

Common Cause vs Union Of India & Ors on 4 April, 2016

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Bench: C. Nagappan, Jagdish Singh Khehar

“Reportable”

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. 114 OF 2014

Common Cause		... Petitioner
	versus	
Union of India and others		... Respondents

With

WRIT PETITION (CIVIL) NO. 194 OF 2014

Prafulla Samantra and another		... Petitioners
	versus	
Union of India and others		... Respondents

J U D G M E N T

Jagdish Singh Khehar, J.

1. This Court by its order dated 16.5.2014, in Common Cause v. Union of India, (2014) 14 SCC 155, restrained 102 mining leaseholders from carrying on any mining operations. The above order was passed on account of the fact, that none of these leaseholders were in possession of clearances/approvals/consent, required for carrying on the mining operations. The above order dated 16.5.2014, granted liberty to the leaseholders whose operations were suspended, to move this Court after obtaining the requisite clearances/approvals/consent, whereupon this Court would, on being satisfied, revoke the suspension order.

2. A number of applications came to be filed before this Court seeking revocation of the above order of suspension, wherein the concerned applicants asserted, that they had obtained all clearances/approvals/consent, and further that, they were now legally eligible to recommence mining operations. During the course of such consideration at our hands, Mr. A.D.N. Rao, learned amicus curiae pointed out, that the question of granting permission to the leaseholders to recommence mining operations would arise, only if the leaseholders have a subsisting mining lease. It was therefore submitted, that before determining the legitimacy of the claim raised by the applicants, this Court should first examine, whether the applicants have a subsisting right to carry on mining operation, under a valid lease.

3. This submission advanced at the hands of the learned amicus curiae, was strongly contested by learned counsel representing the applicants. They invited our attention to paragraph 4 of the order dated 16.5.2014, passed in the Common Cause case, so as to contend, that this Court had not postulated such a precondition, and therefore, the submission advanced at the hands of the learned amicus curiae, should be rejected. Paragraph 4 aforementioned, is extracted hereunder:

“4. We have considered the report dated 25.4.2014 of the CEC, and the submissions made by learned Counsel appearing for different parties, and we find that 102 mining leases do not have requisite environmental clearances, approvals under the Forest (Conservation) Act, 1980, approved Mining Plan and/or Consent to Operate. A list of these 102 mining leases is annexed to the report of the CEC as Annexure R-2. The CEC has, however, stated in the report that mining operations in these 102 mining leases have been suspended and these 102 mining leases have been classified as non-working leases. We direct that mining operations in these 102 mining leases listed in Annexure R-2 of the report of the CEC shall remain suspended, but it will be open to such lessees to move the concerned authorities for environmental clearances, approval under the Forest (Conservation) Act, 1980, approval of Mining Plan or Consent to Operate and as and when the mining lessees are able to obtain all the clearances/approval/consent, they may move this Court for modification of this interim order in relation to their cases.” (highlighting – as per emphasis of learned counsel)

4. Having perused the position expressed by this Court, while suspending mining operations with reference to 102 mining leases, it is apparent, that the said direction was issued for the sole consideration, that the concerned leaseholders were not in possession of all clearances/approvals/consent. And as such, they were permitted to move applications before this Court, for modification of the order of suspension, as and when all clearances/approvals/consent were obtained. It is however relevant to notice, that such clearances, approvals and consent can be meaningful to the applicants, only if they are with reference to subsisting mining lease(s). In case a leaseholder does not have a subsisting mining lease, he is precluded under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as, the MMDR Act), from carrying on any mining operations. It is therefore, that we accept the submission advanced by Mr. A.D.N. Rao. And it is

also for the above reason, that we required learned counsel representing the mining leaseholders, desirous of lifting the suspension order dated 16.5.2014, to substantiate whether or not, they were possessed of a subsisting mining lease.

5. To commence with, we were of the view, that a decision/conclusion in this behalf, would emerge from the actual document by which the mining lease had been granted (or renewed). During the course of hearing it emerged, that the deduction as to whether the applicant-

leaseholders were possessed of subsisting mining lease(s), was a complicated question of fact and law. Since the same has to be resolved, before the claim of the applicants for revoking the suspension order (– dated 16.5.2014) can be accepted, we would endeavour to lay down parameters for such determination.

6. A leaseholder would have a subsisting mining lease, if the period of the original grant is in currency. Additionally, a leaseholder whose original lease has since expired, would have a subsisting lease, if the original lease having been renewed, the renewal period is in currency.

7. It is also essential to notice, that to start with, renewal could be granted to a mining leaseholder, any number of times, under the unamended Section 8 of the MMDR Act. The duration of the original grant (of the mining lease), as also, the duration of renewals, and the number of permissible renewals, that a leaseholder can seek, have undergone a change. We shall dwell upon the instant aspect of the matter in the instant order, as it has a vital bearing on the issue, whether or not the applicant- leaseholders are possessed of subsisting mining leases. For this, in the first instance, reference may be made to the provision regulating the grant of a mining lease, as also, renewal of a mining lease, namely, Section 8 of the MMDR Act. The instant provision, in the manner it came to be structured after being amended in 1994 (which position remained unamended till 18.7.2014), is extracted hereunder:

“8. Periods for which mining leases may be granted or renewed.— (1) The maximum period for which a mining lease may be granted shall not exceed thirty years:

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years;

(2) A mining lease may be renewed for a period not exceeding twenty years. (3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part-A and Part-B of the First Schedule for a further period or periods not exceeding twenty years in each case.

(4) Notwithstanding anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part-A or Part-B of the First

Schedule shall be renewed except with the previous approval of the Central Government.” (emphasis is ours) A perusal of Section 8(1) extracted above reveals, that the maximum period for which a mining lease could be granted, would not exceed thirty years.

After the expiry of the original grant, the mining lease could be renewed in the first instance for a further period not exceeding twenty years, under Section 8(2). For all intents and purposes, the renewal contemplated under Section 8(2), shall be referred to as the “first renewal”. The “first renewal”, required a clearance of the State Government, and the approval of the Central Government. Further renewals, after the expiry of first renewal granted under Section 8(2), were also permissible, and were provided for under Section 8(3) of the MMDR Act. The renewal(s) postulated under Section 8(3), for all intents and purposes, shall be described hereinafter, as the “second (or third, or fourth ...) renewal”. The renewal(s) under Section 8(3) could be granted only if the State Government expressed its satisfaction, that the grant of the second or subsequent renewal, would be in the interest of mineral development. Furthermore, the “second renewal” or still further renewal(s), had to also have the approval of the Central Government. Even though the period of subsequent renewals, is of no significance, insofar as the present controversy is concerned, it may be mentioned, that all subsequent renewals including the second, third or further renewals, could individually extend to a period not exceeding twenty years.

8. The interpretation placed by us, on Section 8 of the MMDR Act (as it existed in 1994), finds support from Rule 24A of the Mineral Concession Rules, 1960 (hereinafter referred to as, the Mineral Concession Rules) – as the rule existed prior to 18.7.2014. Rule 24A in the manner in which it was then structured, is extracted below:

“24A. Renewal of mining lease. —(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twelve months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf.

(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:

Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease.

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of the renewal of mining lease.

(4) An application for the renewal of a mining lease shall be disposed of within a period of six months from the date of its receipt. (5) If an application is not disposed of within the period specified in sub- rule (4) it shall be deemed to have been refused.

(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.

xxx

xxx

xxx”

(emphasis is ours)

A perusal of sub-rule (1) of Rule 24A reveals, that an application for renewal of a mining lease, had to be made at least twelve months before the date of expiry of the existing mining lease. It is therefore essential for us to record, that unless such an application had been made at least twelve months before the date of expiry of an existing mining lease under Rule 24A of the Mineral Concession Rules, the same could not have been entertained.

And also that, the term of the mining lease held by the leaseholder would be deemed to have come to an end, on the expiry of the period depicted in the lease document, if such an application had not been preferred.

9. The next relevant provision is sub-rule (4) of Rule 24A of the Mineral Concession Rules. The instant sub-rule required, that an application for renewal, would be disposed of within six months, from the date of receipt of such application. We have extracted hereinabove, sub- rule (5) of Rule 24A, wherein it was mandated, that an application for renewal, which had not been disposed of within the period of six months, as provided for under Rule 24A(4) of the Mineral Concession Rules, would be deemed to have been refused. It is however relevant to notice, that the aforementioned sub-rule (5) came to be omitted by an amendment, with effect from 7.1.1993. It is significant to record, that sub-rule (6) came to be substituted by an amendment, with effect from 27.9.1994. Sub-rule (6) of Rule 24A of the Mineral Concession Rules, is of extreme importance for the determination, whether the applicant-leaseholder is possessed of subsisting mining lease because a large number of applicants rely on the instant rule in support of their claim for being possessed of a subsisting mining lease. Sub-rule (6) aforementioned postulated, that if an application for renewal of a mining lease (made within twelve months, before the date on which the existing lease was to expire), had not been disposed of by the competent authority, the period of lease would be deemed to have been extended, by a further period till the State Government passed an order disposing of the renewal application. It is therefore, that the right to continue mining operations would seemingly continue ad infinitum, for the simple reason that the State Government which was the

competent authority, had not passed any order(s) on most of the pending applications seeking renewal.

10. An extremely significant event pertaining to the statutory regime of mining leases under the MMDR Act, and the Mineral Concession Rules, took place on 21.4.2014, when this Court passed an order in *Goa Foundation v. Union of India*, (2014) 6 SCC 590, and held as under:

“27. Sub-section (1) of Section 8 of the MMDR Act, which provides the maximum and minimum periods for which a mining lease may be granted will not apply to deemed mining leases in Goa because sub-section (1) of Section 5 of the Abolition Act provides that the period of such deemed mining leases will extend upto six months from the date of assent notwithstanding anything contained in the MMDR Act. In other words, notwithstanding anything contained in sub-section (1) of Section 8 of the MMDR Act, the period of a deemed mining lease in Goa was to expire on 22.11.1987 (six months from the date of assent). Under sub-section (2) of Section 8 of the MMDR Act, a mining lease may be renewed for a period not exceeding twenty years. Sub-section (3) of Section 8, however, provides that notwithstanding anything contained in sub-section (2), if the State Government is of the opinion that in the interest of mineral development, it is necessary so to do, it may for reasons to be recorded, authorise the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case. Thus, renewal beyond the first renewal for a period of twenty years is conditional upon the State Government forming an opinion that in the interest of mineral development, it is necessary to do so and also conditional upon the State Government recording reasons for such renewal of a mining lease in respect of iron ore which is not specified in Part A and Part B of the First Schedule. In *TISCO Ltd. v.*

Union of India (1996) 9 SCC 709, this Court has held that the language of sub-section (3) of Section 8 is quite clear that ordinarily a lease is not to be granted beyond the time specified in sub-section (2) and only if the Government is of the view that it would be in the interest of mineral development, it is empowered to renew lease of a lessee for a further period after recording sound reasons for doing so. This Court has further held in the aforesaid case that this measure has been incorporated in the legislative scheme as a safeguard against arbitrariness and the letter and spirit of the law must be adhered to in a strict manner.

28. The MC Rules have been made under Section 13 of the MMDR Act by the Central Government and obviously could not have been made in a manner inconsistent with the provisions of the Act. Sub-rule (6) of Rule 24A of the MC Rules provides that:

“24-A.(6) If an application for the renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.” This sub-rule

cannot apply to a renewal under sub-section (3) of Section 8 of the MMDR Act because the renewal under this provision cannot be made without express orders of the State Government recording reasons for renewal in the interest of mineral development. In other words, so long as there is a right of renewal in the lessee which in the case of a mining lease is for a maximum period of twenty years, the provision regarding deemed extension of a lease can operate, but if the right of renewal of a mining lease is dependent upon the State Government forming an opinion that in the interest of mineral development it is necessary to do so and the State Government recording reasons therefor, a provision regarding deemed extension till orders are passed by the State Government on the application of renewal cannot apply. We are, therefore, of the opinion that sub-rule (6) of Rule 24A of the MC Rules will apply to a case of first renewal under sub-section (2) of Section 8 of the MMDR Act other than a case covered under sub-rule (9) of Rule 24A of the MC Rules, but will not apply to renewal under sub-section (3) of Section 8 of the MMDR Act. In our view, the deemed mining leases of the lessees in Goa expired on 22.11.1987 under sub-section (1) of Section 5 of the Abolition Act and the maximum of 20 years renewal period of the deemed mining leases in Goa as provided in sub-

section (2) of Section 8 of the MMDR Act read with sub-rules (8) and (9) of Rule 24A of the MC Rules expired on 22.11.2007.” (emphasis is ours)

11. At this juncture, it would be necessary to notice, that prior to the decision in the Goa Foundation case, the State Government while interpreting sub-rule (6) of Rule 24A, had been allowing leaseholders to continue mining operations without any outer limit. In view of the conclusions drawn in the Goa Foundation case, it came to be rightfully understood, that such operations could go on (within the mandate of Rule 24A(6), under which such application was made) till the expiry of the maximum period postulated for the first renewal, i.e., for a period of twenty years. The second and subsequent renewal(s) were held to be not automatic. Because the second and subsequent renewals required the satisfaction of the State Government, by way of recorded reasons, as noticed hereinabove. Therefore, after the judgment in the Goa Foundation case, it came to be understood, that in the absence of an express order of second or subsequent renewal(s), a mining lease would expire after completion of the period of first renewal.

12. In order to give effect to the conclusions recorded by this Court in the Goa Foundation case, Rule 24A(6) came to be amended on 18.7.2014. The above amendment is reproduced below:

“Rule 24-A xxx xxx xxx (6) If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier:

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State

Government before the date of expiry of lease and are pending for disposal as on the date of the notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957.” (emphasis is ours) The above amendment, has to be carefully understood. Undoubtedly, the amendment of sub-rule (6) of Rule 24A of the Mineral Concession Rules now provides, that the period of mining operations would be deemed to be extended for a maximum period of two years, after the expiry of the period of the original grant, unless of course, the State Government takes a conscious decision on the application for renewal. We are of the view, that the instant provision, has to be read in continuation of the erstwhile/previous Rule 24A (which subsisted till the instant amendment came into effect on 18.7.2014). The unamended provision, postulated an unlimited period of mining lease, in the absence of a determinative order, on an application for renewal. Therefore, even if the original lease had expired many years ago, but if a renewal application had been preferred within the permissible time contemplated under Rule 24A(1), the same would have continued to subsist, till the instant amendment took effect on 18.7.2014. The importance of this conclusion is for the reason, that the proviso to new Rule 24A(6) – amended on 18.7.2014, consciously provided, that the lease period where applications had been filed seeking “first renewal”, would be deemed to have been extended for a further period of two years, from the date of coming into force of the amended sub-rule (6).

Accordingly, in all cases wherein the “first renewal” had been sought, but not determined, the mining operations were extended, by operation of law, till 18.7.2014.

13. The case of most of the applicants before this Court is, that they had moved applications within the time permissible under Rule 24A(1), and as such, on account of the unamended sub-rule (6) of Rule 24A, and thereafter, on the basis of the amended sub-rule (6) of Rule 24A, their right to continue mining operations, would be deemed to have been extended up to 18.7.2016. We find that their claim is valid, and accept the same, insofar as the legal position is concerned, but only with reference to “first renewals”. We may hasten to explain, that the instant determination emerges from an interpretation of the unamended and amended Rule 24A(6). Whether subsequent amendments would alter the situation, is being determined hereinafter.

14. One clarification is imperative at this stage. After the passing of the order on 21.4.2014, in the Goa Foundation case, subsisting “first renewals” under Rule 24A, would expire on the completion of a further period of twenty years, after the expiry of the period contemplated under the original grant, or as interpreted above. There was no similar automatic grant of “second renewals”, after the Goa Foundation case. Therefore, for all intents and purposes, the conclusion recorded hereinabove, should be deemed to be relevant only with reference to the grant of “first renewals”. It is necessary

to reiterate, that in the Goa Foundation case, this Court had held, that second renewals would be subject to an order passed by the State Government recording reasons that it was in the interest of mineral development to do so. Needless to mention, that a second or subsequent renewal also required, the previous approval of the Central Government – as provided for under Section 8(4) of the MMDR Act. The amendment to Rule 24A made on 18.7.2014, more particularly, the second proviso to sub-rule (6), leaves no room for any doubt, that the automatic extension postulated with reference to the first renewal, would not apply to the second or subsequent renewals. It is therefore necessary to further conclude, that in cases of second and subsequent renewals, the amended Rule 24A(6) would not extend the lease period for a further period of two years, from the date of amendment. Therefore, for all intents and purposes, in relation to renewal sought under Section 8(3) of the MMDR Act (read with Rule 24A(6) of the Mineral Concession Rules – amended on 18.7.2014), all second renewals which were assumed to be subsisting by State Governments, would expire with effect from the date of the judgment in the Goa Foundation case, i.e., 21.4.2014, and expressly, with effect from 18.7.2014, when the second proviso to Rule 24A(6) provided accordingly. Unless of course, the Government had passed an express order in writing, as mandated under Section 8(3) of the MMDR Act, extending the subsisting mining lease by a second or subsequent renewal.

15. On 16.5.2014, this Court (in the Common Cause case), passed an order requiring the State Government to dispose of pending applications for second and subsequent renewals, within six months. The operative part of the above order is being extracted below:

“10. After considering the report of the CEC as well as the submissions on behalf of the parties, we direct as an interim measure that these 26 leases operating as second and subsequent renewals without any express orders of renewal passed by the State Government will not be allowed to operate by the State Government until express orders are passed in terms of Section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 and we also direct that all renewal applications under Section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 will be considered and disposed of by the State Government within six months from today. We further direct that the State Government will consider first the renewal applications in respect of leases which were granted for captive mining for providing iron or manganese ore as raw material for industries and only thereafter consider the renewal applications in respect of the other leases. In any case, the State Government will ensure that the entire process of consideration and disposal of renewal applications under Section 8(3) of the Act is completed within six months from today. With the aforesaid interim directions, the interim matter stand disposed of.” (emphasis is ours) It seems, that the above direction was breached, as the State Governments, seemingly had no facility or potential, to comply with it. Resultantly, a further order came to be passed in IA No.21 of 2014, which had been filed, for extension of time. The order granting further time of three months, dated 16.5.2014, is extracted hereunder:

After hearing Shri L. Nageswara Rao, learned senior counsel appearing for the State of Orissa, we deem it appropriate to grant them another three months' time from today to comply with the order dated 16.05.2014. We reserve liberty to all the private respondents to object to the orders that may be passed by the State Government while complying with this Court's order dated 16.05.2014.

I.A. No.21 of 2014 is disposed of accordingly.” (emphasis is ours)

16. The Parliament was alive to the predicament of the State Governments. It was also felt, that the regime of grant of mining leases and their renewal(s) needed to be changed, by introducing uniformity in the process. It is therefore, that Section 8A was amended. The instant amendment was inserted in the MMDR Act with effect from 12.1.2015. Section 8A introduced through the above amendment, is being extracted hereunder:

“8A. Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals. — (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-

section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later,

subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government. (9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.”

17. In terms of Section 8A(2) of the amended MMDR Act, all future mining grants, would be for a uniform period of fifty years. Section 8A(3) envisages, that all original mining lease grants, made prior to the insertion of Section 8A, in the MMDR Act (with effect from 12.1.2015) would also be deemed to have been made for a period of fifty years.

18. Section 8A(5) pertains to mining leases granted for captive purposes, and is principally aimed at leaseholders operating under a renewal. Section 8A(5) postulates three different contingencies. Firstly, the period of all mining leases granted before 12.1.2015 “...shall be extended and be deemed to have been extended...” up to 31.3.2030, “...with effect from the date of expiry of the period of renewal last made...”. It is apparent, that the question of an “extension” will ordinarily arise only after an “expiry”. Since both the terms – “extension” and “expiry” find place in sub-section (5), we are of the view, that Section 8A(5) is attracted even after the expiry of a renewal. The instant inference emerges from the use of the words “expiry of the renewal last made”, in sub- section (5). The issue whether, Section 8A would be applicable to a subsisting lease as on 12.1.2015 (when the amended MMDR Act was notified), as was the contention of the non-applicant petitioner, will be examined in further detail immediately hereinafter. The first contingency, therefore, extends to renewed mining leases, which were scheduled to expire before 31.3.2030.

Secondly, the use of the phrase – “renewal last made”, leaves no room for any doubt, that the instant second contingency presupposes an existing (first, second or subsequent) renewal, in favour of the leaseholder. The difference between the first and the second contingency is, the date when the renewal of the mining lease was scheduled to expire. The first contingency, applies to renewed mining leases, which would expire before 31.3.2030. The instant – the second contingency, applies to renewed mining leases, which would expire after 31.3.2030. A perusal of Section 8A of the amended MMDR Act reveals, that the second contingency is aimed at extending the existing lease period, and not reducing it. Therefore, if the period of the existing renewal would extend beyond 31.3.2030, the period contemplated by the renewal itself, has been mandated to be preserved. Thirdly, the regime sought to be introduced also has a reference to an original grant. The scheme/course sought to be introduced under Section 8A(3) of the amended MMDR Act, is intended to be preserved even in situations where a mining leaseholder, is (or has been) carrying on mining operation under a renewal. Since the original lease period of fifty years has been adopted as the overarching rule, the third contingency, aims at allowing the leaseholder, the benefit of treating

the original lease period as of fifty years. Therefore, even during the renewal period, if the period of mining lease would get extended (beyond the renewal period), by treating the original lease as of fifty years, the leaseholder would be entitled to the said benefit under the third contingency. For the leases governed by Section 8A(5), out of the above three contingencies, the contingency as would extend the lease period farthest, would be applicable.

19. A similar contingency has been provided for under Section 8A(6) with reference to mining leases used for non-captive purposes. Herein also, the same three contingencies are contemplated. Firstly, the period of all renewals expiring before 31.3.2020 “...shall be extended and be deemed to have been extended...” up to 31.3.2020, “...with effect from the date of expiry of the period of renewal last made...”. Secondly, if the renewal period in any case would have actually stretched beyond 31.3.2020 – then till the completion of the postulated renewal period. Thirdly, for extending the original lease to fifty years, from the date of grant of the original lease. For leases governed by Section 8A(6) the contingency, as would expire last of all, would be applicable to the leaseholder. No further discussion is being recorded herein, because the discussion in the preceding paragraph, is fully applicable for the interpretation of Section 8A(6) of the amended MMDR Act, except for the substitution of the date 31.3.2020 (as under Section 8A(6) of the MMDR Act) in place of 31.3.2030 (as under Section 8A(5) of the MMDR Act).

20. There is a serious dispute between the rival parties with reference to the interpretation of Sections 8A(3), 8A(5) and 8A(6) of the MMDR Act. Whilst the contention of learned counsel appearing for the petitioner- Common Cause is, that the benefit of sub-sections (3), (5) and (6) of Section 8A, will extend only to such mining leases as were subsisting on the date of introduction of the amendment – 12.1.2015; it is the contention of learned counsel representing the leaseholders, that the above postulation, at the hands of learned counsel for the non-applicants, is wholly misconceived, and would result in a misreading of the amended Section 8A of the MMDR Act.

21. Insofar as the disputed interpretation of Section 8A of the MMDR Act is concerned, the first contention advanced by learned counsel for the petitioner, was founded on sub-section (9) of Section 8A. It was urged, that it was absolutely clear, that the benefit of Section 8A of the MMDR Act, would not extend to such cases where “renewal had been rejected”, or where the mining lease had been “determined”, or where the mining lease had “lapsed”. It was asserted, that the expiry of the original grant or renewal, should be understood to mean, that the lease howsoever granted (original, or renewal) had “lapsed”. And therefore, it was crystal clear, according to learned counsel, that sub-sections (3), (5) and (6) of Section 8A, would be applicable only to leaseholders having a subsisting mining lease on 12.1.2015.

22. The contention advanced on behalf of the petitioners, noticed in the foregoing paragraph, has been vehemently opposed by learned counsel for the leaseholders. It was contended on behalf of the leaseholders, that the terms “rejection”, “determination” and “lapse” were terms of art, used to express different contingencies/situations. According to learned counsel, these terms are contemplated for different exigencies, under the MMDR Act (and the Rules framed thereunder). And that, the said terms cannot be extended to situations beyond those, for which the same are expressly used. It was therefore asserted, that the expiry of the original grant or renewal, would per

se not exclude the applicability of Section 8A.

23. Insofar as the words “renewal had been rejected” (used in Section 8A(9) of the MMDR Act are concerned, it was submitted, that it was clear from the words deployed, that the contemplated contingency applied only to a situation where an application for renewal had been rejected. Namely, that a renewal of a mining lease had been applied for under sub-section (2) or (3) of Section 8 of the MMDR Act, read with Rule 24A of the Mineral Concession Rules, and thereupon, the request for renewal had been rejected. For the term “determination”, reliance was placed on Rules 27(4), 27(5), 29, 37(3) and Part IX Clause 2, Form K of the Mineral Concession Rules. It was contended, that the term “determination” had been deployed for situations where the lease period could be brought to an end, on account of a default having been committed by a leaseholder. For instance, default in the payment of royalty or in the payment of dead rent. The default could also be of violating the lease conditions envisaged under Rule 27(1) or (2) or (3) of the Mineral Concession Rules. A mining lease can also be determined, if the leaseholder had transferred any right, title or interest in a mining lease, in violation of the Mineral Concession Rules. And for a few other defined exigencies. Insofar as the term “lapse” used in Section 8A(9) is concerned, the same according to learned counsel for the leaseholders, pertains to exigencies contemplated under Section 4A(4) of the MMDR Act, and Rules 28 and 28A of the Mineral Concession Rules. The term “lapse” has been used only where the leaseholder(s) has/have committed default of not being in position to carry on (or for not carrying on) mining operations, for a continuous period of two years. On account of either of the above exigencies, a mining lease under the provisions referred to above, would lapse.

24. We do not consider the necessity of extracting the particular provisions relied upon by learned counsel for the leaseholders. We are satisfied in accepting the contention, that the terms “renewal has been rejected”, “determination” and “lapse” are terms used for different contingencies/situations/exigencies under the MMDR Act, and the Mineral Concession Rules. It is also our view, that these terms are not used under the MMDR Act, or under the Mineral Concession Rules, with reference to expiry of the original grant period, or with reference to the expiry of the renewal period. It is therefore not possible for us to accept the contention of learned counsel for the petitioner, that Section 8A(9) can be the legitimate basis for excluding the applicability of Section 8A, the claims of leaseholders, where the period of lease or renewal had expired prior to 12.1.2015.

25. The conclusion drawn by us in the foregoing paragraph, also emerges from the “Objects and Reasons” of the amended MMDR Act. The purpose for which the instant amendment came to be made by the Parliament, whereby the amended Section 8A was inserted into the MMDR Act reveals, that past litigation resulting in different interpretations of the provisions of the MMDR Act, and the alleged hardship caused to the mining industry, due to second and subsequent renewals remaining pending with the State Government without any decision, had occasioned the passing of the instant amendment. The above position emerges from the following excerpts of the statement of “Objects and Reasons”:

“3. The mining sector has been subjected to numerous litigations in the past few years. Important judgments related to the mining sector have been pronounced by the Supreme Court, besides judgments on the issue of allocation of natural resources

which have direct relevance to the grant of mineral concessions.

4. The present legal framework of MMDR Act, 1957, does not permit the auctioning of mineral concessions. Auctioning of mineral concessions would improve transparency in allocation. Government would also get an increased share of the value of mineral resources. Some provisions of the law relating to renewals of mineral concessions have also been found to be wanting in enabling quick decisions. Consequently, there has been a slowdown in the grant of new concessions and the renewal of existing ones.

As a result, the mining sector started registering a decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government has therefore felt it necessary to address the immediate requirements of the mining sector and also to remedy the basic structural defects that underlie the current impasse.

5. In view of the urgent need to address these problems, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was promulgated on 12th January, 2015. The present Bill is to replace this Ordinance. This bill is designed to put in place mechanism for:

- (i) Eliminating discretion;
- (ii) Improving transparency in the allocation of mineral resources;
- (iii) Simplifying procedures;
- (iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country;
- (v) Obtaining for the government an enhanced share of the value of the mineral resources of the country; and
- (vi) Attracting private investment and the latest technology;

6. The salient features of MMDR Amendment Bill, 2015 are as follows:

- (i) Removal of discretion: auction to be sole method of allotment: The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral concessions. The tenure of mineral leases has been increased from the existing 30 years to 50 years. There is no provision for renewal of leases.
- (ii) Impetus to the mining sector: The mining industry has been aggrieved due to the second and subsequent renewals remaining pending. In fact, this has led to closure of a large number of mines. The Bill addresses this issue also. The Bill provides that mining leases would be deemed to be extended from the date of their last renewal to

31st March, 2030 (in the case of captive mines) and till 31st March, 2020 (for the merchant miners) or till the completion of the renewal already granted, if any, or a period of fifty years from the date of grant of such leave, whichever is later.” (emphasis is ours) From a perusal of the extract reproduced above, it is apparent, that the insertion of Section 8A into the MMDR Act, was to address the hardship faced by leaseholders, besides other reasons, due to the second and subsequent applications for renewal, remaining unattended at the hands of the State Government. The instant amendment to the MMDR Act, introduced a uniform original grant period of fifty years, for all mining leaseholders.

It also excluded renewal(s), after the expiry of the original lease period. Accordingly, no renewal application can now be filed (after 12.1.2015). Under sub-sections (5) and (6) of Section 8A, in our view, such leaseholders who had moved applications for renewal of captive/non-captive mines, would be entitled to continue up to 31.3.2030/31.3.2020. The “Objects and Reasons” for the amendment to the MMDR Act aim at remedying the position which emerged upon the interpretation of the provisions of the MMDR Act, as they existed hitherto before. The instant amendment was also directed at remedying the grievances of the mining industry due to “second and subsequent renewals” remaining pending. And also, because the provisions of law relating to renewals had been found to be wanting. The above view is also endorsed by the fact, that Section 8A(9) deals with a situation wherein “...renewal has been rejected...”. It is therefore apparent, that sub-sections (5) and (6) of Section 8A of the amended MMDR Act are aimed at situations, wherein an application for renewal (validly made) has remained unattended. Therefore, for no fault of the leaseholder, he would be subjected to an arbitrary prejudice. It needs to be clarified, that since an application for renewal cannot be filed after 12.1.2015, an application for renewal as would be treated as having been validly made, ought to have been made before 12.1.2015. We are of the view, that out of the three contingencies contemplated under sub-sections 8A(5) and 8A(6), referred to above, the first of the contingencies positively, pertains to a situation, wherein applications validly made for renewal, were pending without any final decision at the hands of the State Government. Because in the absence of a renewal application, the leaseholder can be taken to have already expressed his disinterest, to continue mining operations. Therefore logically, the words “... with effect from the date of expiry of the period of renewal last made ...”, should relate to an expired lease prior to 12.1.2015, in relation to which a valid application for renewal had already been made.

26. We also feel persuaded in accepting the contention advanced at the hands of learned counsel representing the leaseholders, that the words “... with effect from the date of expiry of the period of renewal last made ...” cannot be overlooked. In our considered view, there is no ambiguity in the aforesaid words. The plain reading of the quoted words, can lead to one and only one inference, namely, that the situation contemplated under sub- sections (5) and (6) of Section 8A of the amended MMDR Act (wherein both the above words have been used), includes a situation when the lease period contemplated by a renewal, is scheduled to expire before 31.3.2030/31.3.2020. We are satisfied in clarifying, that the situation contemplated by the use of the aforesaid words, would extend to a leaseholder who had moved a valid application for renewal to the State Government, which was yet to be considered and disposed of, prior to 12.1.2015. The instant situation, is not excluded by the contingencies contemplated under Section 8A(9) of the amended MMDR Act. For

the reasons recorded in the instant paragraph, as also, in the preceding paragraphs (wherein Section 8A of the amended MMDR Act, has been considered and interpreted), we are satisfied to hold, that the applicability of Section 8A of the amended MMDR Act need not only extend to leaseholders whose original lease/renewal lease period had not expired, but would also extend to leaseholders whose term of lease/renewal had expired prior to 12.1.2015 and the concerned leaseholder(s) had moved a valid application for renewal, at least twelve months before the leaseholder's existing lease (original, first, second or subsequent) was due to expire, and whose application has not been considered and rejected.

27. Irrespective of the position noticed herein above, it is imperative for us to clarify, that the benefit of extension of the lease period postulated under Section 8A of the MMDR Act is available, subject to a further overriding condition, namely, "... that all the terms and conditions of the lease have been complied with". A leaseholder who does not satisfy any of the required conditions of the lease, as for instance, the postulated clearances/approvals/consent, would not be entitled to the benefits extended under sub-section (5) or (6) of Section 8A of the amended MMDR Act.

28. Having addressed the issue with reference to the subsistence of a mining lease, on the basis of an interpretation of Sections 8 and 8A of the MMDR Act, we have substantially covered the area needed to be traversed. It is however important to notice, that one further aspect needs to be dealt with. The same emerges from a collective reading of Section 4A(4) of the MMDR Act and Rules 28, and 28A of the Mineral Concession Rules. Section 4A(4) was substituted for the earlier Section 4A with effect from 10.2.1987, as under:

"4-A. Termination of prospecting licences or mining leases.— xxx xxx xxx (4) Where the holder of a mining lease fails to undertake mining operations for a period of two years after the date of execution of the lease or having commenced mining operations, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the mining operations:

Provided that the State Government may, on an application made by the holder of such lease before its expiry under this sub-section and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to continue such operations for reasons beyond his control, make an order, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse: Provided further that the State Government, may on an application by the holder of a lease submitted within a period of six months from the date of its lapse and on being satisfied that such non-commencement or discontinuance was due to reasons beyond the control of the holder of the lease, revive the lease from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the lease: Provided also that no lease shall be revived under the second proviso for more than twice during the entire period of the lease." (emphasis is ours) A perusal of the aforesaid provision reveals, that where a holder of mining lease, does not carry out mining operations for a continuous period of two years, his mining lease would lapse.

It was the contention of learned counsel for the petitioner – Common Cause, as also, that of the learned Additional Solicitor General, that the operation of Section 4A(4) is automatic, and requires no order to be passed. It was submitted, that as soon as the leaseholder has committed the default of not being in a position to carrying on (or for not having actually carried on) mining operations, for a continuous period of two years, the lease would lapse. The above two exigencies will be referred to as the first, and the second contingency respectively, hereinafter.

29. According to learned counsel, the only remedy available to such a leaseholder, to prevent the lease from lapsing is, to move an application, either prior to the expiry of the period of two years (of non-mining operations), or thereafter. The State Government on being satisfied, that mining operations were not discontinued as expressed above, for the reasons beyond the control of the leaseholder, could make an order, in the first contingency, that the lease would not lapse. And in the second contingency, that the lease would rematerialize.

30. It is not possible for us to accept, that vital vested rights in a leaseholder, can be curtailed without affording him an opportunity to repudiate the impression(s) of the competent authority, namely, that the leaseholder could not have (or had actually not) carried out mining operations, for a continuous period of two years. Our instant contemplation, stands affirmed through Rule 28 of the Mineral Concession Rules. The same is reproduced below:

“28. Lapsing of leases – (1) Subject to the other conditions of this rule where mining operations are not commenced within a period of one year (sic. two years) from the date of execution of the lease, or is discontinued for a continuous period of one year (sic. two years) after commencement of such operations, the State Government shall, by an order, declare the mining lease as lapsed and communicate the declaration to the lessee. (2) Where a lessee is unable to commence the mining operation within a period of one year (sic. two years) from the date of execution of the mining lease, or discontinues mining operations for a period exceeding one year (sic. two years) for reasons beyond his control, he may submit an application to the State Government, explaining the reasons for the same, at least three months before the expiry of such period. (3) Every application under sub-rule (2) shall be accompanied by a fee of Rs.200.

(4) The State Government may on receipt of an application made under sub-

rule (2) and on being satisfied about the adequacy and genuineness of the reasons for the non-commencement of mining operations or discontinuance thereof, pass an order before the date on which the lease would have otherwise lapsed, extending or refusing to extend the period of the lease:

Provided that where the State Government on receipt of an application under sub-rule (2) does not pass an order before the expiry of the date on which the lease would have otherwise lapsed, the lease shall be deemed to have been extended until the order is passed by the State Government or until a period of two years, whichever is earlier.

Explanation 1. - Where the non-commencement of the mining operations within a period of two years from the date of execution of mining lease is on account of –

- (a) delay in acquisition of surface rights; or
- (b) delay in getting the possession of the leased area; or
- (c) delay in supply or installation of machinery; or
- (d) delay in getting financial assistance from banks, or any financial institutions; or
- (e) ensuring supply of the mineral in an industry of which the lessee is the owner or in which he holds not less than 50% of the controlling interest, and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for non-commencement of operations for a continuous period of more than one year (sic. two years).

Explanation 2. - Where the discontinuance of mining operations for a continuous period of two years after the commencement of such operations is on account of –

- (a) orders passed by any statutory or judicial authority; or
- (b) operations becoming highly uneconomical; or
- (c) strike or lock out, and the lessee is able to furnish documentary evidence supported by a duly sworn affidavit, the State Government may consider if there are sufficient reasons for discontinuance of operations for a continuous period of more than one year (sic. two years).

Explanation 3. - In case of mining lessee who has undertaken reconnaissance operations or in case of mining lessee whose capital investment in mine development is planned to be in excess of Rs. 200 crores and where the mine development is likely to take more than two years, the State Government shall consider it to be sufficient reason for non-commencement of mining operations for a continuous period of more than two years.” (emphasis is ours) It is apparent from a perusal of sub-rule (1) extracted above, that the State Government is mandated to pass an order, and thereby, declare that a mining lease had lapsed. It is also the mandate of sub-rule (1) aforesaid, that such an order passed by the State Government, must be communicated to the leaseholder. On a conjoint reading of Section 4A(4) and Rule 28(1), we are satisfied to hold, that a mining lease under Section 4A(4) would not be deemed to have lapsed, till the State Government passes an order, declaring the

mining lease to have lapsed, and further communicates the same to the leaseholder.

31. Rule 28(4) of the Mineral Concession Rules, caters to a situation wherein a leaseholder has moved an application, that his lease be permitted to continue even though mining operations could not be carried on (or had actually not been carried on) for a continuous period of two years. The proviso under Rule 28(4) is clear and categorical to the effect, that in cases where the State Government, on receipt of such application, does not pass an order, the lease would be deemed to have been extended, until an order was actually passed by the State Government. This further affirms, that lapse of a mining lease is not automatic. Despite non-operation of a mining lease under Rule 28(2), in case the leaseholder has moved an application for extension, on account of non-commencement of mining operations, or on account of discontinuation of mining operations, the lease period shall be deemed to have continued till the date of passing the order, or for a period of two years beyond the contemplated lease period (in case such an order is not passed). The above conclusions, rule out the submissions advanced on behalf of the non-applicant – petitioner and the Union of India, that lapse (contemplated under Section 4A(4) of the MMDR Act) is automatic, and that, for a lease to lapse, no express order needs to be passed.

32. Based on the considerations recorded above, we summarise our conclusions as under:

(i) A leaseholder would have a subsisting mining lease, if the period of the original grant was still in currency on 12.1.2015. Additionally, a leaseholder whose original lease has since expired, would still have a subsisting lease, if the original lease having been renewed, the renewal period was still in currency on 12.1.2015. Such a leaseholder, would be entitled to the benefit of Section 8A of the amended MMDR Act.

(ii) A leaseholder who had not moved an application for renewal of a mining lease (which was due to expire, prior to 12.1.2015), at least twelve months before the existing lease was due to expire, under the provisions of the unamended MMDR Act and the Mineral Concession Rules, will be considered as not a valid/subsisting leaseholder, after the expiry of the lease period. The provisions of the amended MMDR Act will therefore not enure to the benefit of such leaseholder.

(iii) A leaseholder who has moved an application for renewal (of the original/first or subsequent renewal) of a mining lease, at least twelve months before the existing lease was due to expire, and on consideration, such an application has been rejected, will be considered as not a valid/subsisting leaseholder. The provisions of the amended Section 8A of the MMDR Act will not enure to the benefit of such leaseholder, because of the express exclusion contemplated for the above exigency, under Section 8A(9) of the amended MMDR Act.

(iv) A leaseholder who has moved an application for “first renewal” of the original mining lease, at least twelve months before the original lease was due to expire, and such application has not been rejected, will be considered to be a valid leaseholder

having a subsisting right to carry on mining operations, till the expiry of two years after 18.7.2014, i.e., up to 17.7.2016, as is apparent from a conjoint reading of the unamended and amended Rule 24A of the Mineral Concession Rules. Such leaseholder would have the benefit of sub-sections (5) and (6) of Section 8A of the amended MMDR Act.

(v) A leaseholder who had moved a second (third or subsequent) renewal application under Section 8(3) of the unamended MMDR Act, at least twelve months before the renewed lease was due to expire, and whose application had not been considered and rejected (though not entitled to any benefit under the unamended Section 8A of the MMDR Act and the amended Rule 24A(6) of the Mineral Concession Rules) up to 12.1.2015, would still have the benefit of sub-sections (5) and (6) of Section 8A of the amended MMDR Act, in view of the situation sought to be remedied by the Mines and Minerals (Development and Regulation) Amendment Act, 2015.

(vi) Consequent upon the amendment of Section 8A of the MMDR Act, the regime introduced through sub-sections (5) and (6) thereof, provides for three contingencies where benefits have been extended to leaseholders whose lease period had earlier been extended by a renewal. Firstly, for a leaseholder whose renewal period had expired before 12.1.2015, and the leaseholder had moved an application for renewal at least twelve months before the leaseholder's existing lease was due to expire, and whose application has not been considered and rejected, the lease period would stand extended up to 31.3.2030/31.3.2020 (in the case of captive/non-

captive mines, respectively). Additionally, a leaseholder whose period of renewal would expire after 12.1.2015, but before 31.3.2030/31.3.2020, the lease period would stand extended up to 31.3.2030/31.3.2020 (in the case of captive/non-captive mines, respectively). Secondly, where the renewal of the mining lease already extends to a period beyond 31.3.2030/31.3.2020 (in the case of captive/non-captive mines, respectively), the lease period of such leaseholders, would continue up to the actual period contemplated by the renewal order. Thirdly, a leaseholder would have the benefit of treating the original lease period as of fifty years. Accordingly, even during the renewal period, if the period of the mining lease would get extended (beyond the renewal period) by treating the original lease as of fifty years, the leaseholder would be entitled to such benefit.

Out of the above three contingencies provided under sub-sections (5) and (6) of Section 8A, the contingency as would extend the lease period farthest, would enure to the benefit of the leaseholder.

(vii) Based on the interpretation placed by us on Section 4A(4) of the MMDR Act, and Rule 28 of the Mineral Concession Rules, we can draw the following conclusions. Firstly, unless an order is passed by the State Government declaring, that a mining lease has lapsed, the mining lease would be deemed to be subsisting, up to the date of expiry of the lease period provided by the lease document. Secondly, in situations wherein an application has been filed by a leaseholder, when he is not in a position to (or for actually not) carrying on mining operations, for a continuous period of two years, the lease period will not be deemed to have lapsed, till an order is passed by the State Government

on such application. Where no order has been passed, the lease shall be deemed to have been extended beyond the original lease period, for a further period of two years. Thirdly, a leaseholder having suffered a lapse, is disentitled to any benefit of the amended MMDR Act, because of the express exclusion contemplated under Section 8A(9) of the amended MMDR Act.

.....J. (Jagdish Singh Khehar)J. (C. Nagappan) New Delhi;

April 04, 2016.