Bhushan Power And Steel Ltd vs S. L. Seal & Ors on 15 December, 2016

Equivalent citations: AIR 2016 SC (SUPP) 955, 2017 (2) SCC 125, (2016) 12 SCALE 801, (2017) 2 JCR 183 (SC), (2017) 1 MAD LJ 68, (2017) 2 RECCIVR 33, (2016) 4 CIVLJ 9, (2016) 230 DLT 457, (2016) 2 DMC 507, (2016) 4 CURCC 358

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Bench: Abhay Manohar Sapre, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

CONTEMPT PETITION (CIVIL) NO. 275 OF 2016
IN
CONTEMPT PETITION (CIVIL) NO. 374 OF 2012
IN
CIVIL APPEAL NO. 2790 OF 2012

BHUSHAN POWER & STEEL LIMITED	.....PETITIONER(S)
VERSUS	
MR. S.L. SEAL	
ADDL. SECRETARY (STEEL & MINES)	
GOVERNMENT OF ODISHA & ORS.	.....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

The erstwhile Bhushan Ltd. (predecessor-in-interest of the petitioner) had proposed setting up of plant in some identified villages in the district of Sambalpur, Odisha. For this purpose, it had made a request for acquisition of land, measuring 1250 acres, which was acquired for Bhushan Ltd. It had also applied for grant of lease of mining of iron ore for use in the proposed plant. These applications were favourably considered by the State of Odisha (hereinafter referred to as the 'State Government') which agreed to accord due priority to Bhushan Ltd. for grant of suitable iron ore areas and also agreed to recommend the proposal to the Government of India for grant of a coal block. Even a MoU was entered into between the State Government and Bhushan Ltd. containing the commitment of the State Government to recommend to the Central Government, grant of iron ore mines for its use in the proposed plant. For this purpose, area earmarked for recommendation were Thakurani area with 96 million tonnes iron ore reserves and Keora area, District Sundargarh for additional 128 million tonnes of iron ore; both for 50 years' requirement of the plant. Though

various statutory and other permissions required for setting up of the plant were granted and the plant was also set up, but due to some in- fight between the family members who owned Bhushan Ltd., it faced difficulties in getting the grant of iron ore lease.

Insofar as granting of mining lease of iron ore reserves in the aforesaid areas is concerned, it fell into rough weather. It resulted into show- cause notice dated January 18, 2006 by the State Government which led to the decision that mining lease over the Thakurani area could not be allowed on various grounds and the application made by Bhushan Ltd. was premature. Thereafter, the Government of Orissa made a recommendation to the Central Government on February 09, 2006 to grant mining lease in favour of one M/s Neepaz Metallics (P) Ltd. in relaxation of Rule 59(1) of the Mining Rules, for a period of 30 years. Challenging these orders, Bhushan Ltd. filed Writ Petition (Civil) No. 6646 of 2006 in the High Court on May 08, 2006. This writ petition was dismissed by the High Court on December 14, 2007 and challenging this decision a special leave petition was filed in which leave was granted, thereby converting the special leave petition into Civil Appeal No. 2790 of 2012. This appeal was allowed by this Court vide judgment dated March 14, 2012, which was reported as Bhushan Power & Steel Ltd. v. State of Orissa[1], with the following directions: (SCC p. 256, paras 41-42) “41…Accordingly, we allow the appeal and set aside the judgment and order of the High Court of Orissa and also the decision of the State Government dated 9-2-2006, rejecting the appellant's claim for grant of mining lease.

42. During the course of hearing, we have been informed that Thakurani Block A has large reserves of iron ore, in which the appellants can also be accommodated. We, accordingly, direct the State of Orissa to take appropriate steps to act in terms of the MoU dated 15-5-2002, as also its earlier commitments to recommend the case of the appellants to the Central Government for grant of adequate iron ore reserves to meet the requirements of the appellants in their steel plant at Lapanga.” It would be pertinent to mention that the State of Odisha had filed a review petition seeking review of this judgment but the same was rejected vide order dated September 11, 2012. Pursuant to the aforesaid directions, though Bhushan Power & Steel Ltd. has been given Thakurani Block A, the order was not implemented qua Keora, District Sundargarh. The petitioner treated the aforesaid inaction on the part of the State Government as contemptuous and filed Contempt Petition (Civil) No. 374 of 2012[2]. This petition was contested by the respondents on various grounds. Main contention raised was that the direction given by this Court in its judgment dated March 14, 2012 was incapable of enforcement. For this purpose, the State Government had placed reliance upon the subsequent judgment of this Court in Sandur Manganese and Iron Ores Limited v. State of Karnataka & Ors.[3] and submitted that in view of the law laid down in the said judgment, it was not possible to carry out the directions contained in the judgment rendered on March 14, 2012 passed in the case of the petitioner herein.

Without going into the niceties by stating the basis of the said plea taken by the State Government, suffice is to state that the aforesaid stand did not find favour with this Court. It was found that the contemnors/officials of the State Government were in contempt of the orders dated March 14, 2012. In these circumstances, one more opportunity was given to the State Government to send requisite recommendation to the Central Government. However, for a better understanding of the nature of directions which were given, we reproduce following extracts from the judgment dated April 22,

2014 in the said Contempt Petition:

> "21. We cannot lose sight of the fact that there is a judgment, inter parties, which has become final. Even when the civil appeal was being heard, certain other parties claiming their interest in these very lands had moved intervention applications which were dismissed. At that time also it was mentioned that there are 195 applicants. However, notwithstanding the same, this Court issued firm directions to the State Government to recommend the case of the petitioners for mining lease in both the areas. In view of such categorical and unambiguous directions given in the judgment which has attained finality, merely because another judgment has been delivered by this Court in Sandur Manganese case, cannot be a ground to undo the directions contained in the judgment dated 14-3-2012. Insofar as law laid down in Sandur Manganese is concerned, that may be applied and followed by the State Government in respect of other applications which are still pending. However, that cannot be pressed into service qua the petitioner whose rights have been crystallised by the judgment rendered in its favour. It cannot be reopened, that too at the stage of implementation of the said judgment.
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> 22. We would like to place on record the arguments of the learned Senior Counsel for the petitioner that the total area under notification is 731.67 sq km and out of this 406 sq km is yet to be allotted. The area which comes to the share of the petitioner under MoU is 13.91 sq km which is barely 3% of 406 sq km and, therefore recommendation by the State Government in favour of the petitioner cannot be stalled or put to naught only on the basis of inchoate applications, fate whereof is yet to be decided. It is also pointed out that insofar as the petitioners in other writ petitions are concerned area claimed by them is not overlapping with the petitioner's area. However, it may not even be necessary to go into these contentions in detail. Once we hold that the respondents are bound to implement the direction contained in the judgment dated 14-3-2012, insofar as the State Government is concerned, it is obliged to comply therewith and such matters, along with other relevant considerations, can be left to the wisdom of the Central Government while taking a decision on the recommendation of the State Government.
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> 24. As a consequence, we hold that the respondents/contemnors are in contempt of orders dated 14-3-2012 passed by this Court in not complying with the directions in respect of Keora area. However, we are giving one final opportunity to them to purge the contempt by transmitting requisite recommendations to the Central Government. It would be for the Central Government to consider the said recommendations on its own merits and in accordance with law. In case the recommendation is sent within one month from the date of copy of receipt of this order, we propose not to take any further action and the respondents/contemnors shall stand discharged from this contempt petition. However, in case the respondents do not purge in the manner

> mentioned above, it would be open to the petitioners to point out the same to this Court by moving appropriate application and in that event the contemnors shall be proceeded against." According to the petitioner, the respondent State Government has not purged the contempt and, therefore, in view of the opportunity granted in the judgment dated April 22, 2014, as contained in paragraph 24 extracted above, the petitioner has moved the instant Contempt Petition in which we have heard M/s. Kapil Sibal and P. Chidambaram, learned senior counsel for the petitioner, and Mr. Maninder Singh, learned Additional Solicitor General for the Union of India, and Mr. Ashish Kumar Sinha, Advocate for the State Government.

We may mention at the outset that it is not disputed by the petitioner that after the directions dated April 22, 2014 given in the earlier Contempt Petition, the State Government had sent requisite recommendation to the Central Government for grant of mining lease in the area in question. The Central Government has, however, taken the view that having regard to the amendments in the Mines and Minerals (Development and Regulation) Act, 1957 (for short, the 'Act'), vide Mine and Minerals (Development and Regulation) Amendment Act, 2015 (hereinafter referred to as the Amendment Act, 2015) dated March 26, 2015, the grant of mining lease has to be dealt with in accordance with the new provisions introduced by the Amendment Act, 2015 and under the new scheme, the petitioner's earlier request stands invalidated. This view of the Central Government is contained in its letters dated May 13, 2015 and May 29, 2015 addressed to the State Government, with copies to the petitioner. The State Government has in turn written to the petitioner vide letter dated July 09, 2016 on the same lines. The petitioner has, however, taken the position that the amended sections have a saving provision, in which category the case of the petitioner falls, and in view thereof the approval of the Central Government is not even required and, therefore, the State Government was competent to grant the mining lease itself. It is for this reason the petitioner has impleaded Union of India as well, as respondent in the present proceedings and one of the prayers is to quash the letters dated May 13, 2015 and May 29, 2015 issued by the Central Government, as well as the communication dated July 09, 2015 issued by the State Government.

At this stage, we may reproduce the exact prayers made by the petitioner in this Contempt Petition:

> "(a) Initiate contempt of court proceedings against the Respondents/Contemnors and after hearing them, punish them for willfully flouting and deliberately disobeying the judgments and orders dated 14.3.2012 and 22.4.2014 passed by this Hon'ble Court in Civil Appeal No. 2790 of 2012 and Contempt Petition (Civil) No. 374/2012 respectively.

(b) Hold that the letters dated 13/05/2015 and 29/05/2015 issued by the Central Government (Annexure 9 & 10) and letter dated 09/07/2015 (Annexure

12) issued by the State Government are in breach and contempt of Judgments and Orders of this Hon'ble Court and are thus of no legal consequence and effect.

(c) Pass appropriate directions, directing the Respondents to comply with and implement the judgments of this Hon'ble Court dated 14.3.2012 and 22.4.2014 passed by this Hon'ble Court in Civil Appeal No. 2790 of 2012 and Contempt Petition (Civil) No. 374/2012 respectively and within two weeks of receipt of notice, to execute mining leases as recommended in Annexure Nos. P-5 and P-6.

(d) Pass such other or further orders as this Hon'ble Court may deem fit, just and proper in the facts and circumstances of the case." As pointed out above, the petitioner accepts the fact that the State Government had in fact made the recommendation dated May 24, 2014 to the Central Government for grant of mining lease over an area of 1063.633 hectares in village Rakma, Marsuan, Tibira and in Khajurdihi RF (Keora Sector) in the districts of Keonjhar and Sundergarh. It is further stated that despite this recommendation, the Central Government did not take any action to grant the approval. In the meantime, on January 12, 2015, the Central Government promulgated an Ordinance amending the Mines and Minerals (Development and Regulation) Act, 1957. This Ordinance was made into an Act of Parliament on March 26, 2015 with effect from January 12, 2015. On May 13, 2015, the Central Government has issued a letter to the State Government, a copy whereof was also marked to the petitioner, stating that:

> "3. As per details available with the Ministry, this proposal for accord of prior approval for grant of mineral concession becomes ineligible as per the provisions of Section 10A(1) of the Amendment Act. Accordingly, the proposal should be treated as closed and necessary order may be isued. The State Government may also ascertain whether the proposal is saved from ineligibility under the provisions of Section 10A of the Amendment Act, 2015 before communicating the same to the applicant and take following action in this matter:
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> (i) if the proposal is ineligible, it may be treated as closed and necessary order may be issued; and
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> (ii) if the proposal remain eligible, the State Government (sic) bring it to the notice of the Ministry so that necessary action as per provisions of the Amended Act may be taken." A few days later, the Central Government wrote another letter dated May 29, 2015 regarding proposal for grant of ML for iron ore over an area of 1390.663 hectares in village Rakma, Marsuan and Triba of Keonjhar district and Khajuridihi of Sundargah district stating as follows:
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> "As per details available with the Ministry, this proposal for accord of prior approval for grant of mineral concession becomes ineligible as per the provisions of Section 10A(1) of the Amendment Act. The matter may be treated as closed. However, the State Government is advised to examine the proposal and in case there is strong case for the concession to be saved from ineligibility under the provision of Section 10(a) of the Amendment Act then this Ministry may be informed accordingly for further necessary action." Letter dated July 09, 2015 sent by the State Government to the petitioner rejecting the application of the petitioner for grant of mining lease reads as under:

"And whereas, as per section-10A(1) of MMDR Amendment Act, 2015, all applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

And whereas, both the ML application No. 775 dated 04.12.2001 and ML application No. 780 dated 01.03.2002 of the applicant company are the fresh applications seeking grant of mining leases, which have been recommended to Government of India prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015.

Therefore, after careful consideration of the facts & circumstances and materials on record, the State Government is pleased to reject the ML application No. 775 dated 04.12.2001 and ML application No. 780, dated 01.03.2002 of the applicant company being ineligible as per the provisions of section-10A(1) of the Amendment Act, 2015." It is in the aforesaid background, learned senior counsel appearing for the petitioner argued that the aforesaid approach of the Central Government as well as the State Government contained in their respective communications is totally misconceived inasmuch as direction of this Court, which is inter parties, still remain binding, notwithstanding the introduction of Section 10A by the Amendment Act, 2015. It is also argued that even if the said Amendment Act applies, case of the petitioner is preserved and protected under Section 10A(2)(c) of the Act. Section 10A makes the following reading:

"10A. Rights of existing concession-holders and applicants. – (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-secion (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 –

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit-holder or the licensee, as the case may be, –

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

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

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

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

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government." It was argued with vehemence that even when under sub-section (1) of Section 10A, all applications received prior to the date of commencement of the Amendment Act, 2015 have been rendered ineligible, sub-section (2) saves certain kinds of applications. Clause (c) thereof is invoked by the petitioner to submit that in the instant case since 'Letter of Intent' had been issued by the State Government to grant a mining lease, the petitioner's application stands protected. For this purpose, recommendation dated May 24, 2014 is treated as Letter of Intent by the petitioner, laying emphasis on the words 'letter of intent (by whatever name called)'. It was, thus, argued that form of Letter of Intent is not necessary and the substance of the letter had to be seen. It was argued that since the letter dated May 24, 2014 of the State Government is in the nature of recommendation for grant of lease, it signifies intention to grant the mining lease insofar as the State Government is concerned and, therefore, in substance, it is the Letter of Intent. It was, thus, argued that under the new regime contained in Section 10A, approval of the Central Government was not even required and the State Government could have proceeded further and granted the lease.

Mr. Maninder Singh, learned Additional Solicitor General, submitted, on the other hand, that the view taken by the Central Government in its communications dated May 24, 2014 and May 29, 2015 is in accordance with the provisions of Section 10A of the Act. It was argued that letter dated May 24, 2014 cannot be treated as Letter of Intent as on the date of writing this letter, the State Government had no such power to give Letter of Intent without the prior approval of the Central Government. Therefore, it was only a request to the Central Government for considering the case of

the petitioner favourably. It is further submitted that Letter of Intent mentioned in clause (c) deals with the situations where sanction from the Central Government is received and Letter of Intent is issued but no formal lease executed. Only those cases are protected with. It was further submitted that after coming into effect the amended provision, the very methodology of grant of mining lease has undergone a significant change inasmuch as now the leases are to be granted through auction, which is so specifically provided in the amended Section 11 of the Amendment Act, 2015. It is for this reason, requirement of prior approval of the Central Government is dispensed with. Learned Additional Solicitor General further submitted that there is no contempt of the orders of this Court inasmuch as the only direction given in the impugned judgment dated March 14, 2012 was to the State Government to send the recommendation, which direction was reiterated in the judgment dated April 22, 2014 passed in the Contempt Petition as well. The State Government complied with this direction by sending such a recommendation to the Central Government. Therefore, the present contempt petition was not even maintainable. Counsel for the State Government supported the aforesaid stand taken by the learned Additional Solicitor General.

We have to bear in mind that the matter is being dealt with in a Contempt Petition. Therefore, what is to be seen is as to whether directions contained in the judgment are complied with or not. In the main appeal which was filed by the petitioner against the judgment of the Orissa High Court, it was allowed vide judgment dated March 14, 2012. Direction was given to the State Government to send the recommendation for grant of mining lease to the petitioner. As per the law prevailing at that time, the role of the State Government was only to send the recommendation to the Central Government for allotting mining areas. Ultimate authority/power was vested with the Central Government to take a decision on the said request of the State Government. Since the State Government had even refused to send such a request, this Court was of the view that the act of the State Government in refusing to send recommendation was contrary to the MoU dated May 15, 2002 and direction was issued to do the needful. In the order dated April 22, 2014, passed in Contempt Petition (Civil) No. 374 of 2012, this was made clear by observing that insofar as the State Government is concerned, it is obliged to comply therewith and such matters, along with other relevant considerations, can be left to the Central Government while taking a decision on the recommendation of the State Government. We state at the cost of repetition that since the Union of India was not a party, no direction was given to it. On the contrary, it was left to the Central Government to take an appropriate decision on the recommendation of the State Government. This was made clear in para 24 of the judgment dated April 22, 2014 by observing that it would be for the Central Government to consider the said recommendations on its own merits and in accordance with law.

Since the State Government had sent the necessary letter of request to the Central Government, direction contained in the judgment dated March 14, 2012 stands

complied with. The issue now raised, as reflected and discussed in the earlier portion of this judgment, is whether the application of the petitioner is rendered ineligible in view of Section 10A of the Act or whether it still survives. We are examining this issue as the petitioner's counsel have argued that the petitioner is eligible to be considered as its application falls in the category carved out by clause

(c) of Section 10A(2) and further that since no approval of the Central Government is required now, the State Government could itself grant the lease. It is argued that failure of the State Government amounts to contempt of the orders of this Court.

Undoubtedly, as per sub-section (1) of Section 10A, all applications received prior to coming into force of the Amendment Act, 2015, become ineligible. Reason for interpreting such a provision is not far to seek. Before the passing of the Amendment Act, 2015, it was the Central Government which had the ultimate control over the grant of licenses insofar as mining of major minerals is concerned. As per the procedure then existing, State Government could recommend the application submitted by any applicant for grant of mining lease to the Central Government and the Central Government was given the power to grant or refuse to grant the approval. Thus, 'previous approval' from the Central Government was essential for grant of lease, without which the State Government could not enter into any such lease agreement with the applicant. Shortcomings of this procedure were noticed by this Court in its judgment rendered in Centre for Public Interest Litigation Vs. Union of India[4] (for short, 'CPIL case') and also in Re.: Spl. Ref. No. 1 of 2012[5]. In these judgments, this Court expressed that allocation of natural resources should normally be by auction. Judgment in CPIL case had a direct relevance to the grant of mineral concessions as the Government found that it was resulting in multipurpose litigation which was becoming counter productive. Mining Ordinance, 2015 was passed on January 12, 2015 which was ultimately replaced when the Parliament enacted the Amendment Act, 2015.

The exhaustive Statement of Objects and Reasons reveals that the extensive amendment in the Act were effected after extensive consultations and intensive scrutiny by the Standing Committee on Coal and Steel, who gave their Report in May, 2013. As is evident from the Statement that difficulties were experienced because the existing Act does not permit the auctioning of mineral concessions. It was observed that with auctioning of mineral concessions, transparency in allocation will improve; Government will get an increased share of the value of mineral resources; and that it will alleviate the procedural delay, which in turn would check slowdown which adversely affected the growth of mining sector.

The Amendment Act, 2015, as is evident from the objects, aims at: (i) eliminating discretion; (ii) improving transparency in the allocation of mineral resources; (iii) simplifying procedures; (iv) eliminating delay on administration, so as to enable expeditious and optimum development of the mineral resources of the country; (v) obtaining for the Government an enhanced share of the value of the mineral resources; and (vi) attracting private investment and the latest technology.

The Amendment Act, 2015 ushered in the amendment of Sections 3, 4, 4A, 5, 6, 13, 15, 21 and First Schedule; substitution of new sections for Sections 8, 11 and 13; and, insertion of new sections 8A,

9B, 9C, 10A, 10C, 11B, 11C, 12A, 15A, 17A, 20A, 30B, 30C and Fourth Schedule.

These amendments brought in vogue: (i) auction to be the sole method of allotment; (ii) extension of tenure of existing lease from the date of their last renewal to March 31, 2030 (in the case of captive mines) and till March 31, 2020 (for the merchant miners) or till the completion of renewal already granted, if any, or a period of 50 years from the date of grant of such lease; (iii) establishment of District Mineral Foundation for safeguarding interest of persons affected by mining related activities;

(iv) setting up of a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration and investment; (v) removal of the provisions requiring 'previous approval' from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process simpler and quicker;

(vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to ?5 lakhs per hectare and imprisonment up to 5 years; and (vii) further empowering the State Government to set up Special Courts for trial of offences under the Act.

Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved.

First, applications received under Section 11A of the Act. Section 11A, under new avatar is an exception to Section 11 which mandates grant of prospecting license combining lease through auction in respect of minerals, other than notified minerals. Section 11A empowers the Central Government to select certain kinds of companies mentioned in the said Section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting license or mining lease in respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11A, they are saved and protected, which means that these applications can be processed under Section 11A of the Act.

Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting license had been granted and the permit holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with hope to get the license, had altered their position by spending lot of money on reconnaissance operations or

prospecting operations. This category, therefore, respects the principle of legitimate expectation.

Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the raison d'etre is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led the Parliament to make such a provision saving those rights, and understandably so.

Here, the petitioner seeks to cover its case under the third category with the plea that insofar as the State Government is concerned, it had issued 'Letter of Intent'. The petitioner is treating letter dated May 24, 2014, which was sent by the State Government to the Central Government with a request to the Central Government to give its approval for grant of mineral concessions, as the 'Letter of Intent'. It is in this hue, submission is that the intention behind the said letter is to be seen even if it is not termed as 'Letter of Intent' and this argument is predicated on the words 'by whatever name called'.

No doubt, having regard to the words 'by whatever name called', the expression 'Letter of Intent' is to be given wider connotation. It means that nomenclature of the letter would not be the determinative factor. It is the substantive nature of the letter in question that would determine as to whether it can be treated as the Letter of Intent. For this purpose, it is first necessary to find the meaning that has to be attributed to the term 'Letter of Intent'. As per the legal dictionary, Letter of Intent is a document that described the preliminary understanding between the parties who intend to make a contract or join together in another action. This term has come up for interpretation on few occasions before this Court. In Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and Others[6], relying upon an earlier decision, this Court held that a Letter of Intent merely indicates a party's intention to enter into a contract with other party in future, as can be seen from the following para 43 thereof, which reads as under:

> “43. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of “the Rules and Procedure for Allotment of Plots” in question issued by Kandla Port Trust. As per Clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised “at any time without assigning any reasons thereto”. Clause 13 relates to “approvals from statutory authorities”, with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per Clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/competent authority. In view of

> this material on record and factual position noted in earlier paragraphs we are of the opinion that observations in Dresser Rand S.A. v. Bindal Agro Chem Ltd. would be squarely available in the present case, wherein the Court held that: (SCC p. 773, paras 39-40) "39...a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. ...
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> 40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter." When the LoI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract." {See also Rajasthan Cooperative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and Ors.[7]}.

Applying the aforesaid meaning, can it be said that letter dated May 24, 2014 of the State Government would constitute a Letter of Intent? We are afraid, answer has to be in the negative. Reason is simple. As mentioned above, in order to enable the State Government to enter into any lease agreement/contract with the prospecting licensee, 'previous approval' of the Central Government was essential. Unless such approval came, the State Government could not communicate to the prospecting licensee/lessee its intention to enter into any contract as the pre-requisite prior approval would be lacking. Therefore, no promise could be held by the State Government to any applicant showing its intention to enter into a contract in the future. Position would have been different had letter dated May 24, 2014 been issued after receiving previous approval of the Central Government. However, that is not so. This letter to the Central Government was only recommendatory in nature and ultimate decision rested with the Central Government. It is a different thing if the Central Government refuses to give its approval on any extraneous reasons or mala fides or does not take into consideration relevant factors/material while rejecting the application, which may form a different cause of action and may become a reason to challenge the action of the Central Government rejecting the application on the grounds that are available in law to seek judicial review of such an action. However, we are not dealing with that situation in the

instant case. Our discussion is confined to the plea raised before us, viz., whether letter dated May 24, 2014 can be termed as 'Letter of Intent'. For the reasons stated above, we are of the view that it was not a Letter of Intent. The application of the petitioner, therefore, would not be covered by clause (c) of Section 10A of the Act.

We are conscious of the fact that the petitioner herein had originally succeeded in the appeal inasmuch as judgment dated March 14, 2012 was rendered giving direction to the State Government to recommend the case of the petitioner, in terms of the MoU entered into between the parties, to the Central Government. This was not done and the decision was reiterated in orders dated April 22, 2014 passed in Contempt Petition (Civil) No. 374 of 2012. It is possible that had the State Government acted promptly and sent the recommendations earlier, the Central Government might have accorded its approval. However, whether it could have done so or not would be in the realm of conjectures. Insofar as the Central Government is concerned, no direction was ever given by this Court. On the contrary, it was categorically observed in the order dated April 22, 2014 in Contempt Petition (Civil) No. 374 of 2012 that it would be for the Central Government to consider the recommendations of the State Government on its own merits and in accordance with law. If that has not been done by the Central Government, it cannot be the subject matter of present Contempt Petition.

This Contempt Petition, thus, stands closed with the aforesaid observations.

.....J. (A.K. SIKRI) .....J. (ABHAY MANOHAR SAPRE) NEW DELHI;

DECEMBER 15, 2016.

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[1] (2012) 4 SCC 246 [2] Bhushan Power and Steel Limited & Ors. v. Rajesh Verma & Ors., (2014) 5 SCC 551 [3] (2010) 13 SCC 1 [4] (2012) 3 SCC 1 [5] (2012) 10 SCC 1 [6] (2015) 13 SCC 233 [7] (1996) 10 SCC 405