaking or Joint Venture Project of the State Government which will usher-in maximum benefit to the State and which

generate substantial amount of employment in the State.

The aforesaid notification is being issued in public interest and in the larger interest of the State.

The defining co-ordinates of the reserved area enclosed here with for reference.

By order of the Governor.
S.K. Satapathy.
Secretary to Government

Submissions on behalf of the appellants:-

12. (i) There is not much difference between the facts of the other appellants and Monnet, except that as far as the appellant in Civil Appeal No.3286/2009 i.e. Adhunik Alloy and Power Ltd. ('Adhunik' for short) is concerned, it contends that based on the forwarding of its proposal by the State Government to the Central Government, it had made some substantial investment. It had already invested some 82 crores of rupees out of its proposed investment of Rs.790 crores, and therefore it had a better case on the basis of promissory estoppel. Additional material is placed on the record of its Civil Appeal in justification the investment made by the appellant.

(ii) Since the facts of all these appeals are by and large similar, though various submissions have been raised on behalf of the appellants, they are also by and large similar, and complimentary to each other. The learned senior counsels appearing for the respective parties have, however, emphasised various facets of facts and law with good research put in.

13. (i) Shri C.A. Sunderam, learned senior counsel appearing for Ispat Industries Ltd. ('Ispat' for short) firstly submitted that after the MMDR Act was passed in exercise of the power of the Union Government under List I Entry 54 of the Seventh Schedule of the Constitution of India, the State Government had no longer any power to issue the notifications

making any reservations in favour of public sector undertakings and the notifications of the 1962 and 1969 were bad in law. These notifications which were defended as being issued under Section 4(a) of the Bihar Land Reforms Act, 1950, could not be valid after the passing of the MMDR Act. This is because Entry No. 23 List II (State List) of the Seventh Schedule giving power to the State Government specifically stated that it was subject to the provisions of the entries in List I (Union List) in this behalf. Entry No. 54 of List I states that Regulation of Mines and Mineral development is within the power of the Union Government, to the extent a declaration is made by Parliament in that behalf in public interest, and such a declaration has been made and is to be found in Section 2 of the MMDR Act. This being the position, the provisions of Bihar Land Reforms Act 1950 (Act No. XXX of 1950) (Bihar Act, for short) cannot be pressed into service by the respondents.

(ii) Shri Sundaram contended that the field was already occupied by the MMDR Act when these notifications were issued, since the Parliament had already legislated on the field. Section 17 and 17A of the MMDR Act give special power to the Central Government to undertake the mining operations and effect reservations. Section 18 of the Act casts a duty on the Central Government to take steps for the conservation and systematic development of minerals and for the protection of environment by preventing or controlling any pollution which may be caused by the prospecting or mining operations. These powers were not with the State Government. The reservations in the notifications of 1962 and 1969 will therefore have to be held as outside the powers of the State Government

(iii) This will be the position even when read with Rule 59 (1) (e) of the Mineral Concession Rules, 1960 (M.C. Rules 1960 in short) which speaks about reservation of areas by the State Government and re-grant thereof. Even the subsequent notification of 27.10.2006, providing for a joint venture is contrary to 17A of MMDR Act, and therefore bad in law.

(iv) Shri Sundaram submitted that the High Court's view that the State Government had the inherent power over the mining areas was equally erroneous.

14. (i) Learned senior counsel Dr. Rajeev Dhawan appearing for the appellant in C.A. No. 3289/2009 i.e. Jharkhand Ispat Pvt. Ltd. ('Jharkhand Ispat' for short) mainly canvassed two submissions. Firstly, in view of the federal structure of Indian Constitution, and the provisions of MMDR Act, any mining can be done only under the MMDR Act with Central permission, though mining is included is in the State List. In this behalf, Dr. Dhawan took us through the Constitution Bench judgments of this Court in *Hingir-Rampur Coal Co. Ltd. & Ors. Vs. State of Orissa & Ors.* reported in AIR 1961 SC 459, *State of Orissa & Anr. Vs. M/s M.A. Tulloch & Co.* reported in AIR 1964 SC 1284 and *Baijnath Kadio Vs. State of Bihar and Others* reported in 1969 (3) SCC 838, and submitted that the subsequent judgment of this Court in *Amritlal Nathubhai Shah Vs. Union of India* reported in 1976 (4) SCC 108 which has been relied upon by the State of Jharkhand and accepted by the High Court to repel the challenge, did not consider these three judgments and the true import of the propositions laid down therein.

(ii) Secondly, the Learned Counsel submitted that the State Government's decision was ultra-vires to Section 17A (2) of the MMDR Act. He relied upon Para 6 of the judgment of this Court in *Janak Lal Vs. State of Maharashtra* reported in 1989 (4) SCC 121 to draw the distinction between un-amended Rule 59 and new Rule 59. In his view, the 2006 notification was also invalid since it was only a revival of 1962 and 1969 notifications.

(iii) It was then submitted that the appellant has also set up a factory and reliance was placed on the doctrine of promissory estoppel and legitimate expectations. It was also contended that the two notifications were not acted upon and suffered from Desuetude. Lastly, it was submitted that the State Government cannot act unreasonably in view of the provision

of Article 19 (1) (g) of the Constitution.

15. Learned Senior Counsel Shri Ranjit Kumar, appearing for Monnet raised the following additional submissions.

(i) The State Government did not have the power to issue the two notifications in 1962 and 1969 under the rules as they then existed, particularly the notification of 1962, since the Rule 58 of the concerned rules as then existing did not give any such power to the State Government.

(ii) Rule 58 has been deleted without any saving clause by the amendment Act No. 36 of 1986.

(iii) The two notifications of 1962 and 1969 providing for reservation in favour of the public sector undertakings suffered on account of 'Desuetude', since they were never acted upon.

(iv) In view of the proviso Rule 63A, once a recommendation is made, the State Government becomes functus officio, and it has no power to recall the recommendation.

(v) The right of hearing of Monnet was affected in as much as the decision of the State Government to reject its application was taken behind its back. It was not provided with any opportunity of being heard under Rule 26, of the M.C. Rules 1960 before refusing to grant the mining lease. Besides, their remedy to file a revision to the Central Government under Rule 54 thereof was affected.

(vi) The appellants disputed the fact that at the time of rejection of their applications, M/s Rungta Sons were having any subsisting allotment in their favour. It was submitted that the grant in favour of M/s Rungta Sons had already expired, and in fact they

had applied for renewal in 2006. The area recommended to Monnet was not under any previous reservation of any public sector undertaking or otherwise.

(vii) There was unjustified discrimination in favour of Bihar Sponge Iron Ltd. since their case was supposed to be similar to that of Monnet.

(viii) The decision of the State Government was hit by the doctrine of promissory estoppel, since in the meanwhile Monnet had deposited Rs.50 lacs with the State Government for allotment of land, and it was taking further steps expecting the allotment.

(ix) The provisions of the MMDR Act and the MC Rules will have to be read to mean that the regulatory regime has been taken over by the Central Government, and the State Government will have to be held as without any power to impose reservations.

16. Learned senior counsel Shri Dhruv Mehta, appearing for Prakash Ispat Ltd. in C.A. No.3290/2009 submitted that as stated in Section 14 of MMDR Act, Sections 5 to 13 of the act do not apply to minor minerals, and the State Govt's. power is only to regulate the minor minerals under Section 15 of the Act. In this behalf he referred to the judgment of this Court in *D.K. Trivedi and Sons Vs. State of Gujarat* reported in 1986 Supp (1) SCC 20. He submitted that the rule making power with respect to major minerals was only with the Central Government. The State Government had no power until Rule 59 was amended in 1980 to provide reservation for public sector concerning the major minerals. He further submitted that rule making power cannot be exercised retrospectively and relied upon *Hukam Chand Vs. Union of India* reported in 1972 (2) SCC 601. He contended that in view of the provision in Rule 59 of the MC Rules 1960, an area which has been reserved

can be made available for re-grant to private sector, and in support of this proposition he referred to the judgment of this Court in *Indian Metals and Ferro Alloys Ltd. VS. Union of India* reported in 1992 Supp (1) SCC 91.

17. Learned senior counsel Shri Abhishek Manu Singhvi and L. Nageswara Rao, appearing for Adhunik submitted that the High Court had committed an error in relying upon the above referred amended Rule 59. The 1962 notification was issued when prospecting and mining was not within the jurisdiction of the State Government The judgment of this Court in *Air India Vs. Union of India* reported in 1995 (4) SCC 734 (para 4 to 8) was relied upon to submit that subordinate legislation can survive the repeal of a statute only when it is saved. It was further submitted that the impugned notifications were issued without prior approval of the Central Government and were therefore bad in law.

18. (i) Learned senior counsel Shri G.C. Bharuka, appearing for Abhijeet Infrastructure Pvt. Ltd. ('Abhijeet' for short) submitted that Central Government had opened up the minerals for private participants. In 1962, the Government had no power to issue the notification in the absence of any legislation conferring any executive power. He relied upon the judgment of this Court in *Bharat Coking Coal Ltd. Vs. State of Bihar* reported in 1990 (4) SCC 557 (para 19), and submitted that the State can act only under a legislation or under Article 162 by way of an executive order and not otherwise. He submitted that the 1962 notification was issued under the un-amended Rule 59, and that time there was no power to issue such notification. In his view the subsequent notification dated 27.10.2006 which is issued under Section 17A (2) was also bad in law because it was issued without the prior approval of the Central Government

(ii) It was then submitted by Shri Bharuka, that Abhijeet's proposal was sent to the Central Government on 06.08.2004. State Government withdrew it on 13.09.2005, and Central

Government rejected it on 06.03.2006. In the meanwhile the petitioner took steps for investment. He relied upon two judgments to explain the import of the doctrine of promissory estoppel, namely *M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh* reported in 1979 (2) SCC 409 and *State of Punjab Vs. Nestle India Ltd.* reported in 2004 (6) SCC 465. He canvassed the Contempt Petition moved by Abhijeet by contending that Abhijeet ought to have been granted lease in pursuance of this Court's earlier order dated 15.12.2008.

Reply on behalf of the State of Jharkhand

19. Learned Senior Counsel Shri Ajit Kumar Sinha, appearing for the State of Jharkhand, traced the power of the State Government to reserve the mines situated within its territory for Public Sector Undertakings, to begin with, to the State's ownership of the Mines. He submitted that these mines and minerals vested absolutely in it, and this position was fortified in view of the declaration of the consequences of vesting to be found in Section 4(a) of the Bihar Act. The validity of this provision had been upheld by a Constitution Bench of this Court way back in *State of Bihar Vs. Kameshwar Singh* reported in AIR 1952 SC 252. In any case, the Act had been placed at Entry No. 1 in Ninth Schedule which was added by Constitution (First Amendment) Act, 1951 and was protected by Article 31-B. As held by this Court in *Waman Rao Vs. Union of India* reported in 1981 (2) SCC 362, the Act was clearly beyond the pale of challenge. The State had the inherent power to reserve any area for exploitation in its capacity as the owner of the land and the minerals vested therein. The Sovereign executive power of the State under Article 298 of the Constitution to carry on any trade or business and to acquire, hold and dispose of the property and make contracts, certainly included the power to reserve the land for exploitation of its minerals by the public sector.

20. It was further submitted by Shri Sinha, that there was no conflict between the right of the State Government to deal

with the mines as the owner thereof, and the provisions of the MMDR Act. The MMDR Act does not disturb the ownership of the mines and minerals of the State in the land situated within its territory. The power to issue appropriate notifications concerning the mines and minerals situated within the State is not taken away by any of the provisions of the MMDR Act. In the instant case the Central Government, in its counter affidavit at para 5 (a) and para 10 filed before the High Court, had given deemed/de-jure approval to the reservation upon examination of the 1962 & 1969 notifications. This was apart from the impugned order, dated 6.3.2006, rejecting the proposals of the appellants on the ground that the recommended areas in the said nine proposals were either reserved for public sector undertakings, or overlapped the areas held by M/s. Rungta Sons Pvt. Ltd. and M/s. General Produce Company. In the counter affidavit filed in this appeal by the Central Government, it has been specifically stated in paragraph 5 that the State Government is the 'owner of the minerals.'

21. It was submitted by Shri Sinha that the notifications of 1962 and 1969 continued to be applicable and protected even after the creation of state of Jharkhand by virtue of Section 85 of the Bihar Reorganisation Act, 2000, which provides that the existing laws prior to reorganization shall have effect till they are altered, repealed or amended. Shri Sinha, pointed out that the notifications of 1962 and 1969 had, in fact, been reiterated by the State of Jharkhand vide its notification dated 27.10.2006.

22. He submitted that the power to issue the impugned notifications was very much available under the MMDR Act and the Rules 58 and 59 of the M.C. Rules as they stood at the relevant time. The notification dated 27.10.2006 was clearly traceable to Section 17A (2) of the MMDR Act. The mere absence of mentioning of the source of power in the concerned notifications did not make them ineffective. Shri Sinha relied upon paragraph 13 of the judgment of this Court in *Dr. Ram*

Manohar Lohia Vs. State of Bihar reported in AIR 1966 SC 740 in support of this proposition.

23. With respect to doctrine of Desuetude, Shri Sinha submitted that for this doctrine to apply, two conditions have to be satisfied, viz. (i) there must be a considerable period of neglect, and (ii) there must be a contrary practice for a considerable time. In the instant case no such neglect or contrary practice had been shown. The area of mines has been kept reserved, and no mining lease in the reserved area has been granted to anyone contrary to the notifications. He relied in this behalf upon paragraph 15 of the judgment of this Court in *State of Maharashtra vs. Narayan Shamrao Puranik* reported in 1982 (3) SCC 519, and paragraphs 30 to 36 of *Municipal Corporation for City of Pune vs. Bharat Forge Co. Ltd.* reported in 1995 (3) SCC 434, as well as paragraph 16 of *Cantonment Board Mhow vs. M.P. State Road Transport Corpn.* reported in 1997 (9) SCC 450.

24. With respect to the submissions on promissory estoppel and legitimate expectations, Shri Sinha submitted that these principles were based on equity, and when a matter was governed by a statute, equity will give way. Besides, the promises as claimed were against the public policy and could not be enforced. He relied upon paragraph 10 of *Amrit Vanaspati Co. Ltd. vs. State of Punjab* reported in 1992 (2) SCC 411, paragraph of 12 *M.P.Mathur vs. DTC* reported in 2006 (13) SCC 706, and paragraph 83 of *Sandur Manganese & Iron Ores Ltd. vs. State of Karnataka* reported in 2010 (13) SCC 1.

25. Shri Sinha submitted that MOU between the Appellants and the State Government could not be treated as a contract under Article 299 (1) of the Constitution of India. It was neither enforceable nor binding. Based on the MOU, the State Government had made a recommendation which was only a proposal. Besides, no one had any legal or vested right for the

grant or renewal of a mining lease. In this behalf, he relied upon paragraph 13 of *State of Tamil Nadu vs. M/s Hind Stone* reported in 1981 (2) SCC 205, paragraph 4 of *Dharambir Singh vs. Union of India* reported in 1996 (6) SCC 702, paragraph 13 of *M.P. Ram Mohan Raja vs. State of Tamil Nadu* reported in 2007 (9) SCC 78, paragraphs 19 to 22 and 28 of *State of Kerala vs. B. Six Holiday Resorts (P) Ltd.* reported in 2010 (5) SCC 186, and paragraph 4 of *Sandur Manganese & Iron Ores Ltd. vs. State of Karnataka* reported in 2010 (13) SCC 1.

26. Last but not the least, Shri Sinha pointed out that the controversy in the present matter was fully covered by the judgment of a bench of three Judges of this Court in *Amritlal* (supra) wherein the facts were by and large similar. This Court has clearly held in that judgment that the mines and minerals within its territory did vest in the State Government, and it had the full authority to reserve the exploitation thereof for the benefit of public undertakings. There was no conflict between this judgment, and the three judgments in the cases of *Hingir-Rampur Coal Co., M.A. Tulloch & Co. and Baijnath Kadio* (supra).

Reply on behalf of Union of India

27. The Learned Senior Counsel Shri Ashok Bhan, appearing for Union of India supported the submissions of Shri Sinha. He submitted that the mines and minerals in the State of Jharkhand were owned by the State of Jharkhand, and it had the right to deal with the same appropriately within the scheme of the MMDR Act. It had every right to reserve certain areas for the exclusive utilisation of the Public Sector Undertakings, or to give a direction to avoid overlapping. He pointed out that the proposals forwarded by the State Government were examined by the Central Government . It had accepted the reasons contained in the State Government's letter dated 13.9.2005, and therefore rejected nine out of the ten proposals. He drew our attention to the following paragraphs from the

affidavit filed by the Central Government in the High Court. In para 5 (a) of its Counter Affidavit in reply to the Writ Petition filed by Monnet in the High Court, the Under Secretary, in the Ministry of Mines stated that 'the request of the State Government has been examined by the Central Government, and all nine proposals including the proposal recommended in favour of the petitioner have been rejected and returned to the State Government on 06.03.2006.' In para 10, it was further stated as follows:-

> "10. That, as referred herein above, as per information of the State Government the proposals which were submitted to the Central Government seeking prior approval u/s 5 (1) of the Mines and Minerals (Development & Regulation) Act, 1957, either fall in the areas reserved for exploitation by the Public Sector or overlap with the area earlier held or being presently held by others and therefore on the request of State Government, examined by Central Government, and after rejection returned the proposal to the State Government on 06.03.2006. Under the circumstances if the State Government desires to grant the area under mining lease to a person other than a public sector, it is required to firstly de-reserve the area, notify the same under Rule 59 (1) of the Mineral Concession Rules, 1960 and therefore in present situations the petitioner has no case and writ petition is liable to be dismissed."

Submissions on behalf of the intervenors

28. (i) Shri Das Learned Counsel appearing for M/s Rungta Sons pointed out that Rungta had a mining lease in their favour and were entitled to seek the renewal thereof. Therefore, the appellants could not have been granted any lease, in any way overlapping with the mining area allotted to Rungta Sons.

(ii) Learned Senior Counsels Sarvashri Narasinha, Vikas Singh & Krishnan Venugopal have appeared for the interveners

to oppose these appeals. Their submissions have been similar to that of Shri Sinha.

29. After the hearing of these appeals was concluded, another SLP arising out of the judgment of Orissa High Court in W.A. No.6288 of 2006 (Geo *Minerals and Marketing (P) Ltd. V. State of Orrisa & ors.*) came up for consideration wherein one of the issues involved was regarding reservation of mining areas for public sector. The counsel appearing in that matter for the respective parties viz. Senior counsel Sarvashri Harish Salve, KK Venugopal and RK Dwivedi were therefore heard on this issue. Their submissions were similar to those of the respective parties appearing in the present appeals.

Consideration of the submissions of the rival parties:

Authority of the State of Jharkhand to deal with the mines and minerals within its territory

30. It was submitted on behalf of the State of Jharkhand as well as by Union of India that the mines and minerals within the territory of the State are owned by the State of Jharkhand, and it has full authority to deal with the same. This authority flows from Section 4 (a) of the Bihar Land Reforms Act, 1950. As against that, the counsel for the appellants have challenged the authority of the State of Jharkhand to deal with the mines and minerals on the ground that after the passing of the MMDR Act, the authority of the State Government has come to be curtailed. To examine this issue we may look into some of the salient provisions of the Bihar Act. To begin with the Preamble of the Act declares its objective in following terms:

> 'An Act to provide for the transference to the State of the interests of proprietors and tenure holders in land of the mortgagees and lessees of such interests including interests in trees, forests , fisheries , jalkars, ferries, hats, bazaars, mines and minerals and to provide for the constitution of a Land Commission for the State of Bihar

with powers to advise the State Government on the agrarian policy to be pursued by the State Government consequent upon such transference and for other matters connected therewith.'

Section 3 of the Act provides for issuance of notifications of vesting of estates and tenures in the state. Section 4 provides for the consequences of the vesting namely that they shall vest absolutely in the state free from all encumbrances. Section 4(a) of the Bihar Act reads as follows:

4. Consequences of the vesting of an estate or tenure in the State-

[Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any non- compliance or irregular compliance of the provisions of sections 3, 3A and 3B except the provisions of sub-section (1) of section 3 and sub-section (1) of section 3A, on the publication of the notification under sub-section (1), of section 3 or sub-section (1) or sub-section (2) of section 3A, the following consequences shall ensue and shall be deemed always to have ensued, namely:]

(a) 2[xxx] Such estate or tenure including the interests of the proprietor or tenure-holder in any building or part of a building comprised in such estate or tenure and used primarily as office or cutchery for the collection of rent of such estate or tenure, and his interests in trees, forests, fisheries, jalkars, hats, bazars, 3[mela] and ferries and all other sairati interests, as also his interest in all subsoil including any rights in mines and minerals whether discovered or undiscovered, or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate or tenure (other than the interests of raiyats or under - raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all incumbrances and such proprietor or tenure- holder shall cease to have any interest in such estate or other than the interests expresslly saved by or under the provisions of this Act.

Besides, we must also note that the Constitutional validity of this provision has already been upheld by a Constitution Bench of this Court in *State of Bihar Vs. Kameshwar Singh* reported in AIR 1952 SC 252 by a detailed judgment where at the end of it in Para 237 the Court has declared the Bihar Act to be valid except as regards S. 4(b) and S.23 (f), which were declared to be unconstitutional and void.

31. Ownership denotes a complex of rights as the celebrated author Salmond states in his treatise on Jurisprudence (see page 246 of the Twelfth Edition):

'44. The idea of ownership

Ownership denotes the relation between a person and an object forming the subject-matter of his ownership. It consists in a complex of rights, all of which are rights in rem, being good against all the world and not merely against specific persons. Though in certain situations some of these rights may be absent, the normal case of ownership can be expected to exhibit the following incidents.

First, the owner will have a right to possess the thing which he owns……….

Secondly, the owner normally has the right to use and enjoy the thing owned: the right to manage it, i.e., the right to decide how it shall be used; and the right to the income from it. Whereas the right to possess is a right in the strict sense, these rights are in fact liberties: the owner has a liberty to use the thing, i.e. he is under no duty not to use it, in contrast with others who are under a duty not to use or interfere with it.'

The right of the State of Jharkhand to deal with the mines and minerals within its territory including reserving the same for Public Sector Undertakings, or to direct avoidance of overlapping while granting leases of mines, obviously flows from its ownership of those mines and minerals.

32. (i) It was submitted by the appellants that the power of the State Government under Entry 23, List II of the Seventh Schedule was subject to the provision of Entry No. 54 of List I. Entry 54 of List I states that regulation of Mines and Minerals Development is within the power of the Union Government to the extent a declaration is made by the Parliament in that behalf, and such a declaration has been made in Section 2 of the MMDR Act. Having stated so, it becomes necessary to understand the extent of this control of the Union Government, and for that we must see the scheme of the Act with respect to the powers of the Central Government and the State Government to deal with the mines and minerals. This was also the approach adopted by a Constitution Bench of this Court in *Ishwari Khetan Sugar Mills (P) Ltd. Vs. State of U.P.* reported in 1980 (4) SCC 136 and later by a bench of three Judges in *Orissa Cement Ltd. Vs. State of Orissa* reported in 1991 Supp.(1) SCC 430.

(ii) In *Ishwari Khetan* (supra) the Constitution Bench was concerned with the validity of the provisions of U.P. Sugar Undertakings (Acquisition) Act, 1971 enacted by the State of U.P. It was canvassed that the State's power to legislate in respect of industries under Entry 24 of List II is taken away to the extent of the declaration in that respect made by Parliament under Entry 52 of List I. After examining the relevant provisions, the Constitution Bench held in para 24 as follows:-

> "24. It can, therefore, be said with a measure of confidence that legislative power of the States under Entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State legislature will have power to legislate in respect of declared industry without in any way trenching upon the occupied field......."

(iii) In *Orissa Cement Ltd.* (supra) a bench of three Judges of this Court was concerned with the validity of the levy of a cess on mining imposed by State of Orissa, and the competence of the State Legislation was challenged on the backdrop of MMDR Act and Entry 54 of the Union List. After referring to the judgment in *Ishwari Khetan* (supra) the Court stated as follows in paragraph 49:-

> ".....As pointed out in Ishwari Khetan, the mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of the Union under Entry 52 or Entry 54 does not denude the State Legislatures of their legislative powers with respect to the fields covered by the several entries in List II or List III. Particularly, in the case of declaration under Entry 54, this legislative power is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration......"

33. On this background we may look to the relevant provisions of the MMDR Act. Section 4 (1) of the MMDR Act lays down that prospecting or mining operations are to be done as per the provisions of the license or lease. Section 4(3) does not restrain the State Government from undertaking these operations in the area within the State though, when it comes to the minerals in the First Schedule, it has to be done after prior consultation with the Central Government. This Section 4 reads as follows:

4. Prospecting or mining operations to be under licence or lease:-

No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder]:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

[Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of section 617 of the Companies Act, 1956:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) [No reconnaissance permit, prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

[(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18,1[undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease.

34. The authority to grant the reconnaissance permit, prospecting license or mining lease on the conditions which are mentioned in Section 5 of the Act is specifically retained with the State Government. However, with respect to the minerals specified in First Schedule, it is added that previous approval of the Central Government is required. Thus, with respect to the minerals which are specified in the First Schedule to the Act, this has to be done only after prior consultation with and approval of the Central Government. The provision does not in any way detract from the ownership and the authority of the State Government to deal with the mines situated within its territory. The only restriction is with respect to the minerals in the First Schedule which are specified minerals. Part-C of this schedule includes iron-ore and manganese ore at Entries No. 6 and 9. This Section 5 reads as follows:-

"5. Restrictions on the grant of prospecting licences or mining leases

(1) A State Government shall not grant a [reconnaissance permit, prospecting licence or mining lease] to any person unless such person-

a) is an Indian national, or company as defined in sub-

section (1) of section 3 of the Companies Act, 1956 (1 of 1956); and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in the First Schedule, no [reconnaissance permit, prospecting licence or mining lease] shall be granted except with the previous approval of the Central Government.

Explanation.-For the purposes of this sub-section, a person shall be deemed to be an Indian national,-

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is satisfied that-

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

(b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned."

35. Section 10 of the Act deals with the procedure for obtaining the necessary licences. It makes it very clear the application is to be made to the State Government, and it is the right of the State Government either to grant or refuse to grant the permit, licence or lease. This section reads as follows:-

10. Application for prospecting licences or mining leases-

(1) An application for [a reconnaissance permit, prospecting licence or mining lease] in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the2[permit, licence or lease].

36. Again, it is the right of the State Government to give preferences in the matters of granting lease, though this right is regulated by the provisions of Section 11 of the Act. Sub-section 1 of this Section lays down that one who has done the reconnaissance or prospecting work earlier, will have a preferential right for obtaining a prospective licence or a mining lease in respect of that land. Sub-section 2 lays down that where any area is not notified for reconnaissance or prospecting or mining earlier, the application which is received first will be considered preferentially. It is however, further stated that where applications are invited by any particular date, then all of the applications received by that date will be considered together. Sub-section 3 of Section 11 lays down the factors to be considered while granting the licence which are:

(3) The matters referred to in sub-section (2) are the following:-

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations

or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed."

Sub-section 5 lays down that if there are any special reasons, the State can grant the licence to a party whose application might have been received later in time, but after recording the special reasons. This sub-section again makes it clear that where any such out of turn allotment is to be done with respect to a mineral specified in First Schedule, prior approval of the Central Government will be required. Thus, although the Central Government is given the authority to approve the applications with respect to the specified minerals, that does not take away the ownership and control of the State Government over the mines and minerals within its territory.

37. Senior Counsel Shri Sundaram had contended that Section 17 and 17A of the MMDR Act give special power to the Central Government to undertake the mining operations and effect reservations. Section 18 of the Act casts a duty on the Central Government to protect the environment and to prevent pollution that may be caused by mining operations. These powers were not with the State Government. Therefore, the reservations in the notifications of 1962 and 1969 were outside the powers of the State Government. Thus, Sections 17 and 17(A) of the Act were pressed into service to canvass the reduction in the authority of the State Government. Section 17 (1) gives the power to the Central Government to undertake prospecting and mining operations in certain lands. However,

such operations have also to be done only after consultation with the State Government as stated in sub-section (2) thereof. Besides, sub-section (3) requires the Central Government also to pay the reconnaissance permit fee or prospecting fee, royalty, surface rent or dead rent as the case may be. Section 17A gives the power to the Central Government to reserve any area not held under any prospecting licence or mining lease with a view to conserving any minerals. However that power is also to be exercised in consultation with the State Government. Similarly, under Sub-section (2) of Section 17A, State Government may also reserve any such area, though with the approval of the Central Government. Thus, these sections and the duty cast on the Central Government under Section 18 do not affect the ownership of the State Government over the mines and minerals within its territory, or to deal with them as provided in the statute.

38. The provisions of the MMDR Act contain certain regulations. However, to say that there are certain provisions regulating the exercise of power is one thing, and to say that there is no power is another. The provisions of the Act do not in any way take away or curtail the right of the State Government to reserve the area of mines in public interest, which right flows from vesting of the mines in the State Government. It is inherent in its ownership of the mines. In the present case we are concerned with the challenge to the letter of the State Government dated 13.9.2005, and that of the Central Government dated 6.3.2006, and the challenge to the notification dated 27.10.2006 issued by the State Government. There is no difficulty in accepting that the Central Government does have the power to issue a direction as contained in the letter dated 6.3.2006. As far as the notification of 27.10.2006 is concerned, the same is also clearly traceable to Section 17A (2) of the Act. This Section 17A (2) reads as follows:-

"(2) The State Government may, with the approval of the Central Government, reserve any area not already held

under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved."

As can be seen, this sub-section requires the approval of the Central Government for reserving any new area which is not already held through a Government Company or Corporation, and where the proposal is to do so. The notification of 27.10.2006 refers to the previous notifications of 1962 and 1969 whereunder the mining areas in the Ghatkuri forest were already reserved, and reiterates the decision of the State Government that the minerals which were already reserved in the Ghatkuri area under the two notifications will continue to be utilised for exploitation by public sector undertakings or joint venture projects of the State Government. Therefore this notification of 27.10.2006 did not require the approval of the Central Government.

39. When it comes to the challenge to the letter dated 13.9.2005, it is seen that the State Government states therein that nine out of the ten proposals overlap the areas meant for public undertakings and two other companies, and therefore the proposals were called back. The power to take such a decision rests in the State Government in view of its ownership of the mines, though there may not be a reference to the source of power. Absence of reference to any particular section or rule which contains the source of power will not invalidate the decision of the State Government, since there is no requirement to state the source of power as has already been held by this Court in the case of *Dr. Ram Manohar Lohia* (supra).

40. The appellants have referred to Rules 58 and 59 to

contend that there rules do not give the power to the State Government to reserve the mines for public sector. We may therefore, refer to the Rules 58 and 59 of M.C. Rules as amended from time to time.

Rule 58 and 59 of M.C. Rules as framed in 1960 read as follows:-

"**58. Availability of areas for re-grant to be notified-** (I) No area which was previously held or which is being held under a prospecting licence or a mining lease or in respect of which an order had been made for the grant thereof but the applicant has died before the execution of licence or lease, as the case many be, or in respect of which the order, granting licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31, shall be available for grant unless-

(a) an entry to the effect is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and

(b) the date from which the area shall be available for grant is notified in the official Gazette at least 30 days in advance.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case.)

"**Rule 59. Availability of certain areas for grant to be notified-** In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose other than prospecting or mining the minerals, the State Government shall, as soon as such land becomes

again available for the grant of a prospecting or mining lease, grant the license or lease after following the procedure laid down in rule 58.

41. (i) Rule 58 was amended on 16.11.1980 and the amended Rule 58 reads as under:-

"**58. Reservation of area for exploitation in the public sector etc.-** The State Government may, by notification in the Official Gazette, reserve any area for the exploitation by the Government, a Corporation established by the Central, State or Provincial Act or a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956)

(ii) Rule 59 was amended first on 9.7.1963 and later in 1980 along with Rule 58. The amended Rule 59 as amended on 9.7.1963 reads as follows:-

"**Rule 59. Availability of certain areas for grant to be notified-** In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the license or lease after following the procedure laid down in Rule 58."

(iii) Rule 59 when amended in 1980 reads as follows:-

"**59. Availability of area for regrant to be notified-** (1) No area-

(a) which was previously held or which is being held under a prospecting licence or a mining lease; or

(b) in respect of which an order had been made for the

grant of a prospecting licence or mining lease, but the applicant has died before the grant of the licence or the execution of the lease, as the case may be; or

(c) in respect of which the order granting a licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31; or

(d) in respect of which a notification has been issued under sub section (2) or sub-section (4) of section 17; or

(e) which has been reserved by Government under rule 58, shall be available for grant unless-

(i) an entry to be effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and 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:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired: Provided further that where an area reserved under rule 58 is proposed to be granted to a Government Company, no notification under clause (i) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case.)"

42. Rule 58 has been subsequently deleted, whereas Rule

59 was amended on 13.4.1988. It now reads as follows:-

59. Availability of area for regrant to be notified- (1) No area-

(a) which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease; or

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) of rule 7A or sub-rule (1) of rule 15 or sub-rule (1) of rule 31, as the case may be; or

(d) in respect of which a notification has been issued under sub-section (2) or sub-section (4) of section 17; or

(e) which has been reserved by the State Government or under section 17A ojf the Act,

shall be available for grant unless-

(i) an entry to the effect that the area is available for grant is made in the register referred to insub-rule (2) of rule 7D or sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be; and

(ii) the availability of the area for grant is notified in the Official Gazette and 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:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired.

Provided further that where an area reserved under rule 58 or under section 17A of the Act is proposed to be granted to a Government company, no notification under clause (ii) shall be required to be issued:

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted interms of sub-section (1) of section 11, no notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case."

43. (i) The notification of 1969 is clearly protected under Rule 59 as amended on 9.7.1963, in as much as the rule clearly states that the State Government can refuse to grant a mining lease, should the land be reserved for any purpose. As far as the notification of 1962 is concerned, it is submitted by the appellants that the Rules 58 and 59 as they stood prior thereto did not contain a specific power to reserve the land for any purpose, in the manner it was incorporated in Rule 59 by the amendment of 9.7.1963. As can be seen, these rules provide as to when the reserved area can be notified for re-grant. The Rules lay down the requirement of making an entry in the register maintained in that behalf, and issuance of a notification in the official gazette about the availability of the area for grant. These provisions are made to ensure transparency. The reference to the judgment in **Janak Lal** (supra) does not take forward the case of the appellants, since as stated in that judgment the result of the amendment in the rule is only to extend the rule, and not to curtail the area of its operation. The judgment in terms states that the purpose of these rules is obviously to enable the general public to apply for the proposed

lease.

(ii) Rule 58 as it originally stood, provided for two contingencies. One contingency is where the applicant has died before the execution of licence or lease, and the other is where the order granting licence or lease has been revoked. Rule 59 as originally drafted provided for the third contingency, namely, where the State Government had earlier refused to grant a prospecting licence or mining lease in respect of certain land on the ground that it was reserved for some other purpose, (e.g. environmental), and such land becomes available for grant. For all these three contingencies, the procedure laid down in Rule 58 was required to be followed, namely making of an entry in the specified register, and notifying in the official gazette the date from which the area will be available for grant.

44. The appellants then contended by referring to the amended Rule 59 that because the power to reserve the land 'for any purpose' was specifically provided thereunder from 9.7.1963, such power did not exist in the Rules 58 and 59 as they stood prior thereto. It is not possible to accept this construction, for the reason as stated above that the Rules 58 and 59 as they originally stood, merely dealt with three contingencies where the prescribed procedure was required to be followed. This cannot mean that when it comes to reservation of mining areas for public undertakings, such power was not there with the State Government prior to the amendment of 1963. The over-view of various sections of the act done by us clearly shows that the power to grant the mining leases is specifically retained with the State Government even with respect to the major minerals, though with the approval of the Central Government. The power to effect such reservations for public undertakings, or for any purpose flows from the ownership of the mines and minerals which vests with the State Government. The amendment of Rule 59 in 1963 made it clear that the State can reserve land 'for any purpose', and the amendment of Rules 58 and 59 in 1980 clarified that State can reserve it for a public corporation or a Government company.

These amendments have been effected only to make explicit what was implicit. These amendments can not be read to nullify the powers which the State Government otherwise had under the statute. In the present matter we are concerned with the challenge to the power of the State Government to issue the letter of withdrawal dated 13.9.2005 which is issued in view of the two notifications of 1962 and 1969. The challenge to the validity of the said letter will therefore have to be repelled.

45. Learned Senior Counsel Shri Mehta had relied upon *Indian Metals and Ferro Alloys Ltd.* (supra) to contend that an area which is reserved can be made available for re-grant to private sector. However, that situation can arise when the area becomes de-reserved, and thereafter the specified procedure is followed. The following statement in para 45 of the very judgment cannot be ignored in this behalf:-

> ".....Under Rule 59(1), once a notification under Rule 58 is made, the area so reserved shall not be available for grant unless the two requirements of sub-rule (e) are satisfied: viz. an entry in a register and a gazette notification that the area is available for grant......"

Thus, when such a decision to de-reserve the area for re-grant is taken, the above two requirements are expected to be followed. In the instant case there was no such occasion since no such decision had been taken by the State Government. Once the State Government realised that the concerned areas were reserved for the exploitation in public sector, it withdrew the proposals forwarding the applications of the appellants to the Central Government, and it was fully entitled to do the same.

46. It was then contended by Shri Mehta that the State Government's power is only to regulate the minor minerals under Section 15 of the Act, since, that section gives power to the State Government to make rules in respect of minor minerals, and since Section 14 states that Sections 5 to 13 do not apply to minor minerals. On the other hand the over view of the

provisions from sections 4 to 17A as done above clearly shows the power of the State Government either to grant or not to grant the mining leases, prospecting licenses and reconnaissance permits and to regulate their operations even with respect to the major minerals specified in First Schedule to the act though with the previous approval of the Centre Government. This would include the power to effect reservations of mining areas for the public sector. The reliance on *Bharat Coking Coal* (supra) is also untenable for the reason that the judgment lays down that the executive power of the State is subject to the law made by the Parliament. There is no conflict with the proposition in the facts of this case. The power of the State flows from its ownership of the mines, and it is not in any way taken away by the law made by the Parliament viz. the MMDR Act or the MC rules. It is therefore not possible to accept the submission of Shri Ranjit Kumar that because a regulatory regime is created under the Act giving certain role to the Central Government, the power to effect reservations is taken away from the State Government. The reference to the judgment of this Court in *D.K. Trivedi & Sons* (supra) in this behalf was also misconceived. In that matter a bench of two Judges, of this Court, held section 15 (1) of MMDR Act to be constitutional and valid. The court also held that the rule making power of the State Government, thereunder, did not amount to excessive delegation of legislative power to the executive. In that matter no such submission that the powers of the State Government were restricted only to section 15 was under consideration

47. Similarly, the reliance on *Hukam Chand* (supra) was also misconceived in as much as in the present case there is no such issue of exercising rule making power retrospectively. Nor has the proposition in *Air India* (supra) any relevance in the present case since this is not a case of saving any provision after the repeal of a statute. The action of the State cannot as well be faulted for being unreasonable to be hit by Article 19(1) (g) of the Constitution of India since all that the State has done is to follow the Statute as per its letter and its true spirit.

48. Learned Senior Counsel Shri Ranjit Kumar had contended that once the State Government had recommended the proposal to the Central Government for grant of mineral concession it becomes functus-officio in view of the provision of Rule 63 A of the MC Rules, 1960, and it cannot withdraw the same. As far as this submission is concerned, firstly it is seen from the impunged judgment that this plea was not canvassed before the High Court. Besides, in any case, 'recommendation' will mean a complete and valid recommendation after an application for grant of mining lease is made under Rule 22 with all full particulars in accordance with law. In the instant case the State Government found that its own proposal was a defective one, since it was over-lapping a reserved area. In such a case, the withdrawal thereof by the State Government cannot be said to be hit by Rule 63A. In any case, the Central Government subsequently rejected the proposal, and hence not much advantage can be drawn from the initial forwarding of the appellants' proposal by the State Government.

49. It is also contended that Monnet was not afforded hearing. The submission of denial of hearing under Rule 26 by the State Government is not raised in the Writ Petition. It is material to note that another plea is raised in Para 2 (XVI) of their Writ Petition, namely, that central government ought to have given a hearing before issuing the rejection order, though no specific provision from the rules was pointed out in that behalf. The plea that the appellants could not resort to their remedy of revision under Rule 54 against the letter of State Government dated 13.9.2005 cannot be accepted for the reason that it is the appellants who chose to file their writ petition directly to the High Court to challenge the same (along with Central Government letter dated 6.3.2006) without exhausting that remedy. The Central Government cannot be faulted for the same. Incidentally, the Petition nowhere states as to how Monnet came to know about these internal communications between the state and the central government. The other

petitioners claim to have learnt about the same through a newspaper report, and Adhunik claims to have got the copies thereof through an application under the Right to Information Act, 2005.

50. The appellants had relied upon three judgments of the Constitution Benches of this Court in *Hingir-Rampur Coal Co., M.A. Tulloch & Co. and Baijnath Kadio* (supra). In *Hingir-Rampur Coal Co.* (supra), the Constitution Bench was concerned with the question of legality of the cess under the Orissa Mining Ares Development Fund Act, 1952. One of the grounds canvassed was that the said legislation was bad in law for being in conflict with the previous Mines and Minerals (Regulation and Development) Act, 1948, which was also a Central Act. It was contended that the central legislation was referable to Entry No.54 of the Union List from the Seventh Schedule. It occupied the field and therefore the state legislation which was referable to Entry No.53 was beyond the competence of the state legislature. The Court found that the areas covered by the two acts were substantially the same. However, the 1948 Act was a pre-constitution act and the relevant provisions of the constitution were held to be prospective. The Court therefore, held that unless the declaration under Section 2 of the 1948 Act was made after the Constitution came into force, it will not satisfy the requirement of Entry No.54. The cess and the Orissa Act were therefore not held to be bad in law. What this Court observed in Para 23 in this behalf is relevant for our purpose…………….

"23. The next question which arises is, even if the cess is a fee and as such may be relatable to Entries 23 and 66 in List II its validity is still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union; and that takes us to Entry 54 in List I. This Entry reads thus: "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. The position is not in dispute."

(emphasis supplied)

51. In *M.A. Tulloch & Co.* (supra), the Constitution Bench was concerned with legality of certain demands of fee under the Orissa Mining Areas Development Fund Act, 1952, and the same question arose as to whether the provisions of the Orissa Act were hit by the MMDR Act, 1957 in view of Entry No.54 of the Union List. The validity of the state act was canvassed under Entry No.23 of the State List and was accepted as not hit by the provisions of the MMDR Act, 1957. The Court held the Orissa Act and the demand of fee to be valid. What this Court observed in Para 5 is relevant for our purpose………..

"5. ………….It does not need much argument to realise that to the extent to which the Union Government had taken under "its control" "the regulation and development of minerals" so much was withdrawn from the ambit of the power of the State Legislature under Entry 23

> and legislation of the State which had rested on the existence of power under that entry would to the extent of that "control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made."

52. In *Baijnath Kadio* (supra), this Court was concerned with the validity of second proviso of Section 10 of the Bihar Land Reforms Act, 1964 for being in conflict with the provisions concerning miner minerals under the MMDR Act, 1957. The Court followed the propositions in *Hingir-Rampur Coal Co.* and *M.A. Tulloch Co.* and found that the field was not open to the State Legislature, since it was covered under the Central Act.

53. As can be seen from these three judgments, if there is a declaration by the Parliament, to the extent of that declaration, the regulation of mines and minerals development will be outside the scope of the State Legislation as provided under Entry No.54 of the Centre List. Presently, we are not concerned with the conflict of any of the provisions under the MMDR Act, either with any State Legislation or with any Executive Order under a State Legislation issued by the State Government. The submission of the appellant is that the Jharkhand Government was not competent at all to issue the notifications of 1962 and 1969 reserving the mine areas for public undertaking. The answer of the State Government is that it is acting under the very MMDR Act, and the notifications are within the four corners of its powers as permitted by the Central Legislation.

54. All these issues raised by the appellants have already been decided by a bench of three Judges of this Court in *Amritlal Nathubhai Shah Vs. Union of India* reported in 1976 (4) SCC 108. In that matter also the Government of Gujarat had issued similar notifications dated 31.12.1963 and 26.2.1964 reserving the lands in certain talukas for exploitation of bauxite

in public sector. The applications filed by the appellant for grant of mining lease for bauxite were rejected by the State Government. The revision application filed by the appellant to the Central Government was also rejected by its order which stated that the State Government was the owner of the minerals within its territory and the minerals vest in it, and also that the State Government had the inherent right to reserve any particular area for exploitation in the public sector. The Gujarat High Court had accepted this view.

55. While affirming this view, this Court in *Amritlal Nathubhai* (supra) held in clear terms that the power of the State Government arose from its ownership of the minerals, and that it had the inherent right to deal with them. In para 3 of its judgment the Court observed as follows:-

> "3. It may be mentioned that in pursuance of its exclusive power to make laws with respect to the matters enumerated in entry 54 of List I in the Seventh Schedule, Parliament specifically declared in Section 2 of the Act that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The State Legislature's power under entry 23 of List II was thus taken away, and it is not disputed before us that regulation of mines and mineral development had therefore to be in accordance with the Act and the Rules. The mines and the minerals in question (bauxite) were however in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the "owner of minerals" within its territory, and the minerals "vest" in it. There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the "inherent right to reserve any particular area for exploitation in the public sector". It

is therefore quite clear that, in the absence of any law or contract etc. to the contrary, bauxite, as a mineral, and the mines thereof, vest in the State of Gujarat and no person has any right to exploit it otherwise than in accordance with the provisions of the Act and the Rules. Section 10 of the Act and Chapters II, III and IV of the Rules, deal with the grant of prospecting licences and mining leases in the land in which the minerals vest in the Government of a State. That was why the appellants made their applications to the State Government."

56. The Court traced the power of the State Government to refuse to grant lease, to Section 10 of the MMDR Act. It held that this section clearly included the power either to grant or refuse to grant the lease on the ground that the land in question was not available having been reserved by the State Government for any purpose. In para 5 of its judgment this Court has held as follows:-

> "5. Section 10 of the Act in fact provides that in respect of minerals which vest in the State, it is exclusively for the State Government to entertain applications far the grant of prospecting licences or mining leases and to grant or refuse the same. The section is therefore indicative of the power of the State Government to take a decision, one way or the other, in such matters, and it does not require much argument to hold that that power included the power to refuse the grant of a licence or a lease on the ground that the land in question was not available for such grant by reason of its having been reserved by the State Government for any purpose."

57. In para 6 of the judgment, this Court rejected the argument that since Section 17 of the Act provides for the powers of the Central Government to undertake prospecting or mining operations, the State Government could not be said to have the power for reservations. The first part of this para reads as follows:-

> "6. We have gone through Sub-sections (2) and (4) of Section 17 of the Act to which our attention has been invited by Mr. Sen on behalf of the appellants for the argument that they are the only provisions for specifying the boundaries of the reserved areas, and as they relate to prospecting or mining operations to be undertaken by the Central Government, they are enough to show that the Act does not contemplate or provide for reservation by any other authority or for any other purpose. The argument is however untenable because the aforesaid sub-sections of Section 17 do not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to anyone else, and do not deal with the State Government's authority to reserve any area for itself. As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it……………"

58. The Judgment referred to Rule 59 of the M.C. Rules also, and held that it clearly contemplates such reservation by the order of the State Government In para 7 this Court held in this behalf as follows:-

> "7.……A reading of Rules 58, 59 and 60 makes it quite clear that it is not permissible for any person to apply for a licence or lease in respect of a reserved area until after it becomes available for such grant, and the availability is notified by the State Government in the Official Gazette. Rule 60 provides that an application for the grant of a prospecting licence or a mining lease in respect of an area for which no such notification has been issued, inter alia, under Rule 59, for making the area available for grant of a licence or a lease, would be premature, and "shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded." It would therefore follow that as the areas which are the subject matter of the present appeals had been reserved

by the State Government for the purpose stated in its notifications, and as those lands did not become available for the grant of a prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature. ….."

59. In view of the discussion as above, the judgment in *Amritlal* (supra) cannot be said to be stating anything contrary to the propositions in *Hingir-Rampur Coal Co., M.A. Tulloch & Co. and Baijnath Kadio* (supra), but is a binding precedent. The notifications impugned by the appellants in the present group of appeals were fully protected under the provisions of MMDR Act, and also as explained in *Amritlal* (supra).

Desueutde

60. The submissions with respect to the two notifications suffering on account of Desuetude has also no merit, as the law requires that there must be a considerable period of neglect, and it is necessary to show that there is a contrary practice of a considerable time. The appellants have not been able to show anything to that effect. The authorities of the State of Jharkhand have acted the moment the notifications were brought to their notice, and they have acted in accordance therewith. This certainly cannot amount to deusteude.

Promissory Estoppel and Legitimate Expectations

61. As we have seen earlier, for invoking the principle of promissory estoppel there has to be a promise, and on that basis the party concerned must have acted to its prejudice. In the instant case it was only a proposal, and it was very much made clear that it was to be approved by the Central Government, prior whereto it could not be construed as containing a promise. Besides, equity cannot be used against a statutory provision or notification.

62. What the appellants are seeking is in a way some kind

of a specific performance when there is no concluded contract between the parties. An MOU is not a contract, and not in any case within the meaning of Article 299 of the Constitution of India. Barring one party (Adhunik) other parties do not appear to have taken further steps. In any case, in the absence of any promise, the appellants including Aadhunik cannot claim promissory estoppel in the teeth of the notifications issued under the relevant statutory powers. Alternatively, the appellants are trying to make a case under the doctrine of legitimate expectations. The basis of this doctrine is in reasonableness and fairness. However, it can also not be invoked where the decision of the public authority is founded in a provision of law, and is in consonance with public interest. As recently reiterated by this Court in the context of MMDR Act, in Para 83 of *Sandur Manganese* (supra) 'it is a well settled principle that equity stands excluded when a matter if governed by statute'. We cannot entertain the submission of unjustified discrimination in favour of Bihar Sponge and Iron Ltd. as well for the reason that it was not pressed before the High Court nor was any material placed before this Court to point out as to how the grant in its favour was unjustified.

Epilogue

63. Before we conclude, we may refer to the judgment of this Court in State of Tamil Nadu Vs. M/s Hind Stone reported in AIR 1981 SC 711 wherein the approach towards this statute came up for consideration. In that matter this Court was concerned with Rule 8-C of the Tamil Nadu Minor Mineral Concessions Rule, 1959 framed by the Government of Tamil Nadu under Section 15 of the MMDR Act. This rule provided as follows:-

> **"8-C. Lease of quarries in respect of black granite to Government Corporation, etc.**
>
> (1) Notwithstanding anything to the contrary contained in these rules, on and from 7th December 1977 no lease

for quarrying black granite shall be granted to private persons.

(2) The State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government.

Provided that in respect of any land belonging to any private person, the consent of such person shall be obtained for such quarrying or lease"

64. Although in Hind Stone the Court was concerned with the provision of this rule which was concerning a minor mineral, while examining the validity thereof this Court (per O. Chinnappa Reddy J.) has made certain observations towards the approach and the scope of MMDR Act which are relevant for our purpose. Thus in para 6, it was observed as follows:-

"6…………….The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals, Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community……………."

65. Again in para 9, this Court observed:-

"9………Whenever there is a switch over from 'private sector' to 'public sector' it does not necessarily follow that a change of policy requiring express legislative sanction is involved. It depends on the subject and the statute. For example, if a decision is taken to impose a general and complete ban on private mining of all minor

minerals, such a ban may involve the reversal of a major policy and so it may require legislative sanction. But if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it, such a ban, if it is otherwise within the bounds of the authority given to the Government by the Statute, cannot be said to involve any change of policy. The policy of the Act remains the same and it is, as we said, the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. Exploitation of minerals by the private and/or the public sector is contemplated. If in the pursuit of the avowed policy of the Act, it is thought exploitation by the public sector is best and wisest in the case of a particular mineral and, in consequence the authority competent to make the subordinate legislation makes a rule banning private exploitation of such mineral, which was hitherto permitted we are unable to see any change of policy merely because what was previously permitted is no longer permitted."

Last but not least, in para 13 this Court observed as follows:-

"13……No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions…….”

66. Mines and minerals are a part of the wealth of a nation. They constitute the material resources of the community. Article 39(b) of the Directive Principles mandates that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Thereafter, Article 39(c) mandates that state should see to it that operation of the economic system does not result in the concentration of wealth and means of production to the

common detriment. The public interest is very much writ large in the provisions of MMDR Act and in the declaration under Section 2 thereof. The ownership of the mines vests in the State of Jharkhand in view of the declaration under the provisions of Bihar Land Reforms Act, 1950 which act is protected by placing it in the Ninth Schedule added by the First Amendment to the Constitution. While speaking for the Constitution Bench in *Waman Rao* (supra) Chandrachud, C.J. had following to state on the co-relationship between Articles 39 (b) and (c) and the First Amendment:-

> "26. Article 39 of the Constitution directs by clauses (b) and (c) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good; that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. These twin principles of State Policy were a part of the Constitution as originally enacted and it is in order to effectuate the purpose of these Directive Principles that the 1st and the 4th Amendments were passed….."

67. What is being submitted by the appellants is that the State Government cannot issue such notifications for the reasons which the appellats have canvassed. We, however, do not find any error in the letter of withdrawal dated 13.9.2005 issued by the State of Jharkhand, and the letter of rejection dated 6.3.2006 issued by the Union of India for the reasons stated therein. In our view, the State of Jharkhand was fully justified in declining the grant of leases to the private sector operators, and in reserving the areas for the public sector undertakings on the basis of notifications of 1962, 1969 and 2006. All that the State Government has done is to act in furtherance of the policy of the statute and it cannot be faulted for the same.

68. For the reasons stated above we do not find any merit

in these appeals and they are all dismissed. The interim orders passed therein will stand vacated.

69. The Contempt Petition (C) No.14/2009 is filed by Abhijeet is for the alleged breach of an earlier order dated 15.12.2008. The order dated 28.01.2009 makes it clear that no notice was issued on the Contempt Petition. Since the appeal is being disposed of and dismissed, the Contempt Petition is also dismissed.

70. Iron is a mineral necessary for industrial development. In view of the pendency of these appeals, and the stay orders sought by the appellants therein, grant of lease of iron-ore mines to the public sector undertakings could not be made for over six years. The State of Jharkhand and the people at large have thereby suffered. In view thereof we would have been justified in imposing costs on the appellants. However, considering that important questions of law were raised in these appeals, we refrain from doing the same. The parties will therefore, bear their own costs.

R.P. Appeals dismissed.

BUDHADEV KARMASKAR
v.
STATE OF WEST BENGAL
(Criminal Appeal No. 135 of 2010)

JULY 26, 2012

[ALTAMAS KABIR AND GYAN SUDHA MISRA, JJ.]

Sex Workers - Rehabilitation of - Application filed on behalf of Union of India, for modification of earlier order passed by Supreme Court on 19th July, 2011, referring certain issues to the Committee constituted by the said order itself - First modification sought was deletion of Durbar Mahila Samanwaya Samiti, from the panel on the ground that it had been actively advocating revocation of the Immoral Traffic(Prevention) Act, 1956, and also recognition of sex trade and that continuance of such Samiti in the panel was giving a wrong impression to the public that the Union of India was also inclined to think on similar lines and this wrong impression should be removed by excluding the Samiti from the panel - Second modification sought was with regard to the third term of reference: "(3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity" on the ground that wording of such reference could be suitably modified so as not to give an impression that the Union of India was in favour of encouraging the sex workers, in contravention of the provisions of the aforesaid Act - Held: The presence of the Samiti in the Committee is necessary even to function as a sounding board in respect of the problems faced by the sex workers and therefore prayer of Union of India for deleting the Samiti from the Committee is rejected - No difference would be made to the terms of reference, if the wording of the third term of reference, is modified to the following effect:-"Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution." - Said modification, should not, however, be construed to mean that by this order, any attempt is being made to encourage prostitution in any way - Immoral Traffic(Prevention) Act, 1956.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 135 of 2010.

From the Judgment & Order dated 25.07.2007 of the High Court of Calcutta in CRA No. 487 of 2004.

Solicitor General of India (AC), P.P. Malhotra, ASG, Pradip Ghosh (AC), Jayant Bhushan (AC), T.S. Doabia, Ashok Bhan, A. Mariarputham, Anand Grover with Tripti Tandon, Manjit Singh, Jayant K. Sud, Dr. Manish Singhvi, AAG, Pijush K. Roy, Pallav Mongia, D.S. Mahra, Gaurav Sharma, Sushma Suri, Satya Siddiqui, S.K. Mishra, Sunita Sharma, Sadhana Sandhu, M. Khairati, S. Wasim, A. Qadri, Anjani Aiyagari, Gunwant Dara, B.V. Balramdas, B.K. Prasad, Manpreet Singh Doabia, Kiran Bhardwaj, Tarjit Singh, Kamal Mohan Gupta, Riku Sarna, Navnit Kumar (for Corporate Law Group), Asha Gopalan Nair, Mukul Singh, Pragati Neekhra Singh, Khawairakpam Nobin Singh, Sapam Biswajit Meitei, Edward Belho, Amit Kumar Singh, K. Enatoli Sema, Sunil Fernandes, Gopal Singh, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, A. Subhashini, Anil Srivastav, Rituraj Biswas, Radha Shyam Jena, V.G. Pragasam, S.J. Aristotel, Praburamasubramanian, Jatinder Kumar Bhatia, Mukesh Verma, Chanchal Kr. Ganguli, Abhijit Sengupta, Harendra Singh, Kuldip Singh, D. Mahesh Babu, Mayur R. Shah, Suchitra H., Amit K. Nain, Aruna Mathur, Yusuf Khan, Movita (for Arputham, Aruna & Co.), K.N. Madhusoodhanan, M.T. George, Liz Mathew, Sana Hashmi, Hemantika Wahi, Abhishek Sood, Rohit Kumar Singh, Savita Singh, Amritananda Chakravorty, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Garima Bose, Irshad Ahmad, Balaji Srinivasan, Anitha Shenoy, C.D. Singh, Abhimanyu Singh, Anil K. Jha, Chhaya Kumari, Vibha Dutt Makhija, ANil Katiyar, P.V. Dinesh, Aniruddha P. Mayee, Subramonium Prasad for the

appearing parties.

The order of the Court was delivered by

ALTAMAS KABIR, J. 1. CRLMP.NO.12415 of 2012, has been filed on behalf of the Union of India, for modification of the order passed by this Court on 19th July, 2011, referring certain issues to the Committee which had been constituted by the said order itself.

2. The first modification sought by the Union of India is for deletion of the Durbar Mahila Samanwaya Samiti, from the panel. The second modification sought is with regard to the third term of reference, which reads as follows:-

"(3) Conditions conducive for sex workers who wish to continue working as sex workers with dignity."

3. Appearing in support of the application, the learned ASG, Mr. P.P. Malhotra, submitted that the Samiti in question had been actively advocating the revocation of the Immoral Traffic(Prevention) Act, 1956, and had also been advocating the recognition of sex trade being continued by sex workers. The learned ASG submitted that the continuance of such Samiti in the panel is giving a wrong impression to the public that the Union of India was also inclined to think on similar lines. The learned ASG submitted that this wrong impression should be removed by excluding the Samiti from the panel.

4. As far as the second issue is concerned, the learned ASG submitted that wording of such reference could be suitably modified so as not to give an impression that the Union of India was in favour of encouraging the sex workers, in contravention of the provisions of the aforesaid Act.

5. We have heard Mr. Pradip Ghosh, learned senior advocate and Chairman of the Committee, as also learned senior advocate, Mr. Jayant Bhushan, who is also a member of the Committee and its co-Chairman and Mr. Grover, learned senior advocate, on the issue.

6. It has been submitted by Mr. Ghosh that at the meetings of the Committee, the members of the Samiti had contributed a great deal towards the understanding of the problems of the sex workers and it was not as if the said Samiti was encouraging sex trade, but were providing valuable inputs into the problems being faced by people engaged in the trade. Mr. Ghosh, Mr. Grover, and Mr. Bhushan, in one voice urged that the presence of the Samiti in the Committee was necessary even to function as a sounding board in respect of the problems that are faced by this marginalised and unfortunate section of society.

7. We agree with the submissions made by Mr. Ghosh, Mr. Grover and Mr. Bhushan, learned senior counsel, and are not, therefore, inclined to delete the Samiti from the Committee, as prayed for by the Union of India, and such prayer is rejected.

8. As to the second issue, it will not in any way make any difference to the terms of reference, if the wording of the third term of reference, is modified to the following effect:-

"Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution."

9. The above modification, should not, however, be construed to mean that by this order, any attempt is being made to encourage prostitution in any way.

10. CRLMP.NO.12415 of 2012, is, therefore, disposed of in term of the aforesaid order.

11. Let this matter now be listed for consideration of the Sixth and Seventh Interim Reports, filed by the Committee, on 22nd August, 2012, at 3.00 p.m.

12. Let this Bench be reconstituted on the said date and time for the aforesaid purpose.

GYAN SUDHA MISRA, J. _1. While concurring with the views of my learned brother Justice Altamas Kabir, I prefer to

add in regard to the second issue that this Court should not be misunderstood to encourage the practice of flesh trade or advocate the recognition of sex trade merely because it has raised the issue to emphasize the rehabilitation aspect of the sex workers, for which this Court had taken the initiative right at the threshold. I consider this essential in order to allay any apprehension which prompted the Union of India to move this application for modification, by highlighting that the sex workers although have a right to live with dignity as the society is aware that they are forced to continue with this trade under compulsions since they have no alternative source of livelihood, collective endeavour should be there on the part of the Court and all concerned who have joined this cause as also the sex workers themselves to give up this heinous profession of flesh trade by providing the destitute and physically abused women an alternative forum for employment and resettlement in order to be able to rehabilitate themselves. I, therefore, wish to reiterate by way of abundant caution that this Court should not be perceived to advocate the recognition of sex trade or promote the cause of prostitution in any form and manner even when it had stated earlier in its terms of reference 'regarding conditions conducive for sex workers who wish to continue working as sex workers with dignity'.

2. Thus, when we modify the earlier term of reference and state regarding conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution, the same may not be interpreted or construed so as to create an impression or draw inference that this Court in any way is encouraging the sex workers to continue with their profession of flesh trade by providing facilities to them when it is merely making an effort to advocate the cause of offering an alternative source of employment to those sex workers who are keen for rehabilitation. When we say 'conditions conducive for sex workers to live with dignity', we unambiguously wish to convey that while the sex workers may be provided alternative source of employment for their rehabilitation to live life with

dignity, it will have to be understood in the right perspective as we cannot direct the Union of India or the State Authorities to provide facilities to those sex workers who wish to promote their profession of sex trade for earning their livelihood, except of course the basic amenities for a dignified life, as this was certainly not the intention of this Court even when the term of reference was framed earlier.

3. We, therefore, wish to be understood that we confine ourselves to the efforts for rehabilitation of sex workers which should not be construed as facilitating, providing them assistance or creating conducive conditions to carry on flesh trade for expanding their business in any manner as it cannot be denied that the profession of sex trade is a slur on the dignity of women. Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution be therefore understood in its correct perspective as indicated above.

B.B.B. Matter pending.

SYED AHMED
v.
STATE OF KARNATAKA
(Criminal Appeal No. 1323 of 2007)

JULY 31, 2012

[A.K. PATNAIK AND MADAN B. LOKUR, JJ.]

Prevention of Corruption Act, 1988 - ss.7 & 13(1)(d) r/w s.13(2) - Offences under - Prosecution case that appellant- a police official, demanded and accepted illegal gratification from PW1 for inquiring into a complaint lodged by him against his neighbour - Trial court acquitted the appellant - High Court, however, reversed the acquittal of appellant and sentenced him to rigorous imprisonment for three months - On appeal, held: There was sufficient evidence of the appellant demanding illegal gratification from PW1 and receiving and accepting it when given by him - Testimony of PW1 was unshaken which was corroborated by the evidence of the independent eye witness PW2 - Case proved beyond any doubt - High Court justified in convicting the appellant - However, it erred in awarding a sentence of only three months rigorous imprisonment inasmuch as s.13(2) of the Act prescribes a minimum sentence of one year imprisonment - Nevertheless, since the State did not appeal against the quantum of sentence and the incident occurred about 19 years back, sentence imposed by High Court not interfered with.

The appellant, a police official, allegedly demanded and accepted illegal gratification from PW1 for inquiring into a complaint lodged by him against his neighbour. Two independent persons including PW2 allegedly witnessed the transaction of delivery of the tainted currency notes to the appellant. On these broad facts, the

prosecution charged the appellant for committing offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The trial court did not accept the version of the prosecution and acquitted the appellant. On appeal by the State, the High Court held that there was no reason to disbelieve PW1, nor was there any reason to disbelieve PW2 the independent witness and accordingly, reversed the acquittal of appellant and sentenced him to rigorous imprisonment for three months. Aggrieved, the appellant preferred the instant appeal.

Dismissing the appeal, the Court

HELD: 1.1. The inquiry by the Trial Judge ought to have been somewhat limited and confined to the question of a demand for illegal gratification by appellant, meeting that demand by PW1 and acceptance of the illegal gratification by the appellant. The appellant was entitled to put forward his defence, which was required to be considered by the Trial Judge. However, in this case, no defence was put forward, but an attempt was made to discredit the witnesses. The High Court did not commit any error in reappraising the evidence for arriving at the truth of the matter and also rightly confined itself to the core issues before it in concluding the guilt of the appellant. [Paras 27, 28] [899-E-G]

1.2. The testimony of PW1 was unshaken which was corroborated by the evidence of the eye witness PW2. PW2 specifically stated that the appellant asked PW1 if he had brought what he was told to bring; that PW1 replied in the affirmative and thereupon gave the tainted currency notes to the appellant, which he accepted and thereafter, the appellant kept the tainted currency notes in a purse which was then placed in the pocket of his trousers hung on the wall. There is, therefore, a clear

statement of PW2, which has not been shaken in cross-examination, to the effect that there was a demand for some gratification by the appellant from PW1 and that PW1 paid some money to the appellant by way of gratification. The ingredients of Section 13(1)(d) of the Act are fulfilled in this case and have been proved beyond any doubt. In view of Explanation (d) to Section 7 of the Act, the issue whether the appellant could or could not deliver results (as it were) becomes irrelevant in view of the acceptance of the testimony of PW1 and PW2. [Paras 30, 31] [900-A-F]

1.3. The submission made by the defence that a Rs.10/- currency note recovered from the wallet of the appellant as also the wallet were not sent for forensic examination, is not relevant. The tainted currency notes given to the appellant as illegal gratification are material and not the untreated Rs.10/- currency note or the wallet in which all the currency notes were kept. These are minor issues that have no real bearing on the controversy on hand. The discrepancy in the testimony of the witnesses with regard to the dress worn by the appellant when he allegedly received the illegal gratification from PW1 is also a minor matter. Whether the absence of the Rs. 10/- currency note could or could not be explained or why the appellant's wallet was not sent for forensic examination or whether he was wearing trousers or a lungi at the relevant point of time are matters of minor detail which do not impact on the substratum of the prosecution's case. A discrepancy would be minor if it did not affect the substratum of the prosecution's case or impact on the core issue. In such an event, the minor discrepancy could be ignored. [Paras 36, 37, 41, 42 and 43] [902-C-E; 903-C-E]

1.4. In conclusion, it is found from the evidence of the witnesses that there was sufficient evidence of the appellant demanding illegal gratification from PW1 and receiving and accepting it when given by him. On this basis, there is no reason to interfere with the judgment and order under appeal. [Para 44] [904-A-B]

1.5. With regard to the sentence awarded to the appellant, the High Court erred in awarding a sentence of only three months rigorous imprisonment. Section 13(2) of the Act prescribes a minimum sentence of one year imprisonment. However, the State has not appealed against the quantum of sentence. Moreover, the incident is of 1993, which is about 19 years ago. Keeping these factors in mind, this Court does not propose to interfere with the sentence awarded. [Para 45] [904-B-C]

Abdul Nawaz v. State of West Bengal **2012 (5) SCALE 357 - relied on.**

Chandrappa v. State of Karnataka **(2007) 4 SCC 415: 2007 (2) SCR 630;** *Jugendra Singh v. State of U.P.* **2012 (5) SCALE 691;** *State of Kerala v. C.P. Rao* **(2011) 6 SCC 450: 2011 (6) SCR 864 and** *Banarsi Dass v. State of Haryana* **(2010) 4 SCC 450: 2010 (4) SCR 383 - referred to.**

Case Law Reference:

2007 (2) SCR 630	**referred to**	**Para 21**
2012 (5) SCALE 691	**referred to**	**Para 22**
2011 (6) SCR 864	**referred to**	**Para 24**
2010 (4) SCR 383	**referred to**	**Para 24**
2012 (5) SCALE 357	**relied on**	**Para 42**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1323 of 2007.

From the Judgment & Order dated 25.07.2006 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 116 of 2011.

Shanth Kumar Mahale, Harisha S.R., Rajesh Mahale for the Appellant.

Rashmi Nandakumar, Anitha Shenoy for the Respondent.

The Judment of the Court was delivered by

MADAN B. LOKUR, J. 1. The Appellant (Syed Ahmed) was acquitted by the Trial Court of offences under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The acquittal was set aside by the High Court and he is aggrieved thereby. We are in agreement with the order of conviction handed down by the High Court. We are not in agreement with the sentence awarded, but prefer to let the matter rest. Accordingly, we dismiss this appeal.

The facts:

2. Nagaraja @ Nagarajegowda (PW1) and his father, Thimmegowda (PW4) are owners of some land. On 7th June, 1993 they had a boundary dispute with their immediate neighbour, Channakeshavegowda which resulted in their being assaulted by him and others. Thimmegowda then lodged a complaint on the same day with the Konanur Police Station in this regard.

3. According to Syed Ahmed (a police officer in the Konanur Police Station), the complaint was inquired into by S.C. Rangasetty (PW7). According to Nagaraja, illegal gratification was demanded by Syed Ahmed to enable him to file a charge-sheet against Channakeshavegowda and others on the complaint by Thimmegowda.

4. The dispute between Thimmegowda and Channakeshavegowda was, however, amicably resolved in a few days time and the settlement entered into between them is Exhibit P.15 in the Trial Court.

5. Unfortunately, on 27th June, 1993 a boundary dispute

again arose between Nagaraja and Thimmegowda on the one hand and Channakeshavegowda and others on the other. This resulted in Nagaraja lodging a complaint against Channakeshavegowda in the Konanur Police Station on 27th June, 1993. For inquiring into this complaint, Syed Ahmed allegedly demanded illegal gratification from Nagaraja.

6. Feeling aggrieved by the unlawful demand, Nagaraja lodged a complaint with the Lok Ayukta Police at Hassan on 28th June, 1993. The Lok Ayukta Police decided to trap Syed Ahmed while demanding and accepting illegal gratification from Nagaraja. As per the arrangement for the trap, some currency notes were treated with phenolphthalein powder and upon delivery of these tainted currency notes to Syed Ahmed, his fingers would get smeared with the powder. Thereafter, on washing the powdered fingers with sodium carbonate solution, the resultant wash would turn pink indicating thereby the physical receipt of the tainted currency by Syed Ahmed.

7. Also, as per the arrangements, two independent persons were to accompany Nagaraja to witness the transaction of delivery of the tainted currency notes to Syed Ahmed. The two independent witnesses in the case are Sidheshwara Swamy (PW2) and Keshavamurty (PW6).

8. As per the plan chalked out by the Lok Ayukta Police, Nagaraja went to the Konanur Police Station to hand over the illegal gratification to Syed Ahmed. However, when he reached there, he was told that Syed Ahmed was available at the Inspection Bungalow. Accordingly, Nagaraja and the trap party went to the Inspection Bungalow.

9. At the Inspection Bungalow, the two independent witnesses positioned themselves close to Syed Ahmed's room. Nagaraja then entered his room and after a brief conversation with Syed Ahmed, he handed over some currency notes to him. Thereafter, Nagaraja exited from the room and gave a pre-

determined signal to the trap party who reached Syed Ahmed's room and washed his hands with sodium carbonate solution which turned pink. This confirmed his physical receipt of the tainted currency notes from Nagaraja.

10. On these broad facts, the prosecution charged Syed Ahmed (a public servant) with demanding and accepting illegal gratification from Nagaraja and thereby committing an offence under Sections 7 and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the Act').

11. The prosecution examined eight witnesses including Nagaraja (PW1) and the two independent trap witnesses Sidheshwara Swamy (PW2) and Keshavamurty (PW6). In addition, the prosecution also examined Bistappa (PW3) the scribe of the complaint dated 28th June, 1993 to the Lok Ayukta Police; Thimmegowda (Nagaraja's father) as PW4; B. Pradeep Kumar (PW5) the Police Inspector of the Lok Ayukta Police, who arranged the trap, prepared the trap mahazar and investigated the case; S.C. Rangasetty (PW7) who dealt with the complaint dated 7th June, 1993 and confirmed the settlement Exhibit P.15. The officer who seized the samples relevant to the trap and sent them to Bangalore for analysis and then received the report was examined as PW8. None of the prosecution witnesses turned hostile.

Trial Court judgment:

12. Upon a consideration of the testimony of the witnesses and the documents on record, the Trial Judge by his judgment and order dated 21st July, 2000 concluded that the prosecution had failed to prove its case against Syed Ahmed beyond a reasonable doubt. Accordingly, Syed Ahmed was acquitted of the charges leveled against him.

13. The Trial Judge held that the dispute between Thimmegowda and Channakeshavegowda (of 7th June, 1993) was amicably settled and so there was no occasion for Syed

Ahmed to demand any gratification from Nagaraja in connection with that complaint. As far as the other dispute (of 27th June, 1993) is concerned, it was held that Syed Ahmed had no role to play in it since he was not investigating that complaint. There was, therefore, no occasion for Syed Ahmed to demand any gratification from Nagaraja. On the contrary, it was held that Nagaraja had some enmity with Syed Ahmed as a result of Nagaraja's failure to return some village utensils, which led to Syed Ahmed taking action against Nagaraja's elder brother Thimmegowda. It was to wreak vengeance on Syed Ahmed because of that event that Nagaraja filed a false complaint against him.

14. The Trial Judge had some reservations about the location of the witnesses when the gratification was said to have been given to Syed Ahmed. The Trial Judge also held that Syed Ahmed's wallet and a Rs.10/- currency note recovered therefrom ought to have been sent for forensic examination. The Trial Judge also noted that there was an inconsistency in the testimony of the witnesses about the dress worn by Syed Ahmed when he is alleged to have taken the illegal gratification. Finally, the Trial Judge held that the failure of the prosecution to produce the complaint dated 27th June, 1993 made by Nagaraja against Channakeshavegowda was significant.

15. Taking all these factors and discrepancies into consideration, the Trial Judge did not accept the version of the prosecution and acquitted Syed Ahmed of the charges framed against him.

High Court judgment:

16. On appeal by the State, a learned Single Judge of the High Court of Karnataka by his order dated 25th July, 2006 set aside the judgment and order of the Trial Court and convicted Syed Ahmed for an offence punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the Act. Syed Ahmed was sentenced to suffer rigorous imprisonment for a period of three

months and to pay a fine of Rs.20,000/-, and in default thereof to undergo simple imprisonment for a period of six months.

17. The High Court held that there was no reason to disbelieve Nagaraja, nor was there any reason to disbelieve Sidheshwara Swamy (PW2) the independent witness. It was also held that in view of Section 7(d) of the Act, a public servant who is not in a position to do any favour to a person could also be deemed to commit an offence under the Act if he demands and accepts illegal gratification. As regards the discrepancies pointed out by the Trial Court, the High Court found that they did not dent the veracity of Nagaraja (PW1) or of Sidheshwara Swamy (PW2). Accordingly, the High court reversed the order of acquittal and convicted Syed Ahmed.

18. Feeling aggrieved, Syed Ahmed preferred an appeal to this Court.

Statutory provisions:

19. Section 7 of the Act, to the extent that we are concerned, reads as follows:

> "*7. Public servant taking gratification other than legal remuneration in respect of an official act.*-Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of Section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than six months but which may extend to five years and shall also be liable to fine.
>
> Explanations.-(a) xxx xxx xxx.
>
> (b) xxx xxx xxx.
>
> (c) xxx xxx xxx.
>
> (d) "A motive or reward for doing." A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.
>
> (e) xxx xxx xxx."

20. Sections 13(1)(d) and 13(2) of the Act read as follows:

> "*Section 13 - Criminal, misconduct by a public servant*
>
> (1) A public servant is said to commit the offence of criminal misconduct, -
>
> (a) xxx xxx xxx
>
> (b) xxx xxx xxx
>
> (c) xxx xxx xxx
>
> (d) if he,-
>
> (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or
>
> (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public, interest; or

(e) xxx xxx xxx

Explanation.-

xxx xxx xxx

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine."

Preliminary submissions and conclusions:

21. Learned counsel for Syed Ahmed contended that the High Court ought not to have interfered with the order of acquittal given by the Trial Judge. In this context, reference was made to the principles laid down in *Chandrappa v. State of Karnataka,* (2007) 4 SCC 415, namely:-

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of

language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

22. While culling out the above principles, this Court referred to and relied upon over a dozen earlier decisions. These principles were reiterated recently in *Jugendra Singh v. State of U.P.,* 2012 (5) SCALE 691. We do not think it necessary to burden this decision with the very large number of citations on the subject. Suffice it to say that these principles are now well settled.

23. It is also necessary to appreciate the ingredients of the offence for which Syed Ahmed was convicted. This is necessary for understanding whether or not the Trial Judge correctly applied the law on the subject.

24. Learned counsel relied upon *State of Kerala v. C.P. Rao* (2011) 6 SCC 450 and *Banarsi Dass v. State of Haryana,* (2010) 4 SCC 450 and contended that "mere recovery of tainted money, divorced from the circumstances in which it is paid, is not sufficient to convict the accused when the

substantive evidence in the case is not reliable". It was also contended that the prosecution should, additionally, prove that payment to the accused was by way of a reward for doing or proposing to do a favour to the complainant.

25. We are in agreement with learned counsel on this issue and it is for this reason that we went through the evidence on record.

26. We must add that on a reading of the provisions of the Act, it is also necessary for the prosecution to prove that the person demanding and accepting gratification is a public servant. In so far as the present case is concerned, there is no dispute that Syed Ahmed is a public servant. The prosecution must also prove a demand for gratification and that the gratification has been given to the accused. If these basic facts are proved, the accused may be found guilty of an offence under the provisions of law that concern us in this case.

27. Viewed in this light, the inquiry by the Trial Judge ought to have been somewhat limited and confined to the question of a demand for illegal gratification by Syed Ahmed, meeting that demand by Nagaraja and acceptance of the illegal gratification by Syed Ahmed. Of course, Syed Ahmed was entitled to put forward his defence, which was required to be considered by the Trial Judge. However, in this case, no defence was put forward, but an attempt was made to discredit the witnesses.

28. Given the law laid down by this Court, we are of the opinion that the High Court did not commit any error in reappraising the evidence for arriving at the truth of the matter. The High Court also rightly confined itself to the core issues before it in concluding the guilt of Syed Ahmed.

Submissions on merits and conclusions:

29. On the merits of the case, learned counsel made several submissions. It was submitted that there is nothing on

record to suggest that Syed Ahmed made any demand for gratification or received and accepted any illegal gratification.

This contention does not appeal to us, particularly in view of the unshaken testimony of Nagaraja (PW1) and the corroborative evidence of the eye witness Sidheshwara Swamy (PW2). This witness was near the window and just outside the room occupied by Syed Ahmed. He refers to some conversation that took place between Syed Ahmed and Nagaraja in a low tone and which he could not hear. Thereafter, this witness specifically states that Syed Ahmed asked Nagaraja if he had brought what he was told to bring. Nagaraja replied in the affirmative and thereupon Nagaraja gave the tainted currency notes to Syed Ahmed, which he accepted. Thereafter, Syed Ahmed kept the tainted currency notes in a purse which was then placed in the pocket of his trousers hung on the wall. There is, therefore, a clear statement of Sidheshwara Swamy (PW2), which has not been shaken in cross-examination, to the effect that there was a demand for some gratification by Syed Ahmed from Nagaraja and that Nagaraja paid some money to Syed Ahmed by way of gratification. The ingredients of Section 13(1)(d) of the Act are fulfilled in this case and have been proved beyond any doubt.

31. We agree with the High Court that in view of Explanation (d) to Section 7 of the Act, the issue whether Syed Ahmed could or could not deliver results (as it were) becomes irrelevant in view of the acceptance of the testimony of Nagaraja (PW1) and Sidheshwara Swamy (PW2).

32. It was then contended that the High Court overlooked the fact that the complaint dated 7th June, 1993 made by Thimmegowda had been settled vide Exhibit P.15 and that the subsequent complaint made by Nagaraja on 27th June, 1993 was not available on the record. It was submitted that in the absence of the basic document, that is the complaint dated 27th June, 1993 the case of the prosecution could not stand scrutiny.

33. We are unable to accept this submission. The basis of the action against Syed Ahmed was not the complaint dated 27th June, 1993 but the complaint dated 28th June, 1993 made by Nagaraja to the Lok Ayukta Police. This complaint is on the record and is marked as Exhibit P.3. In the complaint, it is alleged, that Syed Ahmed had demanded illegal gratification from Nagaraja and it is on a follow up of this complaint that arrangements were made to lay a trap against Syed Ahmed. Learned counsel is, therefore, in error in assuming that action against Syed Ahmed was based on the complaint dated 27th June, 1993. As mentioned above, this is factually not so.

34. As regards settlement of the dispute referred to in the complaint dated 7th June, 1993 in our opinion that would not take away the substance of the issue before us, namely, whether Syed Ahmed demanded and accepted illegal gratification from Nagaraja or not. But, it is submitted that the complaint against Syed Ahmed was motivated. This is traced to an earlier dispute between Nagaraja's elder brother (also named Thimmegowda) and Syed Ahmed. It appears that sometime in May, 1993 Nagaraja had taken some utensils belonging to the village community for performing the marriage of his younger brother. These utensils were retained by Nagaraja for quite some time. A complaint came to be made against Thimmegowda (PW4) in this regard and at that time, Syed Ahmed assaulted Thimmegowda (elder brother of Nagaraja) for not promptly returning the utensils. Due to this incident, and by way of revenge, Syed Ahmed is said to have been falsely implicated by Nagaraja.

35. We are not inclined to give much weight to this incident. The reason is that the issue regarding the return of utensils was settled as testified by Nagaraja and S.C. Rangasetty (PW7). In addition, we find that no suggestion was given by Syed Ahmed to any witness that the complaint of 28th June, 1993 was a result of this particular incident. Even in his statement recorded under Section 313 of the Criminal Procedure Code,

Syed Ahmed does not make out a case that that incident had some nexus with this complaint. Also, if anybody had to have any grievance in this regard, it would be Thimmegowda (elder brother of Nagaraja) and not Nagaraja. In fact, it appears that Nagaraja was not particularly happy with his brother because he says in his cross examination that during 1993-94 he was managing the family affairs since his father was aged and infirm and his elder brother was a drunkard.

36. The next two submissions of learned counsel were to the effect that a currency note of Rs.10/- recovered from the wallet of Syed Ahmed and indeed the wallet also were not sent for forensic examination to ascertain the presence of phenolphthalein powder. Moreover, there is nothing on record to indicate what eventually happened to that currency note.

37. We cannot see relevance of these submissions. What we are concerned with is whether Syed Ahmed had demanded illegal gratification from Nagaraja and whether he had received and accepted that illegal gratification. The tainted currency notes given to Syed Ahmed as illegal gratification are material and not the untreated Rs.10/- currency note or the wallet in which all the currency notes were kept. These are minor issues that have no real bearing on the controversy on hand.

38. The final contention was that there is considerable doubt about the attire of Syed Ahmed at the time of receiving the illegal gratification from Nagaraja. It is pointed out that Nagaraja stated that Syed Ahmed had kept the tainted currency notes in a purse and that the purse was kept in the hip pocket of his trousers. It is suggested by learned counsel that this would indicate that Syed Ahmed was wearing trousers at that point of time.

39. In his cross-examination also, Nagaraja stated that Syed Ahmed was wearing his uniform when the illegal gratification was given to him. According to learned counsel, both these statements confirm that Syed Ahmed was wearing

his trousers when the concerned incident took place.

40. In this context, reference was made to the testimony of Sidheshwara Swamy (PW2) who stated that Syed Ahmed kept the tainted currency notes in a purse which he put in the pocket of his trousers hanging on a wall. In his cross-examination this witness stated that at the relevant time, Syed Ahmed was sitting on a cot wearing a vest and a lungi.

41. On this basis, it is submitted by learned counsel that there is a discrepancy in the testimony of the witnesses with regard to the dress worn by Syed Ahmed when he was sought to be trapped. It is submitted by learned counsel that the discrepancy casts a doubt on the correctness of the events said to have taken place on 28th June, 1993 and the benefit of this must go to Syed Ahmed.

42. In our opinion, the discrepancy with regard to the attire of Syed Ahmedthe Rs.10/- currency note and the forensic examination of the wallet are rather minor matters. What is a minor discrepancy? This has been the subject matter of discussion in *Abdul Nawaz v. State of West Bengal,* 2012 (5) SCALE 357 and Jugendra Singh. After referring to a few earlier decisions of this Court, it was held that a discrepancy would be minor if it did not affect the substratum of the prosecution's case or impact on the core issue. In such an event, the minor discrepancy could be ignored.

43. As far as we are concerned, whether the absence of the Rs. 10/- currency note could or could not be explained or why Syed Ahmed's wallet was not sent for forensic examination or whether he was wearing trousers or a lungi at the relevant point of time are matters of minor detail which do not impact on the substratum of the prosecution's case. We are required to look at the core issue and at the overall picture of the events that transpired on 28th June, 1993 and not get diverted by minor discrepancies or trivialities.

44. It is while undertaking this exercise that we find from the evidence of the witnesses that there was sufficient evidence of Syed Ahmed demanding illegal gratification from Nagaraja and receiving and accepting it when given by him. On this basis, we find no reason to interfere with the judgment and order under appeal.

45. With regard to the sentence awarded to Syed Ahmed, the High Court has erred in awarding a sentence of only three months rigorous imprisonment. Section 13(2) of the Act prescribes a minimum sentence of one year imprisonment. However, the State has not appealed against the quantum of sentence. Moreover, the incident is of 1993, which is about 19 years ago. Keeping these factors in mind, we do not propose to interfere with the sentence awarded.

46. The appeal is dismissed.

B.B.B. Appeal dismissed.