State Of Kerala & Ors vs M/S Kerala Rare Earth & Minerals Limited ... on 8 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 1817, 2016 (6) SCC 323, AIR 2016 SC (CIVIL) 1500, (2016) 3 MAD LJ 486, (2016) 4 SCALE 38, (2016) 3 JCR 1 (SC), (2016) 162 ALLINDCAS 214 (SC), (2016) 4 ALL WC 3765, (2016) 2 CURCC 116, (2016) 2 KER LT 571, (2016) 4 SCALE 67, 2016 (2) KCCR SN 175 (SC)

Author: T.S. Thakur

Bench: R.Banumathi, V.Gopala Gowda, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 3608 OF 2016
(Arising out of S.L.P.(C) No.1490 of 2015)

State of Kerala & Ors. ..Appellants

VERSUS

M/s Kerala Rare Earth & Minerals
Limited & Ors. ..Respondents

WITH

CIVIL APPEAL NO. 3609 OF 2016
(Arising out of S.L.P.(C) No.1840 of 2015)

State of Kerala & Ors. ..Appellants

VERSUS

M/s. Kerala Rare Earths & Minerals
Limited & Ors. ..Respondents

WITH

CIVIL APPEAL NO. 3610 OF 2016
(Arising out of S.L.P(C) No.1914 of 2015)

State of Kerala & Ors. ..Appellants

VERSUS

M/s. Kerala Rare Earths & Minerals
Limited & Ors. ..Respondents

J U D G M E N T

T.S. THAKUR, CJI.

1. Leave granted.

2. These appeals arise out of a common judgment and order dated 13th November, 2014 passed by the High Court of Kerala at Ernakulam, whereby, Writ Appeals Nos.1610, 1611 and 1621 of 2014 filed by the appellants-State of Kerala have been dismissed affirming thereby an order passed by a Single Bench of that Court, allowing the writ petitions filed by the respondent.

3. By an order dated 15th September, 2004 the Government of Kerala sanctioned the grant of mining leases for Ilmenite, Rutile, Leucoxene, Zircon and Sillimanite (non-scheduled mineral) for a period of 20 years. The order came in exercise of the powers vested in the State Government under Section 11(5) of the Mines and Minerals (Development and Regulation) Act, 1957 and was preceded by the approval of the Government of India in terms of Section 5(1) thereof. Shortly after the issue of the sanction order, however, the State Government by another order dated 25th September, 2004 stayed further action in the matter on the ground that a detailed study on the environmental impact of the proposed leases need be undertaken before taking any further steps. This was followed by nine letters dated 12th October, 2006, 16th October, 2006 and 9th November, 2006 addressed to the respondent-company stating in no uncertain terms that the Government of Kerala did not consider it necessary to grant mining leases for mineral sand to private parties. Aggrieved by the said letters and communications, the respondents filed nine revision applications No. 14(1)/2007-RC-II to 14(3)/2007-RC-II and 14(6)/2007-RC-II to 14(11)/2007-RC-II under Section 30 of the Act aforementioned before the Government of India. These revision applications were heard and allowed by the prescribed revisional authority by a common order dated 30th November, 2009, setting aside the impugned orders and remanding the matters to the State Government to reconsider the cases in the light of the observations made in the order passed by the revisional authority. The operative portion of the order passed by the revisional authority was in the following words:

> "..... 9. After hearing both the sides, we find that the State Government had recommended the mining lease applications of the applicant for seeking prior approval of the Central Government in line with the policy resolution dated 22.10.2002. In 7 cases the Central Government had also accorded its prior approval under Section 5(1) of the MMDR Act, 1957 for the proposal of the State Government for grant of mining lease for mineral sand in favour of the revision applicant. The impugned orders have been passed by the State Government after obtaining the prior approval of the Central Government in 7 cases, the State Government is required to pass order under Section 10(3) of the MMDR Act. In all the 9 cases, including those in which prior approval of Central Government has been conveyed, the impugned orders passed by the State Government are against competitive edge of the mining

industry. The policy decision of the State Government appears to be not in consonance with the MMDR Act, 1957 and also against the National Mineral Policy, 2008.

10. The impugned orders in all the 9 revision applications mentioned above are set aside with a direction to the State Government to reconsider nil 9 cases in the light of the discussions made in para 9 above and pass appropriate orders accordingly.

|Sd/- |Sd/- |
|(R. Raghupathi) |(Ajita Bajpal Pande) |

|Joint Secretary and Legal |Joint Secretary (Mines)" | |Advisor | |

4. Upon remand, the Government of Kerala once again examined the matter and by an order dated 15th December, 2010 rejected all the applications filed by the respondents on the ground that although, as per Entry 54 List- I (Union List), Schedule VII of the Constitution of India, the Parliament is competent to make laws for regulation of mines and mineral development to the extent such regulation and development is declared by the Parliament by law to be expedient in public interest, yet, the power of granting mining leases for mining minerals vested only in the State Government under Section 10 of the Act aforementioned. The Government referred to and relied upon its own industrial policy of 2007 according to which mining and exploitation of minerals were permissible only through State/Central Public Sector Undertakings in order to restrict indiscriminate mining and exploitations of minerals having regard in particular to the geographical and ecological conditions as well as the density of the population in the State of Kerala. The State Government took the view that it had the power and control over the minerals lying in the land within its territory and that it was entitled to safeguard the same in larger public interest by formulating suitable policies on the subject. Relying upon the decisions of the High Court of Kerala in Shibu v. Tahsildar [1993 (2) KLT 870] and Gem Granites v. State of Kerala and Ors. [2006 (2) KLT 899] the Government declared that as the owner of the minerals lying in the land within its territorial limits it was entitled to determine in public interest that mining and exploitation of minerals will be permitted only through State/Central Public Sector Undertakings. The State Government insisted that such a policy was not contrary to the Act nor did it suffer from any constitutional infirmity. It also relied upon the fact that minerals in question were categorised as Atomic Minerals as per Part-B of the First Schedule to the Act aforementioned. The Government declared that environmental protection being one of its constitutional mandates, any decision that may affect environment or sections of people living in the coastal areas or which may affect environmental conditions in those areas cannot be said to be in public interest.

5. Aggrieved by the order passed by the State Government, the respondent- company filed Writ Petitions No.34345 of 2010, 34346 of 2010 and 5420 of 2011 before the High Court of Kerala inter alia praying for a writ of mandamus directing the State to implement the revisional order issued by the Government of India and grant in favour of the respondents mining leases in respect of all the areas which were the subject matter of the said order. The respondents also prayed for a declaration to the effect that the order passed by the Central Government in exercise of its powers under Section 30 of the Act aforementioned was binding upon the State Government and that any policy decision

by the State Government contrary to the said decision will not affect the rights of the respondents to obtain mining leases for the areas applied for. The respondent also prayed for a mandamus directing the State Government to forward to the Government of India for approval all the mining lease applications made by the respondent- Company which had not so far been forwarded for such approval.

6. By an order dated 21st February, 2013 passed by a Single Judge of High Court of Kerala, the Writ Petitions mentioned above were allowed in part by the High Court inasmuch as the order passed by the State Government was quashed and the matter remitted back to the Government to pass orders in the light of the observations made by the High Court. The High Court quashed the order by which further action in the matter was stayed by the Government with a direction to the Government to consider the applications pending with it in accordance with law. The High Court took the view that the State Government had not reserved, in terms of Section 17 A(2) of the 1957 Act, the areas covered by the applications filed by the respondents and that so long as no such reservation was made, the direction issued by the Central Government to the State Government to reconsider the applications could not be negated. The High Court also held that the State Government had overlooked the provisions of the National Mineral Policy, 2008, which permitted facilitation of private entrepreneurs and that since the Government of Kerala had already exercised its discretion in terms of the prevalent Mining Policy and recommended to the Government of India the grant of approval for mining leases, the rejection of the applications on the basis of a changed policy after the Government of India had accorded sanction for the proposed mining leases was unjustified. The High Court also took note of the fact that Government of Kerala had granted mining lease in respect of the area covered by four other applications and that there could not be different policies in respect of different areas covered by different applications made by the same Company.

7. Aggrieved by the order passed by the Single Judge, the State Government preferred Writ Appeals No.1610, 1611 and 1621 of 2014 which were heard and dismissed by a Division Bench of that Court in terms of the order impugned in the present appeals. The High Court, while doing so, held that the State Government was not justified in declining mining leases on the ground that it had been simply directed to reconsider the matter. The refusal of the Government, according to the High Court, amounted to institutional insubordination. The appeals were accordingly dismissed with the observation that the State Government's role in issuing the sanction was minimal, as the subject matter of the law fell within the domain of Central Government. The present appeals by special leave question the correctness of the above order, as already noted above.

8. The law relating to mines and minerals development and regulation as also the interpretation of the provisions of the 1957 Act has been the subject matter of a long line of decisions of this Court. It is, in our view, unnecessary to refer to all such decisions as have dealt with different facets of the controversy relating to the powers of the Central Government and those of the State Governments in relation to regulation and development of mines and minerals including the power to levy taxes, fee and cesses and royalties. Decisions of this Court in Hingir-Rampur Coal Co. Ltd. v. State of Orissa [AIR 1961 SC 459]; State of Orissa v. M.A. Tulloch and Co. [AIR 1964 SC 1284]; India Cement Ltd. v. State of Tamil Nadu [(1990) 1 SCC 12]; Orissa Cement Ltd. v. State of Orissa [1991 Supp (1) SCC 430]; State of Orissa v. Mahanadi Coalfields Ltd. [1995 Supp (2) SCC 686]; Saurashtra Cement &

Chemical Industries Ltd. and Anr. v. Union of India and Ors. [(2001) 1 SCC 91]; and State of Madhya Pradesh v. Mahalaxmi Fabric Mills Ltd. [1995 Supp(1) SCC 642] have elaborately dealt with the legislative power of the States to levy taxes, fees and cesses on the minerals regulated by the Act. Dealing with various hues and colours of such levies this Court held that once the Parliament declares it to be expedient in public interest to bring the regulation and development of mines and minerals under the control of the Union in public interest, the subject to the extent laid down by the Parliament comes within the exclusive domain of the Parliament and that any legislation by the State after such declaration that has the effect of trenching upon the field, must necessarily be unconstitutional.

9. We are not, in the present case, dealing with a challenge to the levy of any tax, fee, cess or royalty nor is the vires of any legislation enacted by the State under challenge before us. We are, instead, examining whether the State Government was justified in declining the applications for grant of leases in favour of the respondent-company on the ground that the mineral wealth found in the coastal regions of the State was vested in the State Government and that it was in exercise of its right of ownership over the said deposits entitled to reserve in its own favour or in favour of State owned companies or corporations the right to exploit such deposits. The State Government as noticed in the earlier part of the judgment has, while declining applications for grant of lease, relied upon its own policy according to which the mineral deposits in question are reserved for exploitation by a State agency only. Two precise questions, therefore, fall for consideration in the light of the stance taken by the State Government viz:

> Whether the ownership in the mineral reserves is vested in the State Government; and If it is, whether the Government has the right to decline leases on the ground that the minerals or the areas where the same are found have been reserved for exploitation by government companies or corporations.

10. In Monnet Ispat and Energy Limited v. Union of India and Ors. 2012 (11) SCC 1, Lodha, J., as His Lordship then was, speaking for the Court, held that no one can claim any right in any land belonging to the Government or in any mines in any land belonging to the Government except under the 1957 Act and 1960 Rules nor can any person claim any fundamental right to a lease or prospecting license qua any land belonging to the Government. The mines and minerals, observed the Court, within the territory of a State would vest in the State Government especially when the land where such minerals deposits are found is owned by the Government as is also the position in the case at hand. In fairness to counsel for the respondents it must be mentioned that there was no real dispute as to the ownership of the minerals found in the Government owned land. What was strenuously argued by learned counsel for the respondents was that the State Government could not, on the basis of its own mineral policy, decline consideration to the applications filed by the respondents, when such policy was in conflict with the mineral policy of the Government of India.

11. The Mineral Policy 2008 of the Government of India, inter alia, provides as under:

> "4. ROLE OF THE STATE IN MINERAL DEVELOPMENT The role to be played by the Central and State Government in regard to mineral development has been

extensively dealt in the Mines and Minerals (Development and Regulation) Act, 1957 and Rules made under the Act by the Central Government and the State Governments in their respective domains. The provisions of the Act and the Rules will be reviewed and harmonised with the basic features of the new National Mineral Policy. In future the core functions of the State in mining will be facilitation and regulation of exploration and mining activities of investors and entrepreneurs, provision of infrastructure and tax collection. In mining activities, there shall be arms length distance between State agencies (Public Sector Undertakings) that mine and those that regulate. There shall be transparency and fair play in the reservation of ore bodies to State agencies on such areas where private players are not holding or have not applied for exploration or mining, unless security considerations or specific public interests are involved.

xxx xxx xxx 5.2 While these Government agencies will continue to perform the tasks assigned to them for exploration and survey, the private sector would in future be the main source of investment in reconnaissance and exploration and government agencies will expend public funds primarily in areas where private sector investments are not forthcoming despite the desirability of programmes due to reasons such as high uncertainties."

12. It would thus appear that for the minerals in question there was no reservation made in favour of any State owned corporation or agency. That is perhaps the reason why the Government of India had granted approval to the State Governments recommendations on some of the applications filed by the respondents. The State Government Policy, however, runs contrary to the National Mineral Policy, 2008 formulated by the Government of India, Ministry of Mines, in so far as it does not permit a mining lease in favour of any entity other than a State owned corporation or agency. The State Industrial Policy - 2007, relied upon by the State Government in this regard to the extent it is relevant for our purposes, is as under:

"12.0 MINING & GEOLOGY 12.1 Intensive efforts will be made to explore and utilize mineral resources of the State without adversely affecting the ecology and environment. Mineral exploration activities for iron ores, high grade china clay, bauxite and other minerals will be streamlined and strengthened. 12.2 Mining of mineral sand will be done through State/Central Public Sector Undertakings only. However mining of minerals will not be permitted in those areas where the Government appointed Expert Committee recommendation against mining. Government will encourage manufacture of Value Added Products.

12.3 The Government will conduct a scientific study on mineral deposits in the State.

12.2.1 Titanium Considering the rich mineral deposits in the State, a comprehensive scheme to produce Titanium Metal, Titanium composites by using State-of-the-art technology shall be evolved with the help of Central Government agencies and International organisations. If the potential of this natural resource is used properly

and scientifically, it will immensely pave way for rapid industrialisation of the State as Titanium is a unique material for strategic applications. The approach is not to limit the activities to manufacturing alone but to harness its vast potential by setting up a chain of Titanium based industries through forward integration. However, utmost care shall be taken to contain the adverse impact on environment by mining, processing and related activities by adopting strict monitoring and control measures. To develop a package for making use of the immense potential of titanium, support shall be availed from national and international organisations."

13. It is argued by Mr. Parasaran, learned senior counsel for the appellant that the policy aforementioned must be taken to be a reservation in favour of the State owned agencies within the comprehension of Section 17A of the aforementioned Act. Section 17A of the Mines and Minerals (Development and Regulation) Act, 1957 reads as under:

"17A. Reservation of areas 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.

(2A) 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, reserves any area for undertaking prospecting or mining operations, the State Government shall grant prospecting licence or mining lease, as the case may be, in respect of such area to such Government company or corporation:

> Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, the State Government shall grant the prospecting licence or mining lease, as the case may be, only after obtaining the previous approval of the Central Government.
>
> (2B) Where the Government company or corporation is desirous of carrying out the prospecting operations or mining operations in a joint venture with other persons, the joint venture partner shall be selected through a competitive process, and such Government company or corporation shall hold more than seventy-four per cent of the paid up share capital in such joint venture.
>
> (2C) A mining lease granted to a Government company or corporation, or a joint venture, referred to in sub-sections (2A) and (2B), shall be granted on payment of such amount as may be prescribed by the Central Government.
>
> (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."

14. There is no gainsaying that the State Government can 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, but, in terms of sub-Section(2) of Section 17A (supra) where the Government 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. Three distinct requirements emerge from Section 17A(2) for a valid reservation viz.:

> the reservation can only be with the approval of the Central Government and must confine to areas not already held under any prospecting licence or mining lease;
>
> the reservation must be made by a notification in the official gazette; and the notification must specify the boundaries of such areas and the mineral or minerals in respect of which such areas will be reserved.

15. Mr. Parasaran was unable to show us any notification issued by the Government under Section 17A (2) (supra) nor was it possible for him to exalt the State's industrial policy extracted above to the status of a statutory reservation within the contemplation of Section 17A. The net result, therefore, is that while the power to reserve an area not already held under any prospecting licence or mining lease is squarely and specifically vested in the State Government, the exercise of that power is not

demonstrable in the case at hand. It is common ground that there is no approval of the Central Government nor is there a notification duly published in the official gazette specifying boundaries of the reserved area and mineral or minerals in respect of which such area will be or has been reserved.

16. It is well settled that if the law requires a particular thing to be done in a particular manner, then, in order to be valid the act must be done in the prescribed manner alone [See: Commissioner of Income Tax, Mumbai v. Anjum M.H. Ghaswala and ors. (2002) 1 SCC 633; Captain Sube Singh and Ors. v. Lt. Governor of Delhi and Ors. (2004) 6 SCC 440; State of U.P. v. Singhara Singh AIR 1964 SC 358; and Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405]. Absence of the Central Government's approval to reservation and a notification as required by Section 17A, therefore, renders the State Government's claim of reservation untenable till such time a valid reservation is made in accordance with law. It is trite that the State Government's general executive power cannot be invoked to make a reservation dehors Section 17A. In Sandur Manganese and Iron Ores Ltd. v. State of Karnataka and Ors. (2010) 13 SCC 1 this Court held that the State Government is denuded of its executive power in the light of Section 2 of the aforementioned Act. To the same effect is the decision of this Court in Bharat Coking Coal Ltd. v. State of Bihar (1990) 4 SCC 557, where this Court observed that the State is denuded of its executive power in regard to matters covered by the MMDR Act and the Rules. Reference may also be made to the decision of this Court in State of Tamil Nadu v. Hind Stone (1981) 2 SCC 205 where this Court observed:

> "10. ... 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."

17. The upshot of the above discussion then is that while the State Government is the owner of the mineral deposits in the lands which vest in the Government as is the position in the case at hand, the Parliament has by reason of the declaration made in Section 2 of the 1957 Act acquired complete dominion over the legislative field covered by the said legislation. The Act does not denude the State of the ownership of the minerals situate within its territories but there is no manner of doubt that it regulates to the extent set out in the provisions of the Act the development of mines and minerals in the country. It follows that if the State Government proposes to reserve any area for exploitation by the State owned corporation or company, it must resort to making of such reservation in terms of Section 17A with the approval of the Central Government and by a notification specifying boundaries of the area and mineral or minerals in respect of which such areas will be reserved. Inasmuch as the State Government have not so far issued any notification in terms of Section 17A, the Industrial Policy – 2007 of the Kerala State Government does not have the effect of making a valid reservation within the comprehension of Section 17A. The High Court was, therefore, justified in holding that there is no valid reservation as at present no matter the government can make such a reservation if so advised in the manner prescribed by law. In other words, the dismissal of this appeal shall not prevent the State from invoking its right under Section 17(A)(2) of the Act by issuing notification in respect of the mineral deposits in question. There is, in that view, no reason

for us to interfere with the judgment and order passed by the High Court. These appeals accordingly fail and are hereby dismissed, but in the circumstances without any order as to costs.

.....CJI.

(T.S. THAKUR) .....J. (V. GOPALA GOWDA) New Delhi;

April 08, 2016.

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO. 3608 OF 2016 (Arising out of S.L.P. (Civil) No.1490/2015) STATE OF KERALA & ORS. ...Appellants Versus M/S. KERALA RARE EARTH & MINERALS LIMITED & ORS. ...Respondents WITH CIVIL APPEAL NOS. 3609 & 3610 OF 2016 (Arising out of S.L.P. (Civil) Nos.1840/2015 & 1914/2015) J U D G M E N T R. BANUMATHI, J.

I have gone through the judgment prepared by His Lordship Justice T.S. Thakur, Hon'ble the Chief Justice of India. For the reasons, which I have indicated below, I am unable to agree with the reasonings and the final decision arrived at by His Lordship. In my view, the judgment passed by the Division Bench of the High Court of Kerala is liable to be set aside and these appeals are to be allowed.

2. It is not necessary for me to narrate the facts, as the facts are referred to in the judgment of His Lordship Justice T.S. Thakur.

3. The points falling for consideration in these appeals are:- (i) Whether policy of State of Kerala reserving mining of beach sand along coastal stretches for exploitation of minerals-ilmenite, rutile, leucoxene, zircon (and sillimanite- non scheduled mineral) by State/Central Public Sector Undertakings is not in consonance with the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (for short 'MMDR Act 1957'); (ii) Whether State Government's policy of reservation for exploitation of beach sand minerals by its Public Sector Undertakings is untenable on the ground of non-compliance of the procedure stipulated under Section 17A(2) of the MMDR Act and (iii) Whether the High Court of Kerala is right in observing that after disposal of the matter by the revisional authorities for consideration of the matter afresh, the State Government's refusal of permission is statutory and institutional insubordination.

4. Mr. Mohan Parasaran, learned Senior Counsel appearing for the appellant-State submitted that mines and minerals in the territory of the State are vested in the State and it is well within the powers of the State to frame a policy relating to mining activities in the State keeping in mind the public interest, welfare and ecological balance of the State. It was submitted that the policy of the State Government is framed as the mining lease of beach sand for exploitation of mineral involve ecological and environmental sensitive issues and national minerals wealth cannot be allowed to be exploited by indiscriminate mining by private players. It was further contended that the first respondent is a private party where Indian Rare Earths Ltd. (Government of India) and Kerala State Industrial Development Corporation (Government of Kerala) have minimal percentage of share

holdings and no right accrued in favour of first respondent for grant of mining lease and while so, the High Court was not right in directing the State to consider the applications of the first respondent. It was further submitted that inasmuch as mining leases are governed by statutes and M.C. Rules, there is no question of any promissory estoppel especially when mining lease granted on 15.09.2004 was cancelled within ten days i.e. on 25.09.2004.

5. Mr. Shyam Divan, learned Senior Counsel appearing for the first respondent contended that earlier first respondent was found to satisfy all the conditions prescribed by the Government of Kerala for grant of mining lease as per G.O.Ms.No.102/02/ID dated 22.10.2002, however, first respondent's application was rejected only on the basis of subsequent policy of the State. It was contended that in the light of constitutional scheme and the statutory provisions of MMDR Act, State has no legislative competence to frame a policy dehors MMDR Act and MC Rules and the policy decision of the appellant-State is in derogation of the provisions of MMDR Act. It was submitted that in the light of industrial policy of the Central Government permitting private players in the exploitation of beach sand mineral, the State Government has no competence to frame any rule or policy in contravention of the policy of the Central Government. It was contended that if the State desired to reserve the exploitation of the beach sand minerals in any area, the State should have followed the prescribed procedure under Section 17A(2) and the procedure stipulated under the Statute cannot be thwarted under the guise of policy of the State. It was further submitted that in exercise of power under Section 30 of the Act, the Central Government/ Revisional Authority directed the State to reconsider the matter, the State Government was not justified in again rejecting the applications and the High Court rightly directed the State to consider the applications of the first respondent for grant of mining lease.

6. I have carefully considered the rival submissions and perused the impugned judgment and material on record.

7. In the federal structure of India, State Governments are the owners of the mines and minerals located within the territory of the State concerned. In Amritlal Nathubhai Shah & Ors. v. Union Government of India & Anr., (1976) 4 SCC 108, while dealing with the scope of the MMDR Act 1957, this Court held that the State Government is the owner of minerals within its territory and minerals vest in it and there is nothing in the MMDR Act or the MC Rules to detract from this basic fact.

8. Although, mineral wealth vests with the State Government, yet the subject of regulation of mines and mineral development is covered under Seventh Schedule of the Constitution of India. In order to appreciate this, it is necessary to refer to few entries in the Seventh Schedule of the Constitution. Entry 54 of List I of Seventh Schedule reads as under:-

> List I-Union List Entry 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.
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> Entry 23 of List II reads as under:-

> List II-State List Entry 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.
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> By a reading of Entry 23 of List II, it is clear that Entry 23 is subject to the provisions of List I with respect to regulation and development of mines and mineral development under the control of the Union. Section 2 of the Act makes a declaration 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 said Act. It will therefore be seen, to the extent control of regulation of mines and mineral development is taken over by the Union under the law made by Parliament declaring that it is expedient in the public interest to do so, the scope and ambit of Entry 23 of List II is cut down to that extent. This would appear to be clear on a plain construction of Entry 54 of List I and Entry 23 of List II.

9. Considering the scope of Article 246 of the Constitution of India and the wording of the above entries in Seventh Schedule to the Constitution and the scope, purpose and the effect of the State and the Central Legislations, in State of Orissa And Anr. vs. M.A. Tulloch & Co., AIR 1964 SC 1284, this Court held as under:-

> "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 Schedule VII 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:
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> '246. Subject-matter of laws made by Parliament and by the legislatures of States.—(1) 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:
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> '246. (3) 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 Schedule VII, Entry 23 of the State List vests in the State Legislature power to enact laws on the subject of 'regulation of mines and minerals 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 minerals 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:

'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.' 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." (emphasis supplied)

10. The policy of the State and impugned order of the State dated 15.12.2010 which state that the exploitation of the beach sand mineral would be done by the Public Sector Undertakings has to be examined in the light of the provision of the MMDR Act 1957 and MC Rules 1960. MMDR Act 1957 was enacted to provide for the regulation of mines and oil fields and for the development of the minerals. The declaration contained in Section 2 of MMDR Act speaks of taking under the control of the Union the regulation of mines and the development of minerals to the extent provided in the MMDR Act. In Section 3, the words "Minerals", "Mineral Oils", "Minor Minerals" have been separately defined. The MMDR Act, 1957 mainly deals with general restrictions on prospecting and mining operations and the rules and procedures for regulating grants of prospecting licences and mining leases. State Governments are competent to give licences for prospecting and for granting mining leases. The Act specifically provides that in the case of minerals included in the First Schedule to the Act, the State Governments shall not grant or renew, prospecting licences or mining

leases without the prior permission of the Union Government. Sections 4 to 12 of the Act deal with the conditions and procedures and other allied matters regarding the prospecting or mining operations under licence or lease. Sections 13 and 13A deal with the rule making power of the Central Government. It is however, significant that Section 14 provides that Sections 4 to 13 of the Act shall not apply to minor minerals. Further, Section 15 provides that the State Governments may by notification in the Official Gazette make rule for regulating the grant of quarry-lease, mining-lease or other mineral concessions in respect of minor minerals and for the purposes connected therewith. Section 17 confers special powers on Central Government to undertake prospecting or mining operation of certain lands. Section 17A inserted by Act 37 of 1986 (w.e.f. 10.02.1987) deals with reservation of area for purposes of conservation of any mineral. Section 17A (2) deals with the power of the State Government with the approval of the Central Government to reserve any area not already held under the prospecting licence or mining lease by Government Companies. Section 30 deals with power of revision by the Central Government.

11. Comprehensive view of the statutory framework with regard to regulation of mines and minerals development, role and power of the State Government vis-à-vis the power of the Central Government has been elaborately dealt with by this Court in Monnet Ispat And Energy Limited v. Union of India And Ors., (2012) 11 SCC 1. Observing that the State Government has the paramount right over the mineral, State's ownership of mines and minerals within its territory remains untouched by MMDR Act 1957 except to the extent provided in the Act, in para (138), it was held as under:-

> "138. ..... the declaration made by Parliament in Section 2 and the provisions that follow Section 2 in the 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 the 1957 Act that has not been done. There is nothing in the 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 the provisions of the 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 the powers of the State Legislatures under List II Entry 18. As noted above, the declaration made by Parliament in Section 2 of the 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." (Underlining added)

12. State Government's ownership in mines and minerals in its territory and power of the State to grant or refuse application for mining on the ground that the land in question is not available in view of reservation of area by the State for exploitation of the minerals resources in the public sector whether permissible under MMDR Act:- In grant of mining lease of a property of the State, the State Government has the 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. No one has a vested right for grant of mining lease vide M.P. Ram Mohan Raja v. State of T.N. & Ors., (2007) 9 SCC 78 and State of Tamil Nadu v. Hind Stone & Ors., (1981) 2 SCC 205. The State has a discretion to grant or refuse to grant any mining lease. No person can claim any right in any land belonging to the Government or in any mines except the rights created under MMDR Act and the Mineral Concession Rules. But State Government being a public authority, its acts are necessarily regulated by rules and regulations.

13. In Dharambir Singh v. Union of India & Ors., (1996) 6 SCC 702, a three-Judge Bench of this Court while considering Sections 10(3) and 11(2) of the 1957 Act observed as under:-

> "4. ... 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 requirements of the law..." This was reiterated in Monnet Ispat and Energy Ltd. vs. Union of India and Others (2012) 11 SCC 1.

14. Whether the State Government has the competence to frame policy under MMDR Act and reserve the area for exploitation of minerals in the Public Sector Undertakings:- Contention of the respondent is that policy decision of the State Government has no role to play in a matter over which the decision of the Central Government must prevail in the statutory and constitutional scheme. Placing reliance upon the judgment of this Court in the case of Sandur Manganese & Iron Ores Ltd. v. State of Karnataka & Ors., (2010) 13 SCC 1, Mr. Shyam Divan, learned Senior Counsel appearing for the first respondent submitted that there is no question of the State having any power to frame a policy dehors the MMDR Act and the MC Rules and when the Union List has occupied the entire field, executive power of the State cannot extend to matters over which the State Legislature has no power to legislate.

15. Section 17A deals with the reservation of area by Central Government or by the State Government for the purpose of "conservation of minerals". By amendment Act 37 of 1986 (w.e.f. 10.02.1987), Section 17A was inserted in the Act. Section 17A reads as under:-

> 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.
>
> (2A) xxxx
> (2B) xxxx
> (2C) xxxx
>
> (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.

16. The authority of the State to make reservation of a particular mining area within its territory for its own use is the offspring of the State's authority of ownership over the mines and minerals. Section 17A(2) reserves the power of the State Government with the approval of the Central Government to reserve any area not already held under prospecting licence or mining lease. Section 17A(2) uses the words "with the approval of the Central Government" and does not use the expression "prior approval". In paragraph (160) of Monnet Ispat & Energy Ltd. vs. Union of India & Ors., (2012) 11 SCC 1, it was held that Section 17A(2) does not use the expression "prior approval" and I will advert to this aspect a little later.

17. Re. Contention: State has no legislative competence to frame Industrial Policy reserving area for exploitation of beach sand minerals by Public Sector Undertakings in derogation of the National

Policy which encourages private participation:- India has large reserves of beach sand minerals in the coastal stretches around the country. There are substantial deposits of minerals including ilmenite on Kerala Coast especially in Kollam and Alappuzha Districts. The impugned order in G.O.(Rt.)No.1709/10/ID dated 15.12.2010 states that "....It has been estimated that out of the total ilmenite reserves in the world, 35% is in India and out of this 30% is on the coastal stretches of Kollam and Alappuzha Districts...". Realising the potential of this rich mineral deposits in the State, State of Kerala in its Industrial Policy-2007, vide G.O.(P) No.78/2007/ID dated 18.06.2007, took a policy decision that the mining of mineral sand will be done through the State/Central Public Sector Undertakings only. Relevant portion of the Industrial Policy of the State reads as under:-

> "12.2. Mining of mineral sand will be done through State/Central Public Sector Undertakings only. However mining of minerals will not be permitted in those areas where the Government appointed Expert Committee recommended against mining. Government will encourage manufacture of Value Added Products.
>
> 12.2.1 Titanium.

Considering the rich mineral deposits in the State, a comprehensive scheme to produce Titanium Metal, Titanium composites by using state-of-the-art technology shall be evolved with the help of Central Government agencies and International organizations. If the potential of this natural resource is used properly and scientifically, it will immensely pave way for rapid industrialization of the State as Titanium is a unique material for strategic applications. The approach is not to limit the activities to manufacturing alone but to harness its vast potential by setting up a chain of Titanium based industries through forward integration. However, utmost care shall be taken to contain the adverse impact on environment by mining, processing and related activities by adopting strict monitoring and control measures. To develop a package for making use of the immense potential of titanium, support shall be availed from national and international organizations."

18. Mineral ilmenite, rutile, leucoxene, zircon and monazite except sillimanite and garnet have been classified as "prescribed substances" under the Atomic Energy Act 1962. Under the Central Government Industrial Policy 1991, mining and production of minerals classified as "prescribed substances" was reserved for the public sector. As per 1991 Policy, Indian Rare Earths Limited (IREL), a Government of India Undertaking (Department of Atomic Energy) and Kerala Minerals and Metals Limited (KMML) a Government of Kerala Undertaking were engaged in mining, production and processing in Orissa, Tamil Nadu and Kerala. In 1998, as per the national policy of the Department of Atomic Energy on exploitation of beach sand minerals, Central Government (Department of Atomic Energy) has taken a policy decision to encourage exploitation of beach sand mineral through private sector/judicious mix up of public and private sector participation (including foreign investment). The relevant portion of the Policy on Exploitation of Beach Sand Minerals, Department of Atomic Energy No.8/1(I)/97-PSU/1422 dated 06.10.1998, reads as under:-

> "Under the Industrial Policy Resolution of 1991, the mining and production of minerals classified as "prescribed substances" is reserved for the public sector. However, the Policy Resolution also allows selective entry of the private sector. At

present, the Indian Rare Earths Limited (IREL), a Government of India (Department of Atomic Energy) undertaking and Kerala Minerals & Metals Ltd. (KMML), a Government of Kerala undertaking are engaged in mining, production and processing of in Orissa, Tamil Nadu and Kerala. Demand for these minerals and/or their value-added products in the domestic as well as international markets and the potential available in the country, setting up of new plants for exploitation of the deposits in fresh locations would be in the interest of the country. Production of various value-added products of these minerals is, however, highly capital intensive and it may not be possible for only the PSUs (both Central and State owned) operating in this field to set up the new plants on their own. It is, therefore necessary to allow the private sector set up such plants within the framework of some broad guidelines.

In view of the background explained above, Government of India has recently approved a policy to encourage further exploitation of these mineral deposit through a judicious mix of public and private sector participation (including foreign investment). The other objective of the policy are maximization of value addition to the raw minerals within the country, upgradation of the existing process technologies to international standards, attracting funds and new technology necessary for this purpose through participation of the private sector (domestic and foreign), appropriate dispersal of the new production facilities with an eye on regional balance and regulating the rate of exploitation of the reserves by the facilities such that the exploitable reserves last for about hundred years without, of course adversely affecting the investors' techno- economic considerations regarding plant size, etc."

19. Since the source of the executive power of the State Government is Article 298 of the Constitution of India, it is clear from the proviso to Article 298 that the exercise of this executive power would be subject to legislation by Parliament. The declaration made in Section 2 of the MMDR Act has resulted in bringing the entire field of regulation of mines and development of minerals under the control of the Union to the extent provided in the Act. Therefore, to determine the power of the State that is left within Entry 23 of List II, we have to work it within the terms of the MMDR Act and MC Rules. We must therefore consider whether there is anything in the MMDR Act or MC Rules which takes away the executive power of the State Government or in any manner controls or regulates it. If there is any such provision in the Act or in MC Rules, then the same would prevail and the executive power of the State Government would have to give way to it. Under Section 17A (2) of the MMDR Act, when State has the competence to reserve any area for exploitation of minerals by public sector undertakings, the policy of the State of Kerala reserving exploitation of beach sand minerals by public sector undertakings cannot be said to be in derogation of the provisions of MMDR Act.

20. Under Section 17A(2) the power is conferred upon the State Government with the approval of the Central Government to reserve any area for undertaking prospecting or mining operations through a government company or a corporation owned or controlled by it. The State Government has the executive power to exploit its own minerals. Such power is thus conferred upon the State by

the MMDR Act itself. Section 17A (2) clearly recognizes the power of the State Government to reserve the land for mining or exploitation of the mineral in public sector. While so, it is difficult to comprehend as to how a policy decision of the State reserving the area for mining of mineral sand through State/Central Public Sector Undertakings can be said to be in derogation of MMDR Act. The policy of the State that the mining of minerals sand will be done only through State/Central Public Sector Undertakings is well in consonance with the provisions of MMDR Act. It can hardly be disputed that the State Government has the executive power to reserve any area for exploitation of minerals to public sector undertakings.

21. Observing that the power of the State Government to reserve the area for exploitation of the mineral in public sector undertakings, authority of the State Government to make reservation of a particular mining of the area is the off-spring of the ownership and after referring to various decisions in paragraph (144) in Monnet Ispat And Energy Limited (supra), it was held as under:-

> "144 ...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 the 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. AIR 1961 SC 459, M.A. Tulloch & Co. AIR 1964 SC 1284, Baijnath Kadio (1969) 3 SCC 838 and Amritlal Nathubhai Shah (1976) 4 SCC 108. 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. 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 List I Entry 54 in Schedule VII, 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 the State Legislature's power under List II Entry 23 was, thus, taken away and regulation of mines and minerals development had therefore to be in accordance with the 1957 Act and the 1960 Rules. 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 Section 2 of the 1957 Act, but that cannot 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 the 1960 Rules." The above ratio laid down in Monnet Ispat answers the contentions raised by the respondent.

22. As per Section 10 of the MMDR Act, the power to grant mining lease is vested with the State Government. In recognition of the position that the State Government is the owner of the mines and minerals, the said Industrial Policy of the Government of India, Department of Atomic Energy dated 06.10.1998 on exploitation of beach sand mineral, reserves option of the State of selecting the companies/entrepreneurs for setting up of projects/plants. We may usefully refer to relevant portion of the National Policy which reads as under:-

> "4(g). The provisions of the Atomic Energy Act and the Rules and Orders hereunder will continue to apply to the exploitation of beach sands minerals, including their import/export, to the extent such minerals are notified as prescribed substances and require licensing under the said provisions. The mining leases under the Mines and Minerals (Regulation & Development) Act will continue to be granted by the State Government (s) concerned.
>
> (j). Subject to the broad guidelines set forth in the foregoing paragraphs, the selection of companies/ entrepreneurs for setting up projects/plants for exploitation of beach sand minerals in the private/joint sector would be left to the State Government concerned.

However, where a central PSU (at present only the Indian Rare Earths Limited in this field) is one of the proposed partners in the joint venture, the matter would also be referred to the Department of Atomic Energy for prior consultation and concurrence."

23. State Government being owner of the minerals lying within its territory by virtue of the powers conferred under Sections 10 and 17A(2) and having regard to the aforesaid clauses in the National Policy granting liberty to the State to select the companies/entrepreneurs of its choice for setting up projects/ plants for exploitation of beach sand minerals, the policy of the State Government, reserving the area for mining of the mineral sand done through State/Central Public Sector Undertakings cannot be said to be in derogation of MMDR Act and MC Rules. It cannot be contended that the State has no legislative competence and the Executive has no power to frame a policy reserving the area for exploitation of beach sand mineral by State/Central Public Sector Undertakings.

24. In Pallava Granite Industries (India) (P) Ltd. vs. Union of India & Ors., (2007) 15 SCC 30, it was held that the reservation of right in favour of a public sector enterprise was permissible inter alia on the ground of welfare requirements of the State. In Indian Charge Chrome Ltd. & Anr. vs. Union of India & Ors., (2006) 12 SCC 331, it was held that with the approval of the Central Government under Section 17A(2) the State Government has the power to reserve any area not already held under any prospecting licence or mining lease for undertaking the exploitation through a government company or corporation owned or controlled by it.

25. As per the Industrial Policy 2007 of the State of Kerala, the mining and exploitation of beach sand minerals will be permitted only through State/Central Public Sector Undertakings. The reason behind the said policy decision is to restrict the indiscriminate mining and exploitation of minerals

by scientific mining taking into account the geographical and ecological conditions as well as density of the population. The applications of the respondents are for mining lease of Titanium-bearing minerals ilmenite, rutile, leucoxene, zircon minerals and as per Part B of the First Schedule to the MMDR Act, these minerals are categorized as Atomic Minerals. As per Article 48A of the Constitution, the State shall endeavour to protect and improve the environment and this is a constitutional mandate. Kerala being a State with long coastal areas and backwaters and State being densely populated, State Government's decision to reserve mining lease of beach sand minerals to State/Central Public Sector Undertakings is stated to be in larger public interest. Major portion of the land in which mining operation sought to be carried out by first respondent is Kayal Puramboke and Sea Puramboke Land. The policy adopted by the State of Kerala is well in consonance with the National Mineral policy as both are designed to encourage the scientific methods of mining, beneficiation and economic utilization. The National policy specifies that there shall be transparency and fair play in the reservation for one over another in the public interest. Apparently the State of Kerala has reserved the area for public sector undertakings in order to prevent environmental degradation and to ensure the maintainability of public health. The State Government cannot be expected to take any decision which may have adverse health impact on the people of the State residing in those areas. The policy of the State is also in consonance with Section 18 of the MMDR Act which provides that it shall be the duty of the Central Government to take all steps for conservation and systematic development of minerals in India. The State Government's policy is in adherence to sustainable development which is a constitutional mandate and the State has tried to balance the developmental needs and the need for protection of environment and ecology. Respondent's contention that the State Government's policy is violative of provisions of the MMDR Act and National Policy is wholly misplaced. The High Court failed to consider that the State of Kerala keeping in view its policy decision and the importance of environment protection rejected the application moved by the first respondent.

26. While allowing the revision filed under Section 30 of the Act, the revisional authority observed that "...The policy decision of the State Government appears to be not in consonance with the MMDR Act 1957 and also against the National Mineral Policy 2008." The observation that the policy decision of the State Government is not in consonance with the MMDR Act 1957 is not correct. Be it noted that the policy of the State of Kerala itself is not under challenge. The State Government has passed a reasoned order as to why it has chosen to reserve the area for exploitation of mineral sand in public sector undertakings and I do not find any arbitrariness or unreasonableness in the policy of the State.

27. In State of Tamil Nadu vs. Hind Stone & Ors., (1981) 2 SCC 205, it was observed as under:-

> "10. ....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."

28. The decision in Hind Stone case (supra) was referred to and quoted with the approval in Monnet Ispat case in paragraphs (292) and (293) which read as under:-

> "292. Although in Hind Stone, (1981) 2 SCC 205 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 the MMDR Act which are relevant for our purpose. Thus in para 6, it was observed as follows: (SCC p. 213) "6. ...The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Development and Regulation) 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." Again in para 9, this Court observed: (Hind Stone case, SCC pp. 216-17) "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 the least, in para 13 this Court observed as follows: (Hind Stone case, SCC p. 220) "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."
>
> 293. 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 the 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 the Bihar Land Reforms Act, 1950 which Act is protected by placing it in Schedule IX added by the First Amendment to the Constitution. While speaking for the Constitution Bench in Waman Rao (1981) 2 SCC 362 Chandrachud, C.J. had the following to state on the correlationship between Articles 39(b) and (c) and the First Amendment: (SCC p. 387, para 26) "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 First and the Fourth Amendments were passed." Under the MMDR Act, when State Government has the right to reserve any area for exploitation in the public sector, the policy of the State cannot be said to be in derogation of the MMDR Act or MC Rules or the National Policy.

29. Re. Contention. Procedure stipulated under Section 17A (2) cannot be thwarted under the guise of State's Industrial Policy:- Learned Senior Counsel for the respondents submitted that under Section 17A(2) the State Government with the approval of the Central Government can reserve any area for exploitation of the mineral through a public sector undertaking and when the statute stipulates the procedure to be followed, then an area could be reserved for exploitation of the mineral by public sector undertakings only as per the procedure stipulated in Section 17A(2) and the said statutory procedure cannot be thwarted under the guise of an industrial policy. It was submitted that if the State Government really intended to reserve any area for exploitation of beach sand mineral in public sector, the State Government should have taken steps for obtaining approval of the Central Government and having not done so, the State cannot under the pretext of policy decision reject the first respondent's application on the ground that the area is reserved for exploitation of minerals in the public sector.

30. Under Section 17A(2) of the MMDR Act, the statutory dispensation is the approval of the Central Government and reservation of area by the State Government by notification in the Official Gazette specifying the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved. No doubt, when the statute stipulates a procedure, it should be done strictly as per the procedure stipulated thereon. State Government with the approval of the Central Government has the power to reserve any area for undertaking mining operation through public sector undertakings. Recommendation of the State Government for approval of the Central Government for such reservation and issuance of notification is only procedural. As discussed earlier, the policy of the State that mining of beach and mineral would be done through public sector undertakings cannot be said to be dehors the MMDR Act or unreasonable justifying interference by the Court.

31. Further, be it noted, the plea regarding thwarting the procedure stipulated under Section 17A(2) of the MMDR Act under the guise of industrial policy has not been specifically raised before the

High Court in the writ petition. Only during the course of arguments in this Court for the first time, such a plea was raised. Therefore steps, if any, taken by the State of Kerala in furtherance of Section 17A (2) of MMDR Act is not available on record.

32. That apart, grant of a mining lease to the first respondent was stopped by G.O.(MS)112/2004/ID dated 25.09.2004 and the matter was pending consideration before the revisional authority-Central Government from 2007 and the revision came to be dismissed on 30.11.2009 directing the State to reconsider the matter afresh. In the meanwhile, industrial policy of the State stating that mining of minerals sand will be done through State/Central Public Sector Undertakings came into force w.e.f. 18.06.2007. After reconsideration, the impugned order was passed by the State Government on 15.12.2010. Evidently, the State could not have made the proposal to the Central Government for reserving the area for exploitation of the mineral by Public Sector Undertakings. Since 2007, the matter was sub-judice before one authority or the other. Since the matter was sub-judice, State could not have taken further steps in sending any proposal to the Central Government for obtaining the approval.

33. The approval of the Central Government required by Section 17A (2) is mandatory, but nowhere it is stated that the approval must be sought prior to the reservation. Prior approval of the Central Government before reserving any area by the State Government for the public sector undertaking is not required. Therefore, what logically follows from Section 17A (2) is that the State Government may seek approval of the Central Government even after the framing of the policy. Observing that Section 17A(2) does not use the expression "prior approval" in paragraph (160) of Monnet Ispat case, it was held as under:-

> "160. The types of reservation under Section 17-A and their scope have been considered by this Court in Indian Metals and Ferro Alloys Ltd. 1992 suppl.
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> (1) SCC 91, in paras 45 and 46 (pp. 136-39) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17-

A(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 an incorrect reading of Section 17-A(2). This provision does not use the expression, "prior approval" which has been used in Section 11. On the other hand, Section 17-A(2) uses the words, "with the approval of the Central Government". These words in Section 17-A(2) cannot be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17-A 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 17-A(2) may be express or implied. In a case such as the present one where the Central Government has relied upon the 2006 Notification while rejecting the appellants' application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by the State Government in the 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 the 2006 Notification." (Underlining added) Industrial Policy of the State can be said to be a prelude before the State makes the proposal

reserving the area for exploitation of the mineral by the public sector undertakings. Respondent is not right in contending that under the guise of policy decision, the State has bye-passed the procedure stipulated under Section 17A(2).

34. Under Section 30 of MMDR Act after remittance of the matter, the right of the State to reconsider the matter:- While allowing the revision petitions filed under Section 30 of the MMDR Act, the Central Government directed the State Government to reconsider the matter. The High Court faulted the State Government that when the revisional authority directed reconsideration of the matter based on the "facts in issue", the binding nature of the decisions of the superior authorities in the hierarchy was not kept in view and that "it is sheer statutory and institutional insubordination" on the part of the State. Placing reliance upon the judgment of this Court in Dharam Chand Jain vs. State of Bihar, (1976) 4 SCC 427, learned counsel for the appellant submitted that the State Government being "a subordinate authority" in the matter of granting mining lease was obligated under the law to carry out the orders of the Central Government. Relying upon the above decision, it was submitted that if the State Government could decline to carry out the order of the Central Government, it would be subversive of judicial discipline.

35. The decision in Dharam Chand Jain (supra) was rendered in the year 1976, that is prior to insertion of Sections 17A (1A) and (2) (inserted and modified respectively by Act 25 of 1994 with retrospective effect 25.01.1994). In the year 1976, barring Rule 59 of MC Rules, there was no provision in the MMDR Act to reserve the area for mining operation through the public sector undertakings. Under Section 10(3), the State Government has the power to take a decision keeping in view the overall interest of the State and also the scientific mining of the mineral. The minerals to be exploited in this case are ilmenite, rutile, leucoxene and zircon, which have been classified as "prescribed substance" under the Atomic Energy Act 1962. In the order passed by the State Government, State has emphasized the need for environmental protection which is the statutory obligation of the State and the interest of larger section of people who are residing in the coastal areas of Kollam and Alappuzha Districts. Merely because the Central Government has directed the State Government to reconsider the matter, it was not obligated upon the State to grant mining lease in favour of the first respondent. After remittance of the matter, State has the power to consider the applications afresh on its own merits and the constitutional mandate.

36. By perusal of the order dated 30.11.2009 passed by the Revisional Authority, it is seen that the order was passed by the Joint Secretary (Mines) and Joint Secretary and Legal Advisor. The order only directed the State Government to reconsider the matter. When the State Government was required to reconsider the matter, State Government was free to consider the applications and take a decision. Though MMDR Act confers the revisional power on the Central Government for grant of mining lease for mining minerals other than a minor mineral, that does not mean that the State Government is denuded of its power or control over the minerals lying in the land within its territory. The State Government is the custodian of the land, mines and minerals. Under Section 10(3) State has the power to reconsider the applications in the light of its constitutional mandate of environmental protection. The High Court fell in error in faulting the State Government and in my view, the State cannot be faulted for the alleged "institutional insubordination", as observed by the High Court.

37. At this juncture, we may usefully refer to the observation of this Court that many a times Central Government hears revision petitions through an executive officer and without participation of the judicial member. In Sandur Manganese And Iron Ores Ltd. vs. State of Karnataka & Ors., (2010) 13 SCC 1 para (95), it was held as under:-

> "95. It is also brought to our notice that as on date the Central Government hears revision petitions through an executive officer and without participation of a judicial member. It is also pointed out that the exact procedure of the Revisional Tribunal has kept changing over the last few months. It is clear that it would not be an independent and efficacious alternative forum in terms of the guidelines laid down by the Constitution Bench in Union of India v. Madras Bar Assn.(2010) 11 SCC 1 As observed by the three-Judge Bench of this Court in Indian Charge Chrome Ltd.(2006) 12 SCC 331, when there was no valid recommendation by the State Government for the grant of lease, there cannot be any valid approval of the Central Government relying on the defective recommendation."

38. In the present case, Joint Secretary (Mines) and Joint Secretary and Legal Advisor have passed the order in the revision petition. By allowing revision petition, Central Government directed the State to reconsider the matter. As noticed earlier, National Policy on Exploitation of Beach Sand Minerals issued by the Department of Atomic Energy reserves liberty to the State for selection of Companies/Entrepreneurs for setting up of projects/plants for exploitation of beach sand minerals. Grant or refusal of mining lease and mining of minerals involves considerable high stakes both in terms of commercial value and the fact that such a decision will have impact on the concept of mineral development, it is for the State to exercise its discretion either to grant or refuse mining lease.

39. Plea of promissory estoppel and legitimate expectation:- First respondent raised the plea of promissory estoppel and legitimate expectation. It was submitted that State has granted approval for mining by its order dated 15.09.2004 and the same cannot be supplanted by purportedly changing the policy. Learned Senior Counsel for the first respondent submitted that on the basis of representations on the part of the State Government, the first respondent had expended an amount in excess of rupees eighteen crores inter-alia for the project including substantial amounts for acquisition of mineral bearing lands for mining beach sand minerals and by doing so, first respondent has altered its position irretrievably to its prejudice.

40. It is well settled that no one has legal or vested right for the grant of mining lease. Mere disappointment of expectation cannot be a ground for interfering with the policy of the State reserving the areas for exploitation of beach sand mineral by State/Central Public Sector Undertakings. After referring to various judgments on the doctrine of promissory estoppel, in Monnet Ispat case, this Court has summarized the principles in paragraph (182) as under:-

> "182.1. 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.

182.2. 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.

182.3. 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.

182.4. 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.

182.5. 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.

182.6. 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.

182.7. 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."

41. No doubt by G.O (MS) No.105/04/ID dated 15.09.2004, State has sanctioned mining leases to the first respondent. But within ten days by order dated 25.09.2004, the mining lease granted to first respondent was stopped on the ground that the detailed study on the environment impact will be undertaken before taking further action in the matter. The rule of promissory estoppel can be invoked only if on the basis of representation made by the Government, the party has substantially altered the position. Within short time of ten days, in my view, first respondent could not have altered its position so as to invoke the doctrine of promissory estoppel.

42. State of Kerala has the legislative competence to take the policy decision reserving the area for exploitation of minerals by the public sector undertakings and the said policy cannot be said to be dehors the MMDR Act 1957 and MC Rules. The High Court fell in error in not appreciating the policy of the State in the light of the constitutional mandate and the decision taken by the State for the welfare of the State and exploitation of the mineral by scientific mining by public sector undertakings.

43. In the result, the impugned common judgment of the High Court is set aside and these appeals are allowed. No order as to costs.

.....J. (R. BANUMATHI) New Delhi;

April 8, 2016 IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION Civil Appeal NO.3608 of 2016 (Arising out of SLP(C) No(s). 1490 of 2015) STATE OF KERALA & ORS. Appellant(s) VERSUS M/S KERALA RARE EARTH & MINERALS LIMITED & ORS. Respondent(s) WITH Civil Appeal NO.3609 of 2016 (Arising out of SLP(C)No.1840 of 2015) AND Civil Appeal NO.3610 of 2016 (Arising out of SLP(C)No.1914 of 2015) O R D E R In view of the majority of opinion, these appeals fail and are hereby dismissed.

.....CJI.

(T.S. THAKUR) .....J. (V.GOPALA GOWDA) .....J. (R.BANUMATHI) NEW DELHI DATED 8th APRIL, 2016.