National Confederation Of Officers ... vs Union Of India on 18 November, 2021

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Bench: B V Nagarathna, Dhananjaya Y Chandrachud

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
Writ Petition (C) No 229 of 2014

National Confederation of Officers Association
of Central Public Sector Enterprises and Ors. ....Petitioners

Versus

Union of India & Ors. .... Respondents

 organization called the National Confederation of Officers Association1 has invoked the jurisdiction of this Court under Article 32 of the Constitution. The Confederation, which is a trade union registered under the Trade Unions Act 1926, is joined in these proceedings by three other petitioners, including a former employee of Hindustan Zinc Limited2. The members of the Confederation are, or have been, employees of public sector undertakings. Their grievance in these proceedings arises from the Union Government's disinvestment of its shareholding in HZL, the fourth respondent. According to the petitioners, HZL is not a loss incurring unit and the disinvestment does not sub-serve public interest. Parliament acquired the undertaking by the Metal Corporation (Nationalisation and Miscellaneous) Provisions Act 19763. In pursuance of its acquisition, the undertaking came to be vested in a government company. HZL is stated to be a 'mini-navratna' company with a cash liquidity resource of over Rs 20,000 crores. According to the petitioners, the Union Government's divestment of its shareholding in HZL is in violation of the judgment of a two-judge Bench of this Court in Centre for Public Interest Litigation v. Union of

India 4 . In the proceedings as they stand, the challenge is to the proposed disinvestment of the residual shareholding of the Union Government in HZL, representing 29.54 per cent (approx.) of the equity capital. “Confederation” “HZL” “Nationalisation Act 1976” [“Centre for Public Interest Litigation”] (2003) 7 SCC 532 PART A 2 Metal Corporation of India Limited was incorporated in 1944 as a public limited company under the Companies Act 1913. It was the sole producer of zinc and lead from its mines situated at Zawar in Rajasthan. The company had established a lead smelter plant at Tundoo, near Dhanbad, in the then State of Bihar for producing lead, silver and other by-products. Subsequently it installed a zinc smelter at Debari, near Udaipur. Given the strategic importance of zinc and lead, the Union Government took a decision to acquire the company by a legislation. 3 On 22 October 1965, the President promulgated the Metal Corporation of India (Acquisition of Undertaking) Ordinance for acquisition of the undertaking by the Union Government. Possession, control and administration was taken over by the Union Government on 23 October 1965. A petition under Article 226 of the Constitution was instituted in 1965 5 by the corporation and its managing director before the Circuit Bench in New Delhi of the then Punjab High Court, for challenging the constitutional validity of the Ordinance. During the pendency of the proceedings, the Ordinance was replaced by Act 44 of 1965 which led to the institution of another writ petition6 challenging its validity. On 10 January 1966, HZL was incorporated as a public sector company to develop the mining and smelting capacities, so as to substantially fulfil the domestic demand for zinc and lead. 4 On 14 March 1966, the Punjab High Court held that the Ordinance and the enactment that replaced it, violated Article 31 of the Constitution and were void. The WP 631-D of 1965 WP 832-D of 1965 PART A appeal by the Union of India was dismissed by this Court on 5 September 1966, in Union of India v. Metal Corporation of India Ltd7. On 13 September 1966 another Ordinance, Ordinance No 10 of 1966, was promulgated by the President for the acquisition of the undertaking of Metal Corporation of India Limited. The Ordinance was replaced by an Act of Parliament (Act 36 of 1966) which came into force on 3 December 1966. This led to another round of proceedings under Article 226 of the Constitution8 before the Calcutta High Court. The petition was dismissed by a Single Judge of the Calcutta High Court on 1 April 19699 on the ground of res judicata. 5 On 2 August 1976, the President promulgated the Metal Corporation (Nationalisation and Miscellaneous Provisions) Ordinance. This Ordinance was replaced by Act No. 100 of 1976, on 7 September 1976.

6 The Union Government took steps for the disinvestment of its shareholding in HZL. In 1991-92, in the first tranche, the Union Government disinvested 24.08 per cent of its shareholding in the domestic market. Of this, 12.54 per cent was acquired by financial institutions, 7.58 per cent by corporate bodies and non-resident Indians and 3.96 per cent by Indian nationals. HZL was listed on stock exchanges. As a result of the disinvestment, the Union Government was left with a 75.92 per cent stake in HZL.

(1967) 1 SCR 255 WP 551 of 1966 AIR 1970 Calcutta 15 PART A 7 The second tranche of disinvestment of the Union Government’s shareholding in HZL took place in pursuance of the Union Government’s decision to disinvest 26 per cent of its shareholding in HZL to a ‘strategic partner’, by selling 10,98,58,294 fully paid-up equity shares of Rs 10 each, at Rs 40.51 per share, aggregating to Rs 445 crores (approx.). A Shareholders’ Agreement and a Share Purchase Agreement were executed on 4 April 2002 with Sterlite Opportunities & Ventures Ltd.10, the third

respondent, who was chosen as the strategic partner. In terms of these agreements, the Union Government disinvested 26 per cent of its equity in HZL in favour of SOVL. Consequent to the sale of the equity stake, the Union Government was left with an equity holding of 49.92 per cent.

8 On 5 November 2003, a public interest litigation, invoking the jurisdiction under Article 226 of the Constitution, was instituted before the Jodhpur Bench of the Rajasthan High Court11 by a person named Rajendra Kumar Razdan, to challenge the second tranche of disinvestment - of the 26 per cent equity holding of the Union Government in HZL. After the petition was entertained by the High Court, the Union Government moved a transfer petition12 before this Court under Article 139A(1) in which further proceedings were stayed on 9 February 2004 by a three-judge Bench of this Court. On 11 October 2004, this Court allowed the transfer petition, together with other similar petitions seeking a transfer of proceedings, also challenging the disinvestment by the Union Government in other government companies. On 23 "SOVL" DB (C) Writ Petition No 6340 of 2003 Transfer Petition (C) No 830 of 2003 PART A August 2006, a three-judge Bench of this Court dismissed writ petitions challenging the disinvestment of the shareholding of the Union Government in other government companies – namely, Engineers India Limited, National Fertilizers Limited and Burn Standard Company Limited 13 .The dismissal of these petitions followed upon affidavits filed on 14 December 2005, 27 July 2005 and 18 August 2005 stating that the Union Government was reconsidering the sale of these companies, rendering the writs infructuous.

9 While the challenge to the disinvestment of the 26 per cent shareholding was pending before this Court, on 10 April 2002, SOVL acquired 20 per cent of the equity in HZL from the open market by a mandatory open offer, in compliance with the Securities and Exchange Board of India's 14 norms. As a consequence of the acquisition, the holding of SOVL in HZL rose to 46 per cent. The Board of Directors of HZL was reconstituted. Following this acquisition, the shareholding pattern in HZL was as follows:

> • SOVL – 46 per cent (comprising 26 per cent shares purchased from the Union Government and 20 per cent acquired from the open market);
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> • Union Government – 48.45 per cent; and • Public – 5.55 per cent.
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> WP (C) Nos. 487, 569, 586 and 587 of 2003 "SEBI" PART A

10 On 13 May 2009, Rajendra Kumar Razdan's writ petition challenging the disinvestment of the Union Government's 26 per cent equity holding in HZL, was dismissed as withdrawn, following an application for withdrawal by the petitioner. 11 The Shareholders' Agreement between the Union Government and SOVL envisaged two call options. SOVL exercised its first call option for 18.92 per cent of the equity holding in August 2003, which was transferred in its favour in November 2003. Following this acquisition, SOVL became a majority shareholder with a 64.92 per cent equity stake in HZL.

12 In 2012, the Union Government announced its decision to disinvest its residuary shareholding of 29.54 per cent in HZL 15 . On 31 October 2012, Maton Mines Mazdoor Sangh instituted a petition 16 under Article 32 of the Constitution before this Court challenging the proposed disinvestment of the residuary shareholding of the Union Government. This petition was summarily dismissed by a three-judge Bench of this Court on 10 December 2002. 13 On 6 November 2013, the Central Bureau of Investigation 17 - the fifth respondent - initiated a preliminary enquiry into suspected irregularities in the course of the disinvestment of the 26 per cent of equity holding of the Union Government to SOVL in 2002.

Interchangeably referred as “29 per cent” “Maton Mines Mazdoor Sangh” WP (C) 513 of 2012 “CBI” PART B 14 The present public interest litigation under Article 32, was instituted on 14 February 2014. Two reliefs have been sought in these proceedings: (i) A mandamus directing the Union Government and the Department of Disinvestment to refrain from disinvesting the residual shareholding of 29.54 per cent in HZL without amending the Nationalisation Act 1976; and (ii) a direction to the CBI to periodically file status reports before this Court in respect of the investigation being conducted by it, so that it can be monitored by this Court till the filing of the charge-sheet in the appropriate court.

15 On 6 March 2017, CBI filed a closure report with reference to the preliminary enquiry stating that it did not disclose facts which would warrant the registration of a criminal case.

16 The filing of pleadings has been completed.

B Submissions of Counsel

17 Mr Prashant Bhushan, learned senior counsel appearing on behalf of the

petitioners has stressed upon the importance of the residual 29.54 per cent shareholding of the Union Government in HZL. Learned senior counsel has clarified that the challenge is not to the policy of disinvestment, but the manner in which it has taken place. The submissions are summarized below:

PART B

(i) The decision to disinvest the residual shareholding of the Union Government in HZL cannot be undertaken without amending the provisions of the Nationalisation Act 1976;

(ii) Besides yielding profits, the 29 per cent shareholding of the Union Government ensures that no decision which requires the passage of a special resolution under the Companies Act 2013 can be adopted without its support, which effectively gives it a veto over key decisions concerning HZL. The control of the Union Government is wielded under the provisions of Section 134(2) and Section 47 of the Companies Act

2013. Under the Companies Act 2013, several matters requiring the passing of a Special Resolution, are tabulated below:

PART B Section Matters requiring Special Resolution as per numbers the Companies Act 2013 5 Alteration of Articles of Association while converting from Private Limited to Public Limited and vice versa 12 To change the registered office of the company outside the local limits of the city, town or village 13 For Alteration of Memorandum of Association of the Company 14 For Alteration of Article of Association of the Company 13 & 27 Change in the Object Clause of the Memorandum of Association of the Company 41 To issue Global Depositary Receipt in any foreign country 54 Issue of Sweat Equity Shares (Except this share cannot be issued at discount) 62 For issuing further shares to Employees of the Company under the scheme of Employee Stock Option Plan and to determine the terms of issuing Debentures convertible into shares PART B 66 Reduction of Share Capital 68 Buy Back of Shares 71 To issue Debenture convertible into Shares, wholly or partly 140 Removal of Auditor appointed u/s.139 before expiry of his term and after approval of Central Government 149(1) Appointment of more than 15 Directors 149(10) Re-appointment of Independent Director for a further period of 5 years 165 Member of the Company, may by Special Resolution specify any lesser number of companies in which a Director of the Company may act as Director 180 Restriction of powers of Board 186 Loans and Investment by the Company 196 Appointment of persons aged 70 years or more as Managing Director, Whole Time Director or Manager 197 To pay Remuneration to Directors in excess of Schedule V PART B 210 To apply to the Central Government to conduct an investigation into the affairs of the Company 212 To apply to the Serious Fraud Investigation Office to conduct an investigation into the affairs of the Company 248 To make an application to the Registrar for Striking-off the name of the Company 271 Winding up of the Company by the Tribunal 371 For Addition of Table F in Schedule I (Article of Association)

(iii) The Nationalisation Act was enacted in 1976, in pursuance of the policy of the Union Government to acquire control over the deposits of lead and zinc, as a matter of strategic national interest;

(iv) The strategic importance of the deposits of lead and zinc is underscored in the Statement of Objects and Reasons accompanying the introduction of Bill in the Parliament, and by the provisions of Sections 4, 7 and 9 of the Nationalisation Act 1976, under which the acquired undertaking was vested in a government company within the meaning of Section 617 of the Companies Act 1956;

(v) In 2002, the Union Government acted in a manner contrary to the express mandate of the statute when it disinvested its 26 per cent shareholding, in favour of a strategic partner. The decision to offload 29 per cent of the PART B residual shareholding will compound the illegal act which was committed in 2002;

(vi) The Nationalisation Act 1976 prohibits the government from taking any step by which the acquired undertaking ceases to be a government company. Though HZL ceased to be a government company in 2002 following the disinvestment of 26 per cent of the equity shareholding of the Union Government, yet the residual shareholding enables the government to ensure that the strategic mineral deposits of lead and zinc would be used for the common good. These strategic considerations have been emphasized by the one hundred and fifth Parliamentary Committee Report, 2002; and

(vii) The law on the subject has been enunciated in the judgment of this Court in Centre for Public Interest Litigation (supra). In view of this elucidation of legal principle, when the acquisition has taken place under an Act of Parliament, any disinvestment by the Union Government can be undertaken only with the approval of Parliament or through its intervention. 18 On the basis of the above propositions, the petitioners question the decision of the Union Government to disinvest its residual shareholding of 29.54 per cent. Besides the first limb of submissions noted above, the second limb of submissions, seeks to question the decision of the CBI to close the preliminary enquiry. In this context, it has been urged that:

> PART B
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> (i) The decision of the Constitution Bench in Lalita Kumari v. Government of Uttar Pradesh18 stipulates that if an FIR is not registered following a preliminary enquiry (a class of cases was carved out where a preliminary enquiry may be held before the registration of an FIR involving a cognizable offence), the complainant must be furnished with a copy of the reasons for closing the enquiry;
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> (ii) Normally, the informant at whose behest an FIR is registered can challenge the final report under Section 173 of the CrPC, but this avenue is not available in a case where the CBI decides not to register a regular case after a preliminary enquiry;
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> (iii) CBI's submission to the effect that the preliminary enquiry was conducted not on the basis of the complaint which was lodged by the brother of one of the petitioners, but on the basis of source information is an attempt to obviate compliance with the mandate of the decision in Lalita Kumari (supra);
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> (iv) The decision to close the preliminary enquiry disregarded the advice tendered to the CBI by several of its officers that a regular case should be registered; and
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> (v) A disclosure of the circumstances which have led to the closure of the preliminary enquiry should be made to the petitioner, particularly in the ["Lalita Kumari"] (2014) 2 SCC 1 PART B context of the allegations which have been levelled against the then Attorney General in respect of an opinion tendered by him.

19 Opposing the above submissions, Mr Tushar Mehta, learned Solicitor General appearing on behalf of the Union Government submitted that:

(i) The petition is barred by the principles of res judicata since this Court had dismissed Maton Mines Mazdoor Sangh's writ petition on 10 December 2012 on the very issue which has been pressed in the present proceedings;

(ii) The disinvestment of the equity shareholding of the Union Government in public sector corporations commenced after the Industrial Policy Statement of 24 July 1991. In 1991-92, the minority shareholding of the Union Government in thirty central public sector enterprises was sold to selected financial institutions – the Life Insurance Corporation, General Insurance Corporation and Union Trust of India. The Union Government sold 24.08 per cent of its shareholding in HZL in 1991-92 to these financial institutions;

(iii) According to the White Paper on Disinvestment of Public Sector Enterprises dated 31 July 2007, the policy of disinvestment has evolved through the Budget Speeches of Union Finance Ministers;

(iv) In spite of the policy of disinvestment, the following industries were proposed to be reserved for the public sector in terms of the industrial policy statement dated 24 July 1991:

PART B "(i) Arms and Ammunitions and Allied items of defence equipment, defence aircraft and warships.

(ii) Atomic Energy

(iii) Coal and Lignite

(iv) Mineral Oils

(v) Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond.

(vi) Mining of copper, lead, zinc, tin, molybdenum and wolfram.

(vii) Minerals specified in the Schedule to the Atomic Energy (Control of Production arid Use) Order, 1953.

(viii) Railway transport."

(v) After the establishment of the Public Sector Disinvestment Commission on 23 August 1996, the Union Government on 16 March 1999 classified public sector enterprises into 'strategic' and 'non-strategic areas' for the purpose of disinvestment. Strategic industrial public sector enterprises were those functioning in the areas of "(i) Arms and Ammunition and the allied items of defence equipment, defence

aircrafts and warships;

(ii) Atomic Energy (except in the area related to the generation of nuclear power and applications of radiation and radio-isotopes to agriculture medicine and non-strategic Industries);

(iii) Railway Transport."

(vi) The Union Government disinvested 26 per cent of its shareholding through a strategic sale to SOVL, through a Share Purchase Agreement on 27 March 2002. It also executed a Shareholders' Agreement dated 4 April 2002 with SOVL. The Union Government also sold 1.47 per cent of its shareholding to employees of HZL in November 2002. In November 2003, SOVL exercised its first call option under Article 5.8 of the Shareholders' Agreement and acquired 18.92 per cent of the shareholding. Prior to this, PART B SOVL acquired 20 per cent of the share capital of HZL from the public in an open offer. As a cumulative consequence, the shareholding of SOVL had risen to 64.92 per cent in 2003. HZL ceased to be a government company from March 2002;

(vii) Significantly, the executive decisions to disinvest the shareholding of the Union Government until 2002 have not been challenged by the petitioners and only the proposed sale of the residual shareholding of 29.54 per cent is raised in these proceedings;

(viii) The decision in Centre for Public Interest Litigation (supra) would have no application for the reason that HZL had ceased to be a government company following the process of disinvestment which took place in 1991- 92 and 2002;

(ix) The Union Government cannot be restrained from disinvesting its shareholding in a company which is listed as a limited company, especially since the process of disinvestment by which the company ceased to be a government company within the meaning of Section 617 of the Companies Act 1956 has not been challenged;

(x) The Union Government has stated on affidavit that the residual shareholding of 29.54 per cent will be sold in the open market, strictly in accordance with SEBI rules and regulations; and

(xi) The assumption that zinc is a strategic asset whose control must continue to remain with the Union Government is no longer valid. PART B 20 As regards the second limb of submissions, relating to the preliminary enquiry by CBI, an affidavit dated 4 March 2020 has been filed in these proceedings stating that (i) the former Attorney General had not advised SOVL at any stage in regard to the process of disinvestment in HZL; and (ii) CBI had, after considering the entire material which has been obtained during the course of the preliminary enquiry, decided to close the preliminary enquiry. In any event, the sale of the residual 29.54 per cent shareholding cannot be interdicted on the basis of a CBI enquiry into what transpired nearly two decades ago in 2002, in respect of an earlier disinvestment. 21 The Solicitor General submitted that it is estimated that the 29.54 per cent residual shareholding has a value of about Rs 40,000 crores and a considered decision has been taken by the Union Government to offload it in the open market so as to strengthen revenues for public purposes.

22 Mr Harish Salve, learned Senior Counsel appearing on behalf of SOVL, has urged the following submissions:

> (i) The first prayer which seeks to challenge the disinvestment of the residual 29.54 per cent shareholding of the Union Government is barred by the principles of res judicata, following the dismissal on 10 December 2012, of the earlier writ petition instituted by Maton Mines Mazdoor Sangh;

(ii) At the time of privatization in 2002, a contract was entered into in the form of a Shareholders' Agreement which conferred SOVL with a call option to PART B acquire shares in HZL, upon fulfilling certain parameters, including the residual 29.54 per cent shares;

(iii) Since the disinvestment of 70.5 per cent shares in the first instance is not under challenge, HZL has ceased to be a government company governed by the Nationalisation Act 1976. Effective management and control stand transferred to SOVL. The transfer of 29.54 per cent of the residual equity shareholding by the Union Government of a company in which it has no surviving control would only raise finances for the government and does not impact management or control;

(iv) Following the disinvestment in HZL in 1991-92, 24.08 per cent of its equity shareholding was sold by the Union Government in the domestic market, reducing its stake to 75.92 per cent. In April 2002, when the government transferred another 26 per cent in favour of SOVL, its shareholding was reduced to 49.92 per cent. SOVL further acquired 20 per cent of equity from the open market, by an open offer, which raised its holding in HZL to 46 per cent;

(v) In August 2003, SOVL exercised its first call option to acquire 18.92 per cent equity shares from the government, increasing its shareholding in HZL to 64.92 per cent; and

(vi) HZL is a listed public company whose shares are traded on the Bombay Stock Exchange and National Stock Exchange. There is no prohibition in the judgment of this Court in Centre for Public Interest Litigation (supra) on the sale of shares held by the government in such a company. The PART B earlier disinvestment in 2002 took place as a result of competitive bidding and there is not a tittle of evidence before the Court to show that the valuation was incorrect.

23 In compliance with an interim direction, CBI has submitted an affidavit dated 4 March 2020, detailing its submissions with respect to the allegations regarding the irregularity in the disinvestment of the 26 per cent shareholding of the Union Government in HZL, in 2002. It has stated:

> (i) A preliminary enquiry was registered on 6 November 2013, on the basis of "source information" received. C P Babel, the brother of the third petitioner, is not the original complainant. The memo of parties (sic) does not mention his name;
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> (ii) The CBI Manual details a decision-making process where opinions of various authorities in the administrative hierarchy are recorded and a final decision is taken

by the competent authority;

(iii) The subject was never placed before the Attorney General, and he has had no occasion to opine on the matter; and

(iv) Based on the preliminary enquiry conducted in accordance with the CBI Manual, a self-contained note dated 6 March 2017 was submitted, closing the preliminary enquiry, without registering a regular case.

24 In rejoinder, Mr Prashant Bhushan, submitted that:

(i) HLZ holds 80 per cent of the national deposits of zinc;

PART C

(ii) HZL is the largest producer of zinc, which is used in the defence sector;

(iii) Parliamentary legislation, the Nationalisation Act 1976 in the present case, cannot be overridden by the executive arm of the government;

(iv) 26 per cent of the equity holding of the government was sold in 2002 for a paltry consideration of Rs 400 crores; and

(v) There is no document or material before this Court to indicate that the value of the residual shareholding of the Union Government stands at Rs 40,000 crores.

25 The rival submissions come up for analysis.

C Res Judicata and PILs

26 The Union Government and SOVL have objected to the maintainability of the present writ petition, and sought its dismissal at the threshold on the ground of res judicata. It has been contended that the reliefs sought in the petition overlap with the reliefs sought by the petitioners in the earlier petition instituted by Maton Mines Mazdoor Sangh, which was dismissed by a three-judge Bench of this Court on 10 December 2012. The reliefs sought in the earlier petition were in the following terms:

"(i) To appoint a High Powered Committee comprising of such individuals of technical / financial expertise whom this Hon'ble Court deems fit to assess the net worth of Hindustan Zinc Ltd. at the time of initial disinvestment in the year 2002 and therefore, declare the initial disinvestment of 2002 to be void ab initio and against the law of land laid down by this Hon'ble Court in the case of 'Centre of Public

Interest Litigation Vs. Union of India' reported in (2003) 7 SCC 532 as per the Judgment dated 16.09.2003 and issue consequential directions in that regard;

PART C

(ii) Direct the Respondent No. l to refrain from further sale of the remaining equity of 29.54% to SOVL or any other party and thereby swindling of properties, Plant & Machineries and other valuable assets for all times to come, as reported in the Newspapers and quoted in the preceding paragraphs:

(iii) Direct the Respondent No.1 to retake the 18.92% equity sold to SOVL and manage 3% more equity either from open market or from SOVL so as to make it a total of more than 51% in the light of Apex Court Judgment dated 16.09.2003 to retain the: structure of the Company as a Government Company thereby restoring the Government control over the Company;

(iv) Direct the Respondents No.1 & 2 through Government of lndia - or otherwise to put a halt for further expansion of capacities of various Lead/ Zinc Plants including Silver I Zinc Refineries installed in Uttaranchal so that perpetual revenue loss to Central Government in Income Tax and Sales Tax loss to Government of Rajasthan can be stopped;

(v) Direct the SOVL through Government of India or otherwise to put a halt for further expansion of mining activities and produce these critical base metals to the extent of requirement for the existing plants as the base metals are critical for the future requirement of the nation and defence requirement also;

(vi) Recruit workmen in workmen cadre for regular nature of jobs in all the units as per practices stood prior to disinvestment in 2002 and give due preference as per law to ST/SC, physically handicapped and other socially backwards classes as per law and refrain the company from further violation of Contract Labor Abolition & Regulation Act;

(vii) Direct the SOVL through Government of India to stop export of the critical base metals like lead and Zinc etc. either in the form of concentrated or as finished products; and

(viii) Pass any such other order or order(s) which Your Lordships may deem fit in the interest of justice." PART C 27 The petition was summarily dismissed by this Court on 10 December 2002 in the following terms:

"[...] we are not inclined to entertain the writ petition, which is accordingly dismissed." 28 The present writ petition was filed seeking the following reliefs:

> "(i)Issue a writ of mandamus directing the respondents 1 & 2 herein from disinvesting the residual shareholding of the Govt. of India to the extent of 29.5% in the respondent no. 4 without amending the Metal Corporation (Nationalisation and Miscellaneous Provisions) Act, 1976,
>
> (ii) Direct the Central Bureau of Investigation to file status report in this Hon'ble Court from time to time in respect of investigation being carried by it and this Hon'ble Court monitor the investigation till filing of the charge-sheet in appropriate court; and
>
> (iii) Pass any other order or orders which this Hon'ble Court may think fit and proper in the facts and circumstances of the case as well as in the interest of justice." 29 The first relief which has been sought in the petition in the present case - that the residual disinvestment can occur only after the amendment of the Nationalisation Act 1976- is substantially similar to the first and second reliefs sought by Maton Mines Mazdoor Sangh, when they challenged the disinvestment of 2002 and 2014, on the basis of the decision in Centre for Public Interest Litigation (supra).

PART C 30 Section 1119 of the Code of Civil Procedure 1908 embodies the principles of res judicata and bars the court from deciding issues which have been directly or substantially in issue in an earlier proceeding between the same parties or parties claiming under the same title and have been finally decided. 31 The principles of res judicata and constructive res judicata, which Section 11 of the Code of Civil Procedure 1908 embodies, have been applied to the exercise of the writ jurisdiction 20 , including public interest litigation 21 . Yet courts have been circumspect in denying relief in matters of grave public importance, on a strict application of procedural rules. In Rural Litigation and Entertainment Kendra v. State of U.P.22, this Court observed:

> "16. The writ petitions before us are not inter-partes disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court. Even if it is said that there "11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. [...] Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this

> section, be deemed to have been refused. [...]" Kantaru Rajeevaru (Sabrimala Temple Review- 5J) v. Indian Young Lawyers Association, (2020) 2 SCC 1 (Constitution Bench); State of U.P. v. Nawab Hussain, (1977) 2 SCC 806 (three-judge Bench); Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior, (1987) 1 SCC 5 (two-judge Bench) Forward Construction Co. v. Prabhat Mandal (Regd.), (1986) 1 SCC 100 (three-judge Bench) 1989 Supp (1) SCC 504 PART C was a final order, in a dispute of this type it would be difficult to entertain the plea of res judicata. As we have already pointed out when the order of 12-3-1985, was made, no reference to the Forest (Conservation) Act of 1980 had been done. We are of the view that leaving the question open for examination in future would lead to unnecessary multiplicity of proceedings and would be against the interests of society. It is meet and proper as also in the interest of the parties that the entire question is taken into account at this stage." (emphasis supplied)

32 In Daryao v. State of U.P.23, a Constitution Bench of this Court has held that orders dismissing writ petitions in limine will not constitute res judicata. The Court noted that while a summary dismissal may be considered as a dismissal on merits, it would be difficult to determine what weighed with the Court without a speaking order. Justice PB Gajendragadkar (as the learned Chief Justice then was), observed:

> "26...If the petition is dismissed in limine without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata. It is true that, prima facie, dismissal in limine even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all; but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of res judicata against a similar petition filed under Article 32..." (1962) 1 SCR 574 PART C

33 In State of Karnataka v. All India Manufacturers Organization24, a three judge Bench has also held that res judicata would be applicable to a public interest litigation if it was bona fide. Justice B N Srikrishna held:

> "35. As a matter of fact, in a public interest litigation, the petitioner is not agitating his individual rights but represents the public at large. As long as the litigation is bona fide, a judgment in a previous public interest litigation would be a judgment in rem. It binds the public at large and bars any member of the public from coming forward before the court and raising any connected issue or an issue, which had been raised or should have been raised on an earlier occasion by way of a public interest litigation. It cannot be doubted that the petitioner in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] was acting bona fide. Further, we may note that, as a retired Chief Engineer, Somashekar Reddy had the special technical expertise to impugn the Project on the grounds that he did and so, he cannot be

dismissed as a busybody. Thus, we are satisfied in principle that Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] , as a public interest litigation, could bar the present litigation.

[...]

47. All of these unequivocally show that the issue of excess land (and connected issues) was specifically raised by the petitioner in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and was also forcefully denied by the State. In fact, the decision in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] , went further with the High Court according its imprimatur to the land requirements under the FWA amounting to 20,193 acres, which in no small measure, resulted from the State's successful defence that it had provided the “bare minimum of land” for the Project calculated by a “scientific method”. The judgment also contains copious references to the issue of land (including the acreage), the types of land to be acquired, the land requirement for different aspects of the Project, the scientific techniques involved in identifying the land and road alignment, etc. In these circumstances, it cannot be doubted that Explanation III to Section 11 squarely applies. It is clear that the issue of excess land under the (2006) 4 SCC 683 PART C FWA was “directly and substantially in issue” in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and hence, the findings recorded therein having reached finality, cannot be reopened in this case.

[...]

50. As we have pointed out, the cause of action, the issues raised, the prayers made, the relief sought in Somashekar Reddy's petition and the findings in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] and the claims and arguments in the present petitions were substantially the same. Therefore, it is not possible to accept the contention of the appellants before us that the judgment in Somashekar Reddy [(1999) 1 KLD 500 : (2000) 1 Kant LJ 224 (DB)] does not operate as res judicata for the questions raised in the present petitions.” (emphasis supplied) 34 While determining the applicability of the principle of res judicata under Section 11 of the Code of Civil Procedure 1908, the Court must be conscious that grave issues of public interest are not lost in the woods merely because a petition was initially filed and dismissed, without a substantial adjudication on merits. There is a trend of poorly pleaded public interest litigations being filed instantly following a disclosure in the media, with a conscious intention to obtain a dismissal from the Court and preclude genuine litigants from approaching the Court in public interest. This Court must be alive to the contemporary reality of “ambush Public Interest Litigations” and interpret the principles of res judicata or constructive res judicata in a manner which does not debar access to justice. The jurisdiction under Article 32 is a fundamental right in and of itself.

PART D 35 In this case, since the three judge Bench of this Court rejected the petition filed by Maton Mines Mazdoor Singh in limine, without a substantive adjudication on the merits of their claim, the present writ petition is not barred by res judicata.

D The decision in Centre for Public Litigation

36 In order to place the controversy in perspective, it would be worthwhile to

reproduce a tabulated statement of the shareholding pattern in HZL, as submitted by the Solicitor General. The statement is reproduced below:

Date	GoI shareholding (%)	Strategic partner [Sterlite Opportunities & Ventures Ltd. Shareholding (%)	Public shareholding	Tota (%)
27.03.2002				
27.03.2002	[26% sold to SOVL]	[26% acquired from GoI]		
20% from public after giving an open offer from public as mandated by SEBI regulations.		[acquired 20% from Public]	[Public tendered 20% in Open Offer]	
	[1.47% sold by GoI to employees]		[1.47% sold by GoI to employees]	
option as	[GoI	[acquired from GoI		

stipulated is SHA transferred 18.92% as result of and acquired 18.92% to Call Option] shares to the SP as result extent of 18.92% of call option] On and from March, 2002 Hindustan Zinc Ltd. Ceased to be a Government Company u/sc. 2(45) of Companies Act.

PART D 37 As the above statement indicates, prior to 27 March 2002, 75.92 per cent of the shareholding of HZL was with the Union Government, the public shareholding being the balance 24.08 per cent. Pursuant to the Share Purchase Agreement, 26 per cent of the shareholding was sold to SOVL as a strategic partner on 27 March 2002, which brought down the Union Government's shareholding to 49.92 per cent. SOVL's shareholding stood at 26 per cent. In addition, SOVL acquired 20 per cent from the public, after furnishing an open offer in terms of SEBI's regulations which raised its equity shareholding to 46 per cent. In November 2002, the Union Government sold 1.47 per cent of its shareholding to the employees of HZL which further brought down its holding to 48.45 per cent. As a result of the exercise of the first call option for SOVL in terms of the Shareholders' Agreement, SOVL acquired another 18.92 per cent of the equity holding of the Union Government in November 2003. As a consequence, the shareholding of the Union Government

stood reduced to 29.53 per cent while SOVL's holding increased to 64.92 per cent. 38 While considering the ambit of the present controversy, it is necessary to note that the challenge in the petition under Article 32 is to the proposal of the Union Government to sell its residual stake in HZL, by the sale of the remaining 29.54 per cent equity. Neither is the validity of the initial disinvestment of 24.08 per cent equity which took place in 1991-92, nor is the subsequent disinvestment of 26 per cent in terms of the Share Purchase Agreement, challenged in these proceedings. As a matter of fact, if it were to be challenged, the first objection would be to the delay of well over two decades in challenging the disinvestment of 1991-92 and of nearly 12 PART D years in challenging the sale of 2002 in pursuance of the Share Purchase Agreement. Since the disinvestment of 1991-92 and of 2002 has attained finality, it becomes necessary to assess the effect of the earlier disinvestment, in terms of the status of HZL. As a consequence of the disinvestment on 27 March 2002, HZL ceased to be a government company within the meaning of Section 617 of the Companies Act 1956 since its shareholding fell below 51 per cent. As a matter of fact, Mr Prashant Bhushan, learned Counsel appearing on behalf of the petitioners does not dispute this factual position. Then, the issue which arises is whether the Nationalisation Act 1976 interposes any bar on the sale of the residual shareholding of the Union Government in HZL.

39 When the Nationalisation Act was enacted in 1976, the object and purpose of the enactment was spelt out in the Statement of Objects and Reasons accompanying the introduction of the Bill in Parliament. Insofar as is material, the objects are spelt out in the following extract:

> "The Metal Corporation of India Limited a company had a mining lease in respect of zinc-lead deposits in Zawar area in Rajasthan and owned a lead smelter at Tundoo in Bihar. It had undertaken to expand production from the Zawar mines and to construct a Zinc Smelter near Udaipur for producing electrolytic grade zinc and bye-products. However, for various reasons, the Corporation was not able to complete the projects it had undertaken. The construction work came to a standstill and the corporation failed to meet its repayment obligations to the suppliers of machinery and others.
>
> 2. As zinc and lead are essential raw materials for the economy of the country and are of considerable strategic importance to the country, it was necessary to the public interest that the project undertaken by the Corporation should PART D be completed as soon as possible. In the circumstances, for the speedy development and expansion of the zinc lead deposits, the undertaking of the Metal Corporation of India was acquired by the Central Government with effect from 22nd October, 1965 by a Parliamentary legislation, enacted in 1965. The said act, having been struck down was replaced by the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966). The undertaking of the Corporation was later vested in the Hindustan Zinc Ltd., Udaipur, a Government company with effect from 10th January, 1966."

40 The submission of the petitioners emphasises that the purpose underlying the acquisition was that zinc and lead were considered to be essential raw-materials for the economy of the country and

of considerable strategic importance, such that it was necessary in public interest that the project which was undertaken by Metal Corporation of India should be completed expeditiously. The Statement of Objects and Reasons also indicates that the erstwhile undertaking had a mining lease in respect of zinc and lead deposits in the Zawar area and owned a lead smelter in Bihar, besides which it had undertaken to expand production from the mines and construct a smelter for producing zinc and by-products near Udaipur. For various reasons, Metal Corporation of India was not able to complete its projects; construction had come to a standstill and the undertaking had failed to meet its obligations to repay suppliers of machinery. The Statement of Objects and Reasons emphasises the importance of zinc and lead to the economy, which was undoubtedly an important facet of the purpose of acquisition. Moreover, Metal Corporation of India, the pre-nationalized entity, was unable to complete its projects and its acquisition by an Act of Parliament was envisaged for the expeditious PART D completion of the projects. The long title to the Nationalisation Act 1976 indicates that the Act was enacted to enable the Central Government, in public interest, to exploit to the fullest extent, the zinc and lead deposits in and around the Zawar area of Rajasthan and "to utilize those minerals in such manner as to sub-serve the common good". Section 4(1)25 of the Nationalisation Act 1976 provided for the taking over of the management of the undertaking of Metal Corporation. As a consequence of the acquisition, Section 6(1)26 envisages that so long as the management of the undertaking of Metal Corporation remains vested in the Central Government, (i) it is not lawful for the shareholders to nominate or appoint a director; (ii) no resolution by the shareholders would be given effect to, unless approved by the Central government; and (iii) no proceedings for winding up the acquired entity would lie in any court, except with the consent of the Central government. Section 7 provides for "4. Taking over of management of the undertaking of the Metal Corporation.—(1) On the commencement of this Act, the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966), shall stand repealed, and on such repeal, the undertaking of the Metal Corporation, which had been transferred to, and vested in, the Central Government by virtue of the provisions of Section 3 of the Act so repealed, and the undertaking of the Metal Corporation together with all its properties, assets, liabilities and obligations specified in sub-section (1) of Section 4 of that Act and such other properties, assets, liabilities and obligations, acquired or incurred, for the purposes of its undertaking, after the 22nd day of October, 1965, which stood, by virtue of the provisions of Section 12 of the said Act, transferred to, and vested in, the Government company formed in pursuance of the provisions of Section 12 of the Act aforesaid shall, by virtue of the provisions of this Act, be deemed to have been retransferred to, and re-vested in, the Metal Corporation, and, immediately thereafter, the management of the undertaking of the Metal Corporation shall be deemed to have been transferred to, and vested in, the Central Government." "6. Application of Act 1 of 1956.—(1) Notwithstanding anything contained in the Companies Act, 1956, or in the memorandum or articles of association of the Metal Corporation, so long as the management of the undertaking of the Metal Corporation remains vested in the Central Government,—

(a) it shall not be lawful for the shareholders of the Metal Corporation or any other person to nominate or appoint any person to be a director of the Metal Corporation:

> (b) no resolution passed at any meeting of the shareholders of the Metal Corporation on or after the commencement of this Act shall be given effect to unless approved by

the Central Government;

(c) no proceeding for the winding up of the Metal Corporation or for the appointment of liquidator or receiver in respect of the undertaking thereof shall lie in any court except with the consent of the Central Government." PART D the vesting of the undertaking of the Metal Corporation in the Central government, in the following terms:

"7. Vesting of the undertaking of the Metal Corporation in the Central Government.— (1) On the appointed day, the undertaking of the Metal Corporation, and the right, title and interest of the Metal Corporation in relation to its undertaking, shall stand transferred to, and shall vest absolutely in, the Central Government.

(2) Subject to the other provisions contained in this Act, all property included in the undertaking of the Metal Corporation which has vested in the Central Government under sub-

section (1) shall, by force of such vesting, be freed and discharged from any trusts, obligations, mortgages, charges, liens and other incumbrances affecting it, and any attachment, injunction or any decree or order of a court, tribunal or other authority restricting the use of such property in any manner shall be deemed to have been withdrawn. Explanation.—For the removal of doubts, it is hereby declared that the mortgagee of any property included in the undertaking of the Metal Corporation, or any other person holding any charge, lien or other interest in, or in relation to, any such property, shall be entitled to claim, in accordance with his rights and interests, payment of the mortgage money or other dues, in whole or in part, from the Central Government but no such mortgage, charge, lien or other interest shall be enforceable against any property which has vested in the Central Government.

(3) Subject to the other provisions contained in this Act, all contracts and working arrangements which are subsisting immediately before the appointed day and affecting the Metal Corporation shall, in so far as they relate to the undertaking of the Metal Corporation, cease to have effect or be enforceable against the Metal Corporation or any person who was surety or had guaranteed the performance thereof and shall be of as full force and effect against or in favour of the Central Government and enforceable as fully and effectually as if, PART D instead of the Metal Corporation, the Central Government had been named therein or had been a party thereto.

(4) Subject to the other provisions contained in this Act, any proceeding or cause of action pending or existing immediately before the appointed day by or against the Metal Corporation or the Central Government or the Government company referred to in Section 12 of the Metal Corporation of India (Acquisition of Undertaking) Act, 1966 (36 of 1966), in relation to the undertaking of the Metal Corporation may, as from that day, be continued and enforced by or against the Central Government or the Government company referred to in Section 9, as it might have been enforced by or against the Metal Corporation, the Central Government or the Government company, as the case may be, if this Act had not been enacted, and shall cease to be enforceable by or against the Metal Corporation,

its surety or guarantor." 41 Section 9 empowers the Central government to direct the vesting of the undertaking of Metal Corporation in a government company:

> "9. Power of Central Government to direct vesting of the undertaking of the Metal Corporation in a Government company.— (1) Notwithstanding anything contained in Section 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct, by an order in writing, that the undertaking of the Metal Corporation and the right, title and interest of the Metal Corporation in relation to such undertaking shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of publication of the direction or on such earlier or later date (not being a date earlier than the appointed day), as may be specified in the direction.
>
> (2) Where the right, title and interest of the Metal Corporation in relation to its undertaking vest in a Government company under sub-section (1), the Government company shall, on and from the date of such vesting, be deemed to have PART D become the lessee in relation to the mines of which the Metal Corporation was the lessee as if a mining lease in respect of such mines had been granted to the Government company, and the period of such lease shall be the entire period for which such lease could have been granted under the Mineral Concession Rules; and all the rights and liabilities of the Central Government in relation to such mines shall, on and from the date of such vesting, be deemed to have become the rights and liabilities, respectively of the Government company.
>
> (3) The provisions of sub-section (2) of Section 8 shall apply to a lease which vests in a Government company as they apply to a lease which has vested in the Central Government and any reference therein to the Central Government shall be construed as a reference to the Government company.
>
> (4) Any reference hereafter in this Act to the Government company shall be construed as a reference to the Government company which is appointed as the Administrator under sub-section (1) of Section 5, or, as the case may be, the Government company referred to in the direction made under sub-section (1)."

42 Section 4 of the Nationalisation Act 1976 provides for the vesting of all assets, liabilities and the management of the undertaking in the Central Government. Section 5 provides for the appointment of an administrator to take over the management of the undertaking, for and on behalf of the Central Government. Section 7 clarifies that on the appointed day, the undertaking of the Metal Corporation, and the right, title, and interest of the said Corporation in relation to its undertaking, stood transferred to and vested absolutely in the Central Government. In pursuance of Section 9, the undertaking of Metal Corporation came to be vested in HZL, as a government company, within the meaning of Section 617 of the Companies Act 1956. Section 13 provides that the general superintendence, PART D direction control and management of the affairs and business of the

undertaking of Metal Corporation of which the right, title and interest is vested in the Central government under Section 7, shall vest in the government company specified in the direction made under Section 9(1).

43 Sections 4, 7 and 9 indicate that the undertaking of Metal Corporation stood transferred to, and vested absolutely in the Central Government. Section 9 further empowers the Central Government to vest the undertaking in a government company. Once the Metal Corporation stood vested in a government company, the provisions of the then Companies Act 1956 and present Companies Act 2013 become applicable. Thereupon, the government company would be entitled to exercise all such powers and to do all such things as Metal Corporation was authorized to effect, in relation to its undertaking. 44 The Nationalisation Act 1976 contains no express provision restraining the exercise of rights by the Union Government upon the undertaking of Metal Corporation vesting in it and thereupon, pursuant to a direction under Section 9(1), being transferred to a government company. As already noted earlier, the shareholding of the Union Government was divested initially in 1991-2 and subsequently in 2002. After the disinvestment of 26 per cent of the equity stake of the Union Government to SOVL, HZL ceased to be a government company within the meaning of Section 617 of the Companies Act 1956. Section 617 defined the expression government company in the following terms:

> PART D "617. Definition of "Government Company".—For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid- up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined." As a result of the disinvestment on 27 March 2002, HZL ceased to be a government company, with the Union Government's shareholding falling to 49.92 per cent, below the threshold of 51 per cent.

45 The petitioners seek to read an implicit limitation on the transfer of the residual shareholding of 29 per cent held by the Union Government in HZL, from the provisions of the Nationalisation Act 1976. This submission is prefaced on the object of the enactment which is to acquire control over the strategic mineral deposits of lead and zinc. This submission has been met by the respondents by urging that after 16 March 1999, the mining of zinc has ceased to retain a strategic character, given the changes in industrial policy. The aspect which is of significance is that there is no challenge to the disinvestment which took place in 1991-92 or in 2002, the latter having resulted in HZL ceasing to retain its status as a government company within the meaning of Section 617 of the Companies Act 1956. That being the position, it would be inconsistent to read an implied limitation on the transfer by the Union Government of its residual shareholding in HZL representing 29.54 per cent of the equity capital. Hence, when a decision has been taken by the government as a shareholder of a company to sell its shares, it acts as any other shareholder in a PART D company who makes the decision on the basis of financial and economic exigencies.

46 The issue which needs to be considered is whether the decision of this Court in Centre for Public Interest Litigation (supra) would result in a bar on the disinvestment of the residual shareholding.

This decision of a two-judge Bench is dated 16 September 2003. In that case, petitions were filed in the public interest invoking the jurisdiction of this Court under Article 32, to challenge the decision of the Union Government to sell a majority of its shares in Hindustan Petroleum Corporation Limited27 and Bharat Petroleum Corporation Limited28 to private parties without parliamentary approval or sanction, as being contrary to and violative of the provisions of the ESSO (Acquisition of Undertakings in India) Act 1974; the Burmah Shell (Acquisition of Undertakings in India) Act 1976; and Caltex [Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited] Act 1977. The erstwhile companies were nationalized as a result of these enactments. The Union Government had proposed a disinvestment of the shares of the companies comprised in the public sector, after the policy of disinvestment had been upheld by this Court in Balco Employees' Union (Regd.) v. Union of India29. After considering the provisions of the legislation under which the undertakings were nationalized, Justice Rajendra Babu speaking for the two judge Bench held:

> "HPCL" "BPCL" (2002) 2 SCC 333 PART D "12. In order to interpret the enactments in question it is necessary to look at the preamble to the Act. The preamble to the Act clearly stated that acquisition is done "in order to ensure that the ownership and control of the petroleum products distributed and marketed in India by the said company are vested in the State and thereby so distributed as best to subserve the common good".

(emphasis supplied) Preamble, though does not control the statute, is an admissible aid to construction thereof. The Act sets out that the assets of the undertaking shall vest in the Government as provided under Section 3 of the Act.

However, Section 7 of the Act enables the Government to transfer the undertaking to a government company as defined under Section 617 of the Companies Act, 1956. If the Act intended that the undertaking so vested in the government company can be transferred, wholly or partly, to any company other than a government company, there certainly would have been an indication to that effect in the Act itself. The question, therefore, is whether absence of specific provision as contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act or in the Coal Mines Nationalisation Act, 1973 that the shareholding shall always be held by the Government, will give a different complexion to these provisions. When the provisions of the Act provide for vesting of the property of the undertaking in the Government or a government company, it cannot mean that it enables the same being held by any other person, particularly in the context that the object of the Act is that the ownership and control of the petroleum products is distributed and marketed in India by the State or a government company and that products thereby so distributed as best to subserve the common good. The argument that there is no specific provision in the Act as contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act or in the Coal Mines Nationalisation Act, 1973 does not carry the matter any further because the idea embedded in those provisions are implicit in the provisions of this enactment, as explained earlier. If disinvestment takes place and the company ceases to be a government company as defined PART D under Section 617 of the Companies Act, to say that it is still a government company as contemplated under Section 7 of the Act will be a fallacy. What is contemplated under Section 7 of the Act is only a

government company and no other. In relation to a government company Sections 224 to 233 are substituted and the audit of the company takes place under the supervision and control of the Comptroller and Auditor General of India who shall give effect to Section 224(1-B) and (1-C). The Auditors shall submit a report to the Comptroller and Auditor General of India and even when audit takes place, subject to his instructions, the Comptroller and Auditor General of India may also conduct supplementary audit and a test audit. Under Section 19(1) of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 audit of companies is to be conducted by him in terms of the Companies Act. Annual reports on the working of affairs of the company are laid before Parliament under Section 619-A(1)(b) of the Companies Act. Such control will be lost if a company ceases to be a government company.

13. Argument of Shri Harish Salve that a simple amendment of Section 617 of the Companies Act unrelated to the acquisition can alter the position in law is only perceived but not attained and hence does not require any examination. He contended that to facilitate disinvestment of the shares the public sector enterprises are allowed to list the shares on stock exchanges, irrespective of the percentage of shares disinvested by the Government and, therefore, submitted that there is no need for the Government to obtain parliamentary approval. Sales of shares of these companies, though uninhibited, cannot be to such an extent so that the substratum of the character of the government companies is allowed to be lost and converted into an ordinary company without being approved by the general body of shareholders and, in this case, the Government. The Government, in turn, is subject to the statutory limitations, to which we have adverted to now. Hence, the argument begs the question which is put in issue before us.

14. Again accretions to the government company's assets subsequent to acquisition of the undertaking is an irrelevant PART D factor in the context of the question we are considering. Here what is required to be seen is, not which asset can be transferred or not, but whether the undertaking can change its character from a government company to ordinary company without parliamentary clearance in the light of the statute of acquisition." (emphasis supplied) The view of this Court was that the divestment of the shareholding of the Union Government in HPCL and BPCL, as a result of which the companies would cease to be government companies, could not be undertaken without amending the statutes under which they were nationalized. This Court noted the following:

> "20. There is no challenge before this Court as to the policy of disinvestment. The only question raised before us is whether the method adopted by the Government in exercising its executive powers to disinvest HPCL and BPCL without repealing or amending the law is permissible or not. We find that on the language of the Act such a course is not permissible at all." The Court distinguished the previous precedents of this Court on challenges to disinvestment, in the following terms:
>
> 19. In the case of BALCO, executive action to disinvest was not challenged probably due to the fact that there was no statutory backing of the nature with which we are concerned in the present case. In the case of Maruti Udyog Limited though acquired under an enactment, there was no challenge to the same to disinvest merely by

executive action. Thus, these cases stand on a different footing. 47 The decision in Centre for Public Interest Litigation (supra) is distinguishable for the reason that HPCL and BPCL were government companies when the disinvestment action was challenged before this Court. In the present case, the disinvestment as a consequence of which HZL ceased to be a government PART D company took place in March 2002. What is in question on the first relief sought is the 29.54 per cent residuary shareholding in HZL, after it has admittedly ceased to be a government company within the meaning of Section 617 of the Companies Act 1956 and the corresponding provisions of the Section 2(45) of the Companies Act 2013. In the Companies Act 2013, the expression 'government company' is defined in Section 2(45) in similar terms:

"2....(45) "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company;" 48 The Union Government is a shareholder of HZL. The control and management of HZL does not vest with the Union Government which has a residual stake of 29.54 per cent. The shareholding of SOVL stood increased to 64.92 per cent after the exercise of the first call option in 2002. During the course of hearing, this Court has been apprised by SOVL that it does not seek to exercise the second call option, in terms of the Share Purchase Agreement. It is in this backdrop that a decision has been taken by the Union Government to sell its residuary shareholding in the open market. The Union Government, in its capacity as a shareholder of HZL, is entitled to take such a decision. The fact that the Union Government is amenable to the norms set out in Part III of the Constitution would not impose a restraint on its capacity to decide, as a shareholder, to disinvest its shareholding, so long as the process of disinvestment is transparent and the Union Government is following a PART D process which comports with law and results in the best price being realized for its shareholding. In Life Insurance Corporation of India v. Escorts Ltd. 30 , a Constitution Bench of this Court inter alia considered whether the action of an instrumentality of the State (the Life Insurance Corporation) in asserting its rights as a shareholder to bring about a change in the management of a public limited company, was amenable to public law standards. Answering the question, Justice O Chinnappa Reddy, speaking for the Constitution Bench held:

"102. [...] Broadly speaking, the court will examine actions of State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or

private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder, and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management, by a resolution of the company, like any other shareholder." The Constitution Bench held that the notice by the Life Insurance Corporation requisitioning a meeting of the company was not liable to be questioned on any of (1986) 1 SCC 264 PART E the grounds set out in the writ petition. This principle has been followed as a precedent by various decisions of this Court31.

The Union Government, in the present case, is exercising its rights as a shareholder and has taken a decision to disinvest its residual shareholding of 29.54 per cent in HZL. HZL is no longer a government company. In any event, the decision of the Union Government, as an incident of its policy of disinvestment, to sell its shares in the open market, cannot be questioned by reading a bar on its powers to do so, from the provisions of the Nationalisation Act 1976. No such express or implied bar exists, failing the applicability of this Court's decision in Centre for Public Interest Litigation (supra).

E CBI's preliminary enquiry

49 A preliminary enquiry on the basis of 'confidential source information' in

relation to the HZL disinvestment during 1997-2003, was registered by the CBI on 6 November 2013. In compliance of this Court's order dated 3 November 2014, a status report was submitted by CBI. Furthermore, on 19 January 2016, this Court had directed CBI to submit another status report in a sealed cover. By an affidavit dated 14 July 2020, the Head of Branch, Anti-Corruption Branch 32 , Jodhpur has annexed a 'self-contained note' dated 6 March 2017, detailing the closure of the ABL International Ltd. v. Export Credit Guarantee Corporation of India, (2004) 3 SCC 553 (two-judge Bench); Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly, (1986) 3 SCC 156 (two-judge Bench) "ACB" PART E preliminary enquiry, after compliance with the process detailed in the CBI Crime Manual, 200533.

50 The above affidavit, the self-contained note closing the preliminary enquiry and additional documents detailing the steps taken by the CBI during the preliminary enquiry were shared for the perusal of this Court. The Special Prosecutor, CBI Head Office, New Delhi on 31 July 2014, the Director of Prosecution on 16 October 2014, and the Special Director on 21 March 2016 have stated their reasons for recommending the closure of the preliminary enquiry without registering a regular case.

51 However, the Additional Director, CBI on 22 August 2014, recommended the conversion of the preliminary enquiry into a regular case, against certain named officials and persons under Section

120B read with Section 420 of the Indian Penal Code 1860 and Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act 1988. A similar conclusion was reached by the Enquiry Officer (Head of Branch, ACB, Jodhpur) on 4 April 2014, Senior Public Prosecutor, Jodhpur on 21 April 2014, the Head of Branch, Jodhpur, on 25 April 2014, the Head of the Zone, DLI on 13 August 2014, the Deputy Legal Advisor, ACB, Jodhpur on 26 May 2014, the Deputy Superintendent of Police, Jaipur on 12 February 2015 and the Head of Branch, Jodhpur on 13 February 2015.

"CBI Crime Manual" PART E 52 In view of the difference of opinion between the Director of CBI and the Director of Prosecution, CBI, the matter was to be referred to the Attorney General on 17 October 2014, in accordance with Para 23.21 of the CBI Crime Manual. However, the status of this referral has not been alluded to before us, for determination of the closure of the preliminary enquiry. 53 Chapter 9 of the CBI Crime Manual details the process of conducting preliminary enquiries. Para 9.1 states that "a P[reliminary] E[nquiry] may be converted into R[egular] C[ase] as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence". In Lalita Kumari (supra), a Constitution Bench of this Court had underscored the duty of the police to register an FIR when the information received prima facie discloses the commission of a cognizable offence. However, the decision recognizes that in certain cases, a preliminary enquiry may be held. With specific reference to the CBI Manual, this Court noted that the "the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed.34" This Court issued inter alia, the following directions:

> "120. In view of the aforesaid discussion, we hold:
>
> [....] (120.3) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases Para 119 PART E where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> (120.4) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> (120.5) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence....." (emphasis supplied)

54 In Central Bureau of Investigation (CBI) v. Thommandru Hannah Vijaylakshmi @ T.H. Vijaylakshmi and another, 35 a three-judge Bench of this Court held that it is not mandatory to hold a preliminary enquiry in all cases before registering an FIR against a public official, in a matter involving the possession of disproportionate assets. Speaking for the three-judge Bench, one of us (Justice D Y Chandrachud), noted the stage at which a preliminary enquiry is converted into a regular case:

> "24. Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in Managipet (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed 2021 SCC OnLine SC 923 PART E against the accused on the basis of the information without conducting a Preliminary Enquiry.
>
> [...]
>
> 35. Hence, two distinct principles emerge from the above :
>
> (i) a Preliminary Enquiry is registered when information (received from a complaint or "source information") after verification indicates serious misconduct on part of a public servant but is not enough to justify the registration of a Regular Case; and (ii) when the information available or after its secret verification reveals the commission of a cognizable offence, a Regular Case has to be registered instead of a Preliminary Enquiry being resorted to necessarily.

[....]

37. The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a Preliminary Enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari (supra) holds that if the information received discloses the commission of a cognizable offence at the outset, no Preliminary Enquiry would be required. It also clarified that the scope of a Preliminary Enquiry is not to check the veracity of the information received, but only to scrutinize whether it discloses the commission of a cognizable offence. Similarly, para 9.1 of the CBI Manual notes that a Preliminary Enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a Preliminary Enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable offence. A similar conclusion has been reached by a two Judge Bench in Managipet (supra) as well. Hence, the proposition that a Preliminary Enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari (supra) but would also tear apart the framework created by the CBI Manual." (emphasis supplied) PART E 55 In Manohar Lal Sharma v. Principal Secretary, 36 a three-judge Bench of this Court, while monitoring an investigation in a matter of national importance, had elaborated on the duty of the CBI to convert a preliminary enquiry into a regular case, once a prima facie case involving the commission of a cognizable offence is evinced. Justice R M Lodha, speaking on behalf of the Court, had also remarked on the nature of the powers of the constitutional court, while monitoring an investigation in exceptional matters. This power could be operationalized to do complete justice:

> "29 ...Once jurisdiction is conferred on CBI to investigate the offence by virtue of notification under Section 3 of the DSPE Act or CBI takes up investigation in relation to the crime which is otherwise within the jurisdiction of the State police on the direction of the constitutional court, the exercise of the power of investigation by CBI is regulated by the Code and the guidelines are provided in the CBI (Crime) Manual. Para 9.1 of the Manual says that when, a complaint is received or information is available which may, after verification, as enjoined in the Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 of the Code, a preliminary enquiry (PE) may be registered after obtaining approval of the competent authority.

It also says that where the High Courts and the Supreme Court entrust matters to CBI for inquiry and submission of report, a PE may be registered after obtaining orders from the head office. When the complaint and source information reveal commission of a prima facie cognizable offence, a regular case (RC) is to be registered as enjoined by law. A PE may be converted into RC as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. When information available is adequate to indicate commission of cognizable offence or its discreet verification leads to (2014) 2 SCC 532 PART E similar conclusion, a regular case must be registered instead of a PE. [...]

38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

[....]

50. When the Court monitors the investigation, there is already departure inasmuch as the investigating agency informs the Court about the progress of the investigation.

Once the constitutional court monitors the inquiry/investigation which is only done in extraordinary circumstances and in exceptional situations having regard to the larger public interest, the inquiry/investigation into the crime under the PC Act against public servants by CBI must be allowed to have its course unhindered and uninfluenced and the procedure contemplated by Section 6-A cannot be put at the level which impedes exercise of constitutional power by the Supreme Court under Articles 32, 136 and 142 of the Constitution. Any other view in this regard will be directly inconsistent with the power conferred on the highest constitutional court." (emphasis supplied) PART E 56 There is no bar on the constitutional power of this Court to direct the CBI to register a regular case, in spite of its decision to close a preliminary enquiry. Analogously, this Court has directed the police to register an FIR, once a cognizable offence has been disclosed to it. In

Shashikant v. Central Bureau of Investigation37 a two-judge Bench of this Court, has held that this Court has the power to direct the CBI to conduct an investigation in exceptional cases, despite the CBI's decision to close the preliminary enquiry, even in the exercise of its writ jurisdiction:

> "3. The appellant claims himself to be a vigilant employee. He made an anonymous complaint to the Central Bureau of Investigation alleging corrupt practices and financial irregularities on the part of some officers of his department. Respondent 1 stated that on the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. However, the investigating officer was of the opinion that it was not necessary to register a first information report. It recommended for holding of departmental proceedings against the officers concerned. The said recommendation found favour with the higher officers. The opinion of the Central Vigilance Commission was also obtained.
>
> [...]
>
> 17. The appellant does not deny or dispute that the first respondent initiated a preliminary inquiry upon receipt of the complaint. The question which arises for consideration is as to whether it was obligatory on the part of the first respondent to lodge a first information report and carry out a full-fledged investigation about the truthfulness or otherwise of the allegations made in the said anonymous complaint.

(2007) 1 SCC 630 PART E [...]

30. The first respondent [CBI] is a statutory authority. It has a statutory duty to carry out investigation in accordance with law. Ordinarily, it is not within the province of the court to direct the investigative agency to carry out investigation in a particular manner. A writ court ordinarily again would not interfere with the functioning of an investigative agency. Only in exceptional cases, it may do so. No such case has been made out by the appellant herein. The nature of relief prayed for in the writ petition also is beyond the domain of a writ court save and except, as indicated hereinbefore, an exceptional case is made out." (emphasis supplied) 57 Upon perusal of the aforementioned reports and recommendations, it is our considered opinion that the disinvestment in 2002 evinces a prime facie case for registration of a regular case. We are desisting from commenting on some crucial facts and names of individuals involved, so as to not cause prejudice to the investigation of the matter. Some details in the CBI officials' recommendations to register a regular case, which have not been adequately addressed by the self- contained note closing the preliminary enquiry, are as follows:

> PART E A. Irregularities in the decision to disinvest 26 per cent, instead of 25 per cent:
>
> (i) The Disinvestment Commission in its sixth report of December 1997 had categorized HZL as a "non-core PSU" and had recommended its disinvestment, but not beyond 25 per cent of the equity, in order to retain control. The Government's

share at the time was 75.92 per cent;

(ii) The Cabinet Committee on Disinvestment was to be the final authority, with a Core Group of Secretaries on Disinvestment as the recommending body. An Inter-Ministerial Group of Secretaries was to implement the decisions of disinvestment. On 6 July 1999, the Cabinet Committee on Disinvestment had allegedly taken note of the recommendations of the Disinvestment Commission regarding disinvestment of 25 per cent and accepted the same. However, the Core Group of Secretaries on Disinvestment, on 17 February 2000, had allegedly disregarded this recommendation and proposed a sale of 26 per cent, without any justification. During the seventh meeting of the Core Group of Secretaries on Disinvestment on 16 June 2000, the body was informed of the Ministry of Mines' objection to seeking the approval of the Cabinet Committee of Disinvestment for transfer of management control to a strategic partner.

Yet, the Cabinet Committee of Disinvestment approved the Core Group of Secretaries on Disinvestment's proposal of disinvestment of 26 per cent equity to a strategic partner with management control and appointment of an advisor, instead of a 25 per cent sale. This was allegedly done on the basis of a senior government official's note dated 27 August 2000, without PART E further details or reasoning. This decision of disinvesting 26 per cent equity reduced the Union Government's share in HZL to 49.92 per cent; B. Irregularities in the bidding process:

(iii) The advertisement dated 4 December 2000, soliciting 'Expressions of Interest', was allegedly confined to the sale of 26 per cent equity. It allegedly did not mention that a road-map for a complete sale of the company had been decided and the remaining shares would also be eventually sold to the strategic partner;

(iv) During the first bidding in 2001, the Evaluation Committee had fixed the reserve price at Rs. 35.90 per share. Nine parties had submitted an expression of interest for the process of disinvestment, of which six were considered as qualified bidders. However, only one bid of SOVL was received for Rs 29.22 per share on 8 November 2001, much below the reserve price of Rs 35.90 per share. In view of the unsuccessful bid, the Evaluation Committee had recommended the delaying of the tender process until the global markets stabilized. However, this recommendation was initially accepted, but rejected the very next day- on 10 November 2001, without furnishing any reasons. Second bids were invited soon after, in March 2002;

(v) In March 2002, bids were invited, with the reserve price being reduced from Rs 35.90 per share to Rs 32.15 per share. The rationale justifying the reduction of the reserve price has not been mentioned in the self-

PART E contained note. Final price bids were invited only from the earlier six qualified interested parties, instead of a competitive open bidding process, in view of the reduced share price. Only two qualified interested parties- SOVL and M/s Indo Gulf Corporation submitted their bids. The sale

was made to SOVL at Rs 40.51 per share, totalling to Rs 445 crores (approx.). Allegedly, at least three bidders were required to process the matter. No justification has been furnished to rebut this;

(vi) During the second bidding process, SOVL's bid was accepted, in spite of an alleged adverse SEBI order which disqualified SOVL from participation;

(vii) The Ministry of Law had recommended the removal of the mandatory obligations in the Shareholders' Agreement and the Share Purchase Agreement with SOVL. These recommendations had been allegedly disregarded without any justifications;

(viii) The Comptroller and Auditor General's Report 17 of 2006 indicated that the Asset Valuer and Global Advisor had not valued the assets of the company properly. Further, the Comptroller and Auditor General's Report stated that the subsequent sale of 18.92 per cent equity to SOVL in 2002 at the old rate of Rs 40.51 per share, was not in line with the Share Purchase Agreement, as the prevailing rate then was Rs 119.10 per share, resulting in a loss of about Rs 650 crores;

PART E C. Irregularities in the valuation of 26 per cent equity for disinvestment

(ix) M/s BNP Paribas was appointed as the 'Global Advisor' on 9 January 2002. However, during the preliminary enquiry, the CBI was allegedly unable to trace these officials representing the Global Advisor. It was found that M/s BNP Paribas was a bank based in France, but the erstwhile company M/s BNP Paribas Equities India Pvt. Ltd. (also known as M/s BNP Prime Peregrine India Pvt. Ltd.) had undergone voluntary liquidation on 5 September 2001. The advisors had allegedly used the name of 'M/s BNP Paribas' during most of their correspondence and the bank was denying the details of the company and its existence;

(x) The untraceable officials of 'M/s BNP Paribas' had relied on three methodologies for valuation- (i) discounted cash flow method 38 ; (ii) comparable companies methodology (relative valuation methodology); and

(iii) balance sheet methodology. The DCF method was allegedly chosen on 22 March 2002 without any justification, in spite of the first report of the Disinvestment Commission recommending the 'asset valuation method', in case of a strategic sale;

(xi) 'M/s R B Shah Associates' was appointed as an 'Asset Valuer' for the valuation of the fixed assets, without issuing a competitive/ limited bidding advertisement, which was allegedly against the Union Government's policy. An unknown public servant had allegedly appointed these private "DCF" PART E valuers who did not possess the requisite expertise. The valuers allegedly failed to consider goodwill, technical know-how and various assets of HZL, including 150 million tonnes of ore reserves in various mines, to the tune of Rs 80,000 crores; Union Government's earlier investment of Rs 83 crores (approx.) in Andhra Pradesh Gas Power Ltd.; Rs 175 crores in advance income tax; various properties to the tune of Rs 20,000 crores (approx.); and scrap valued at Rs 600 crores (approx.);

(xii) The value of Kayad Mines, Ajmer; Sindeshar Khurd, Rajsamand; and Bamania Kalan Mines, Rajsamand was not included in the valuation of assets, in spite of their mention in the Share Purchase Agreement;

(xiii) The valuation of ore reserves was done only for Agucha Mines, and for ten years, by a discounting method of six per cent. The life of the mine was allegedly much longer;

(xiv) Discounts were given on certain leasehold properties, without any basis.

The life of Zawar and Rajpura Dariba Mines was allegedly taken as eighteen years and fifteen years respectively, without valuing the ore reserves. Value of ore reserves was also not included for Agnigundala lead mines, Sargipalli Lead Zinc Mines, Matun Rock Phosphate Mines and Sindeshar Kurd Mines.

(xv) The value of lead and zinc mineral at the time was Rs 66,292 crores (approx.). Even if 40 per cent cost of extraction process is excluded, the value would have allegedly been around Rs 39,000 crores. Yet, the valuer had valued the ore reserves at a paltry Rs 748.88 crores; PART E (xvi) Control premium was not added in the valuation, irrespective of certain officials recommending its inclusion. The rationale for its exclusion has not been explained in the self-contained note;

(xvii) In October 2001, the Voluntary Retirement Scheme39 was introduced and 1993 employees were given VRS. In January 2003, 1856 employees were given VRS. However, an amount of Rs 776 crores has been taken as VRS expenditure, which allegedly incorrectly assumes that all 7222 employees and 1058 officers of HZL have been given VRS; and (xviii) During the enquiry, the CBI had sought opinions from certain experts who were Chartered Engineers. These experts had opined that the valuation was on the lower side, without including relevant mining properties. Allegedly, the absence of any mining engineer or geologist in the team of the asset valuers was also not understandable. Allegedly, if the valuation had been conducted properly, on the basis of DCF method, the value would have been over Rs 1000, per share.

"VRS" PART E 58 Some of the aforesaid observations of the officials of the CBI, who recommended the conversion of the preliminary enquiry into a regular case, satisfy this Court's conscience for exercising its exceptional powers to direct the CBI to conduct an investigation into the matter. A prima facie case for a cognizable offence, as mandated in para 9.1 of the CBI Manual, has been made out in this case and warrants the registration of a regular case. The registration of a regular case, followed by a full-fledged investigation must be conducted. This Court shall be duly apprised of the status of the investigation.

59 The petitioner has alleged that the complainant, C P Babel, was the brother of Petitioner No 3 which entitles them to a copy of the report of the CBI closing the preliminary enquiry, in terms of Para 120 (iii) of Lalita Kumari (supra)40. However, we are denying this relief on two counts- (i) the finding of the Constitution Bench of this Court was with respect to the informant alone, and the original complainant is not before us; and (ii) CBI has stated that the preliminary enquiry was registered at the behest of source information, much before C P Babel's complaint. "...120.3 If the

inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further…" PART F F Conclusion 60 Accordingly, we hold that:

> (i) The summary dismissal of an earlier petition under Article 32 of the Constitution does not bar the present writ petition on grounds of res judicata as there has been no substantive decision on the merits of the issues;
>
> (ii) The decision in Centre for Public Interest Litigation (supra) does not apply to the present facts because HZL had ceased to be a government company, at the stage of the disinvestment which is in challenge. Hence, the Union Government's decision to disinvest 29.54 per cent of its residual shareholding in HZL is not interdicted by the principles laid down by this Court in Centre for Public Interest Litigation (supra);
>
> (iii) SOVL has stated before the Court that it is not exercising its second call option under the Share Purchase Agreement;
>
> (iv) The Union Government has stated through the Solicitor General that the residual shareholding shall be divested in the open market and shall take place in accordance with the rules and regulations of SEBI to ensure that the best price is realized for the sale of the shareholding; and
>
> (v) There is sufficient material for registration of a regular case in relation to the 26 per cent disinvestment of HZL by the Union Government in 2002.

The CBI is directed to register a regular case and proceed in accordance with law.

PART F 61 Accordingly, the petition under Article 32 is partially allowed. The CBI is directed to register a regular case and periodically submit status reports of its investigation to this Court. The aforesaid reports shall be submitted every quarter, or as otherwise directed by this Court.

62 Pending application(s), if any, shall stand disposed of.

……J. [Dr Dhananjaya Y Chandrachud]
.....J. [B V Nagarathna] New Delhi;

November 18, 2021