Bishambhar Prasad vs M/S Arfat Petrochemicals Private ... on 20 April, 2023

Author: Surya Kant

Bench: Vikram Nath, Surya Kant

REPOR

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2963 OF 2023
[Arising out of Special Leave Petition (Civil) No. 14970 of 2021]

Bishambhar Prasad … Ap

Versus

M/s Arfat Petrochemicals Pvt. Ltd. & Ors. … Resp

WITH

CIVIL APPEAL NO. 2965 OF 2023
[Arising out of Special Leave Petition (Civil) No. 13106 of 2021]

The Rajasthan Industrial Development and Investment Corporation Ltd. … Ap

Versus

M/s Arfat Petrochemicals Pvt. Ltd. & Ors. … Resp

WITH

CIVIL APPEAL NO. 2964 OF 2023
[Arising out of Special Leave Petition (Civil) No. 13008 of 2021]

The State of Rajasthan & Anr. … Appellant

Versus

M/s Arfat Petrochemicals Pvt. Ltd. & Ors. … Respondents

WITH

CIVIL APPEAL NO.2966 OF 2023
[Arising out of Special Leave Petition (Civil) No. 960 of 2022]

The President, J.K. Staple & Acrylic Employees Union & Ors. … Appellant

Versus

M/s Arfat Petrochemicals Pvt. Ltd. & Ors. … Respondents

AND

CIVIL APPEAL NO.2967 OF 2023
[Arising out of Special Leave Petition(Civil) No.5073of 2023]
[Arising out of Special Leave Petition (c) Diary No. 8380 of 2022]

Rajasthan Trade Union Kendra … Appellant

Versus

M/s Arfat Petrochemicals Pvt. Ltd. & Ors. … Respondents

JUDGEMENT

Surya Kant, J.

1. Leave granted.

2. This batch of appeals arises from the judgment dated 20.07.2021 passed by the Jaipur Bench of the High Court of Judicature for Rajasthan whereby the Writ Petition filed by Respondent No. 1 – M/s. Arfat Petrochemicals Pvt. Ltd. in all connected matters was allowed. As a corollary, the decision by the Cabinet Committee of the State of Rajasthan, and resulting instructions issued to the Rajasthan State Industrial Development and Investment Corporation Ltd. ("RIICO") to cancel a series of permissions and approvals granted/awarded to Respondent No. 1 in respect of industrial land in Kota, Rajasthan, were set aside.

3. There are different Appellants before us in the respective SLPs. They include the State of Rajasthan (hereinafter, "State of Rajasthan" or "State Government"), RIICO, and various workers unions (hereinafter, "Appellant Unions"). As the nature and type of relief sought by both the State of Rajasthan and RIICO, stand on a slightly different footing to that of the Appellant Unions, we will address the State of Rajasthan and RIICO (collectively, "Appellants") separately, to maintain the distinction between the reliefs sought by them as compared to the Appellant Unions.

A. FACTS

4. The dispute originates from the allotment of approximately 271.39 acres of land by the State of Rajasthan through the District Collector, Kota, in the Large-Scale Industrial Area, Kota ("LIA, Kota") to J.K. Synthetics Ltd. ("JKSL") on 12.09.1958. Following the allotment, a lease deed was executed with JKSL by the Collector, Kota, and permission was granted for setting up its industrial units in the area. JKSL's retention of the property was facilitated over the following decades through the execution of fresh lease deeds with respect to the same area, as and when the period specified in the earlier lease lapsed.

5. Just after the first allotment was initially made, the State Government exercised its powers under Section 100 of the Rajasthan Land Revenue Act, 1956 and formulated the Rajasthan Industrial Areas Allotment Rules, 1959 ("1959 Rules") to regulate the allocation of land to entrepreneurs and the development of industrial areas across the State. Section 100 of the Rajasthan Land Revenue Act is provided below:

> "100. Sale of land in Industrial and Commercial Areas – The State Government may make rules regulating sales of lands in industrial and commercial areas and may also impose an annual assessment of such lands, wherever necessary."

6. Similarly, Rules 2, 8 and 9 of the 1959 Rules are also of some relevance and the same are reproduced below:

> "2. Period for which land may be allotted.- Land in industrial area may be allotted on lease-hold basis for a period of 99 years-

(a) for setting of a large-scale industry anywhere in the state, by the State Government in the Industries Department and in the case of large-scale tourism unit, the allotment shall be made by the Government in the Revenue Department and

(b) for setting up of other industries –

(i) in Jaipur District, by the Director of Industries, Rajasthan Jaipur provided that in case of a tourism unit the allotment shall be made by the Government in the Revenue Department, and

(ii) in any other district, by the Collector concerned.

(bb) for the setting up of IT Industries Government land shall be allotted by the State Government in the Revenue Department on the recommendation of the Department of Information Technology and Communication.

(c) all allotment of land under clause (a) shall be made within a period of 60 days and under clause (b) within a period of 30 days from the date of receipt of the completed application in Form-B. In case applicants submit complete application electronically in Single window System Portal, it shall be disposed as per the provisions of the Rajasthan Enterprises Single Window Enabling and Clearance Rules, 2011.

Provided that the allotment of land for the purpose of setting up of Common Effluent Treatment Plant and related activities, anywhere in the State, shall be made by the State Government in the Revenue Department for a period of 10 years which shall be extendable for a period of 5 years.

xxx xxx xxx

8. Land not to be used for other purpose. – (1) The land given for industrial purposes shall not be used for any other purpose except constructing factory premises and such other residential quarters as are required for those engaged in that industry. No constructions shall be permitted which may have the object of using it as a commercial undertaking other than the industry permitted to be established.

Provided that the State Government, on the application of the lessee for establishment of industry other than the industry for which the was given, may grant permission for establishment of such industry. But in case of government land allotted under these rules, such permission shall not be granted for establishment of tourism units. (2) The permission for construction of the labour colony shall be given if required at the time of the establishment of an industry.

(3) The industrialist shall be free to use an area upto 200 sq. meter for his own residential purpose on first floor of the factory premises.

9. Lessee debarred from sale of land etc. – The lessee shall have the limited ownership on the land leased till the lease subsists and shall have the right of assignment only for the purpose of taking a loan for the development of the industry or for pledging as collateral security for a loan taken by the lessee or some other industry owned by the same management. The lessee shall have no right to sell the land:

> (i) Provided that the land can be pledged as collateral security only in favour of Industrial Financial Corporation of India, Rajasthan Finance Corporation, IDBI, ICICI, LIC, IRBI, HDFC, SIDBI, EXIM Bank, Co-

operative Banks and any Public Financial Institution as defined in the Public Financial Institute Act or Scheduled Banks or private lending agencies subject to ensuring that the lessee has cleared all the outstanding dues of the lessor and the lessee creates first charge in favour of the State Government and second to the financing body or bodies.

(ii) Provided further that once the land has been utilised for the purpose for which it was allotted within the period specified in rule 7, the lessee may, with the permission of the Allotting Authority transfer his right or interest in the whole land, so leased out, on the following conditions:-

> (a) In case of government land allotted under these rules, he shall pay 50% of prevailing market price of land after deducting allotment price charged under rule 3A and the transferee shall pay 50% of excess amount of yearly lease land mentioned in rule 5 and other conditions of lease shall be remained unchanged.
>
> (b) In case of converted Khatedari land allotted under these rules for industrial purpose, the transferee shall pay 50% excess amount of yearly lease rent mentioned in rule 5 and other conditions of lease shall be remained unchanged. (iia) Provided also that if after grant of permission the transferee has failed to execute the lease deed and further transferred the allotted land without prior permission of allotting authority, such transfer may be regularised by the allotting authority on payment of penalty of Rs.3000/- for each transfer. The lease deed may be executed in favour of such transferee for the remaining period of lease may be executed in favour of such transferee for the remaining period of lease.

The transferee shall pay 50% excess amount of the yearly lease rent mentioned in rule 5 on such transfer.

(iii) Provide also that in case an industrial plot is proposed to be divided or sub-divided for any purpose, whatsoever, prior permission of the State Government in the Revenue Department shall be obtained by the allotting authority.

(iiia) Provide also that if any industrial plot is divided or sub-divided without obtaining prior permission of the State Government, the lessee shall apply for permission of division or sub-division to the allotting authority along with a copy of the challan depositing an amount of Rs.3000/-. The

allotting authority, with prior approval of the State Government, may regularise the division or sub-division.

(iv) Provide also that, in case of sick unit as per RBI guidelines, the lessee with the prior permission of the State Government, may transfer his right or interest in the leased land sub-divided under the above proviso on the following conditions: -

(a) That NOC from Financial Institutions/Bank shall be obtained, in case land is mortgaged.

(b) that the conditions of lease shall remain unchanged.

(c) that the transferee shall pay additional 100 percent excess amount of the proportionate yearly lease rent applicable from the date of transfer of right or interest in leased land.

(d) that the transferee shall use the land for the industrial purpose only.

(e) that in case of government land allotted under these rules, the transferee shall pay 50% of prevailing market price of land after deducting allotment price charged under rule 3A.

(v) Provided also that no permission of transfer under the above proviso, shall be allowed in case of a Government land unless the unit is declared sick by Board of Industrial and Financial Reconstruction (BIFR).

(vi) Provided also that in case of any doubt of any kind the allotting authority shall refer the matter to the State Government in the Revenue Department whose decision shall be final.

Provided also that the developer of micro, small and medium enterprises clusters, as per approved plan, may transfer his right or interest in the whole land, so leased out to entrepreneurs. The conditions of lease remaining unchanged. The transferee shall pay 50% excess amount of the yearly lease rent mentioned in rule 5 on such transfer."

7. The first lease deed of 11.08.1967 which governed the terms and conditions of allotment of land to JKSL, contained, amongst others, the following conditions:-

> "xxx xxx xxx
> NOW THIS INDENTURE WITNESSETH AS
> FOLLOWS:
> …

iv) The lessee shall set up on the said plot of land Nylon industry for which land has been leased to him by the lessor within a period of two years from the date of talking over the possession of the land as above mentioned and in case of his failure to do so the said plot shall revert to the lessor unless the period of two years is extended by the lessor on valid grounds.

v) The lessee shall set up, construct, erect and build on the said plot of land, only such buildings, sheds, and structures as are required by him for setting up the industry aforesaid and also such other residential quarters e.g. watch & ward quarters as are required for those engaged or to be engaged in the said factor.

vi) The lessee agrees not to construct or build any structures or building on the said plot of land or on a portion of it which may have the object of using it as a commercial undertaking other than for the industries aforesaid for which the said plot has been leased to the lessee.

..." As is evident from the lease, the object behind the allocation of the land was for a specific purpose and no other usage was permissible. Subsequent leases executed between JKSL and the District Collector contained pari materia clauses.

8. While the above stated leases were subsisting, the Rajasthan State Industrial and Mineral Development Corporation Ltd. ("RSIMDC") was incorporated for carrying out development projects across the State. The Corporation was subsequently split into two entities, with RIICO acting as its direct successor. To regulate RIICO's activities in respect of the lands over which it would have control, the RIICO Disposal of Land Rules, 1979 ("1979 Rules"), were issued under Article 93(xv) of the Articles of Association ("AoA") of the Company. The Rules provided a mechanism by which RIICO could grant different types of approvals and permissions in relation to industrial lands and their utilization. On 18.09.1979, an Order was passed by the State Government to allot all industrial lands within its territory to RIICO. Thus, the Corporation would, from that point onwards, step into the shoes of the state government in overseeing further development of the areas under its supervision. Whether or not this included the LIA, Kota, is a point of contention among the parties. The Joint Director of the Department of Industries at Kota, also issued an Order on 28.09.1979, according to which a number of industrial areas would be transferred to RSIMDC in compliance with the Government decision of 18.09.1979. LIA, Kota, was listed among the areas to be entrusted to RSIMDC in the said communication.

9. The Government Order dated 18.09.1979 and Joint Director's Order dated 28.09.1979, warrant reproduction:

> "Government of Rajasthan Industry Group-2 Department No.P-4 56/Industry/1/79Jaipur, Dated: 18.9.79 Order It has been decided in the meeting dated 18.09.1979 of Rajasthan State Level Planning and Development Coordination Committee that all the industrial areas of Rajasthan shall only be developed through Rajasthan State Industrial and Mining Development Corporation. Further, it has also been decided that the industrial areas operated by the Department of Industry shall be handed over to Rajasthan State Industrial and Mining Development Corporation Ltd., Jaipur w.e.f. 01.10.1979.

Therefore, the State Government hereby issues order to transfer the handing over of industrial areas operated by the Department of Industry to Rajasthan State Industrial and Mining Development Corporation Ltd., Jaipur w.e.f. 01.10.1979." x----------x----------x

"Office of Joint Director, District Industrial Centre, Kota Dated: 28.09.1979 Order With reference to the State Government Order No. Industry (Group-I) Department, A.P.4 (56) Industry/1/79 dated 18.09.1979 and Director, Department of Industry, Rajasthan, Jaipur DO letter No.F.2 (182) 9A/2305 dated 21.09.1979, the following Industrial Areas (Departmental) are hereby transferred to Rajasthan State Industrial and Mining Development Corporation Ltd., Jaipur w.e.f. 28.09.1979 (Afternoon):

1. Large Scale Industrial Area, Kota

2. Small Scale Industrial Area, Kota

3. Lakhava Industrial Area, Kota

4. Nanta Industrial Area, Kota" x----------x----------x

10. The contents of the 1979 Rules, under which RIICO would carry out its activities in terms of industrial areas allotted to it, that are important for our purposes may also be noted at this stage:

"20-A. The Managing Director shall have full powers with regard to the following:

1. Approval of layout plan of the industrial areas and changes/ modification / revision /subsequent changes therein and all related matters.

2. Changes in status of any of the land at any industrial area e.g. conversion from industrial land to open land, service land, commercial land, residential land, conversion from open land to industrial land, commercial land, residential land, services land, conversion from service land to industrial, open, commercial, residential and for other purposes etc., and vice-versa.

20-B. Sr. DGM / SRMs / RMs are authorized for:

(i) sub-division of plots.

(ii) reconstitution of plots.

(iii) …

20-C

xxx xxx xxx

(A) Following riders/conditions will be observed while considering the change in land use:

i) No change in land use of allotted plots will be permitted for residential purpose.

ii) No change in land use of vacant industrial plot would be allowed. In other words, the allottees of industrial plot who have not set up an industry will not be permitted change in land use for non-industrial purposes. However, change in land use of part vacant sub-divided plot would be allowed subject to condition that the leasehold rights of the sub-divided plot are held by the allottee of integrated plot.

iii) No change in land use of allotted institutional plots will be allowed in the dedicated Institutional Areas for any other purpose.

iv) No change in land use of plots allotted under the provisions of Rule 3(E) and 3(W) of RIICO Disposal of Land Rules, 1979 will be permitted.

v) Change in land use of plot allotted for non-

industrial use will be allowed for vacant plot subject to payment of 15% of the prevailing rate of allotment as additional charges.

vi) Change of land use of the allotted plots for commercial/institutional purposes as permitted under this rule will be considered only for the plots located on the roads having right of way of 18.00 mtr. and above (total road width). However, in the land use conversion cases wherein the criterion of minimum road width of 24 mtr. or above is specified in the building regulations/parameters then the same will be observed while considering the cases of the land use conversions.

vii) ..."

11. Even after the Govt. Order dated 18.09.1979, JKSL continued to deal directly with the District Collector, Kota. Another lease, extending JKSL's utilization of the land in LIA, Kota, was signed in 06.10.1982 between the Collector and JKSL, and not RIICO. During the same period, the 1959 Rules were amended to introduce provisions that would effectuate the allocation of industrial areas to RIICO, and to then facilitate the Company administering these lands under the 1979 Rules.

Relevant sub-clauses of Rule 11A inserted on 23.12.1983, and Rule 12 added in 13.07.1982, are particularly important in this context:

"11-A. Allotment of land to the Rajasthan State Industrial Development and Investment Corporation Ltd. or Rajasthan Tourism Development Corporation-

Land shall be allotted to the Rajasthan State Industrial Development and Investment Corporation Ltd. or Rajasthan Tourism Development Corporation for setting up and developing Industrial Areas, on the following terms and conditions :-

(i) The land shall be allotted on lease hold basis for a period of 99 years;

(ii) The premium to be charged for the allotment of government land for industrial purposes shall be equivalent to the prevailing market price of the same class of agricultural land in the vicinity and shall be determined accordingly by the Colonization Commissioner in the Rajasthan Canal Project Colony Area and by the Collector concerned in other areas:

Provided that no premium for allotment shall be charged from Rajasthan State Industrial Development and Investment Corporation where the land has been purchased by the Rajasthan State Industrial Development and Investment Corporation or acquired for Rajasthan State Industrial Development and Investment Corporation after its incorporation and the compensation is paid by the Rajasthan State Industrial Development and Investment Corporation.

(iii) ....

(iv) The Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation] may sub-lease the leased land or part thereof, for industrial purposes including essential welfare and supporting services, provided that in the case of Diamond and Gem Development Corporation to who the land has already been leased out by RIICO for 99 years, the sub-lessee i.e. DGDC may further sublet and the terms and conditions and other provisions contained in the rules in so far as they relate to RIICO shall mutatis mutandis apply to DGDC also as if the land in question has been let out to them by State Government and rule 11-A ibid.

Provided further that where land was allotted and converted in favour of Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation] after its incorporation for industrial purpose but land was used for essential welfare and supporting services, such allotment [xxx] shall be deemed to be for industrial purpose.

(iv-a) The sub-lessee of the Rajasthan State Industrial Development and Investment Corporation Limited may further sub-lease the sub-leased land or part thereof on such terms and conditions as may be mutually agreed between such sub-lessee and subsequent sub- lessee. The terms and conditions applicable to sub-lessee shall also mutatis mutandis apply to such subsequent sub-lessee.

(v) The Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation] may levy and recover such lease rent and other charges as may be determined by it, in respect of the lands sub-leased by it;

(vi) The periods of the sub-leases by the Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation] shall be determined by it, but shall not exceed 99 years, in all, in any case;

(vii) The land shall revert to the Government free of all encumbrances and without payment of any compensation in case the Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation] or any of its sub- lessees, use it for any purpose other than industrial [including essential welfare and supporting services], or commit breach of any other condition of the lease or sub-leases;

(viii) The sub-lessees of the Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation shall continue to be governed by all other terms and conditions prescribed in these rules, and any other analogues rules that may be promulgated or orders that may be issued, in this behalf by the State Government.

12. Allotment of land by Rajasthan State Industrial Development and Investment Corporation Ltd. [or Rajasthan Tourism Development Corporation.

The Rajasthan State Industrial Development and Investment Corporation Ltd. Jaipur or Rajasthan Tourism Development Corporation shall be empowered to make allotment in accordance with the Rajasthan State Industrial Development and Investment Corporation Disposal of Land Rules, 1979 [or any other rules framed by the RIICO and RTDC for the purpose] of vacant plots to entrepreneurs in the Industrial Areas notified by the State Government and transferred to the said Corporation. The Corporation shall also be authorised to execute lease deeds, realize development charges, lease rent and other dues from the entrepreneurs to whom plots have already been allotted in accordance with the provision of these rules, and to take any consequential or residuary action in regard to the plots allotted the entrepreneur.

Provided that the Rajasthan State Industrial Development and Investment Corporation Ltd. or Rajasthan Tourism Development Corporation shall be empowered to grant written permission to the lessee for transfer of rights or interest in the land in respect of the plots/land located in the Industrial Areas notified by the State Government and transferred to the said corporation:

> Provided further that any permission granted or action taken for transfer of rights or interest in the plots/land by the Rajasthan State Industrial Development and Investment Corporation Ltd. or Rajasthan Tourism Development Corporation. after 13-07-1982 in respect of the plots/land saturated in the Industrial Areas and transferred to the said Corporation shall be deemed to be valid under the first proviso to this rule."
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> 12. In the backdrop of these amendments, confusion arose regarding whether Rules 11A and 12 of the 1959 Rules would be applicable prospectively or retrospectively. In this context, a clarification was sought by the District Collector, Kota, through a letter dated 15.05.1986. The Collector was referring in this context to the deposit of lease rent and to whom the rent in question should go:
>
> "Therefore, guide in this regard that the above- mentioned notification dated 13-07-1982, the lease rent etc. of the land allotted to the factory will be deposited by

RIICO or deposited in the erstwhile tehsil itself s a state item. Please send guidance in this regard soon. Till the guidance is received the decision has been taken to deposit the lease amount in the Tehsil. Photocopy of the form letter is also being sent from M/s J K Synthetic in this regard. Signature District collector, Kota Number:- F-8 (198) Revenue/4435-38 Dt. 15-05-86"

x----------x----------x

13. In response to this, a notification was issued by the State Government on 23.05.1987, clarifying that Rule 12 of the 1959 Rules, added on 13.07.1982, would not apply retrospectively and the lease rent and other items pertaining to different deeds would remain a state subject.

"Rajasthan Government Revenue (Group-4) Department Sr. No. 2 (242) Rajasthan/3/86Jaipur, Dated 23.05.1987 Sent:- District Collector, Kota.

Sub:- Regarding development fee, lease rent and service charge of land allottee to M/s JK Synthetic Ltd. Kota.

Ref:- Your letter 4434 dated 15-05-1986. Sir, According to the above subject, it is written that the notification dated 13-07-1982 of this department has not been implemented with retrospective effect and in earlier cases the amount of lease rent etc. should be deposited in the tehsil as a state item.

Yours Faithfully Katara Deputy Government Secretary"

x----------x----------x

14. This seemed to remove whatever doubts, if any, and clarified explicitly that the amendments to the 1959 Rules, of which Rules 11A and 12 are important for us to keep in mind, were prospectively applicable. The management and control of the lands leased out under the 1959 Rules, were apparently not handed over to RIICO. This understanding was enunciated in a Government Circular dated 12.01.1995 which indicates that revenue records would reflect that ownership and the right to administer the land remained with the State Government. Further, documents in this regard would be retained by the District Industries Centre, and not RIICO:

"Government of Rajasthan Industries (Group-1) Department

1. Director Industries Department Jaipur, Rajasthan

2. All District Collector

3. All General Manager District Industries Centre Sr. No. 1(75) Industries/1/94 Jaipur, Dated 12th January, 1995

1. Land reserved for industrial area Under section 92 of Rajasthan Land Revenue Act, 1956 land allotted under Rajasthan Industrial Area Allotment Rules, 1959 all records

to be kept with District Industrial Centre. At present files with RIICO should also be taken back and kept with District Industrial Centre. In all these cases compliance of terms of lease deed and monitoring of the same to be under supervision of District Industrial Centre.

2. Before lease deeds are signed for Land allotted under Rajasthan Industrial Area Allotment Rules, 1959 entry of change of land use and ownership should be entered into the revenue records and only then the land should be allotted under Rajasthan Industrial Area Allotment Rules, 1959.

3. After the signing of lease deed the same should be entered into the revenue records and files pertaining to it should be kept with District Industries Centre.

4. Lease deed of the allotted land under Rajasthan Industrial Area Allotment Rules, 1959 is to be executed by District Collector/ General Manager, District Industries Centre. As District Collector/ Managing Director has to initiate action in cases of violation of terms of lease deed, General Manager, District Industries Centre to be directly responsible to bring any or all violations in the notice of Director, District Industries Centre and District Collector.

Sincerely, Special Secretary Industry" x----------x----------x

15. A circular by RIICO itself, on 27.01.1995, gave RIICO's own interpretation of the content and meaning of the Circular issued by Industries Department, Government of Rajasthan on 12.01.1995. It concurred with the stand that files pertaining to lands for which allotment and leases had been executed under the 1959 Rules, would be retained by the State Government and not the Corporation:

"Rajasthan State Industrial Development and Investment Corporation Ltd.

Udyog Bhawan, Tilak Marg, Jaipur- 302005 Sr. IPI/P-3(24)47/95 Dated:- 27-01-1995 Circular Sub:- Proceeding in respect of land under Rajasthan Industrial Area Allocation Rules, 1959. In the industrial areas of the corporation (and those industrial areas which were later transferred from the Department of Industries to the Corporation) in violation of the terms of the lease of land allotment. Action is taken by the unit office under the Corporation's Land Disposal Rules. Some such cases (especially in Bhilwara) have come to notice in which land allocation to Industrial Units at the state level or district level was done under the Rajasthan Industrial Area Allocation Rules, 1959 and whose lease deed was also executed by the District Collector (Industry). But their files were transferred to the unit offices of the corporation in some such cases proceedings were initiated by the unit office of the corporation in cases of violation of the terms of the lease deed. Such proceedings are irregular.

In the above context, the State Government has recently issued circular dated 12-01-1995, a copy of which is being attached for your information. It will be clear from this that under the Rajasthan Industrial Area Allocation Rules, 1959 the District Industry Center/Collector (Industry) will have the right and responsibility to take action in respect of violation of the terms of the lease deed. If you have any documents under consideration in this regard, please return them to the District Industries Centre. Enclosed Circular Dated 12-01-1995. Copy:-

1. All Unit offices For information.

2. RIICO (Headquarters) Officers for information (S S Chaturvedi) Advisor (Infra)"
x-------------------------x-------------------------x

16. In this background, JKSL was continuing its operations in the leased-out area for several years. However, in the 1990s, JKSL encountered financial difficulties and was eventually declared a "sick company" by the Board for Industrial and Financial Reconstruction ("BIFR") on 02.04.1998, under the Sick Industrial Companies (Special Provisions) Act, 1985 ("SICA"). Following the classification of JKSL as a sick company, the matter was referred to the Appellate Authority for Industrial and Financial Reconstruction ("AAIFR"). During this period, JKSL signed a Memorandum of Understanding with Respondent No. 1 as part of its plan to sell the Kota unit of its operations. Section 18 of SICA1 envisages certain measures being taken for revival of the company that has fallen on difficult times and been declared a "sick" company.

17. The prospect of a demerger of the certain units owned by JKSL became the preferred strategy for effectuating the 1 18. Preparation and Sanction of Schemes — (1) Where an order is made under sub-section (3) of section 17 in relation to any sick industrial company, the operating agency specified in the order shall prepare, as expeditiously as possible and ordinarily within a period of ninety days from the date of such order, a scheme with respect to such company providing for any one or more of the following measures, namely:— [(a) the financial reconstruction of the sick industrial company;]

(b) the proper management of the sick industrial company by change in, or take over of, management of the sick industrial company;

[(c) the amalgamation of— (i) the sick industrial company with any other company, or (ii) any other company with the sick industrial company; (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), the sick industrial company, referred to as "transferee company";]

(d) the sale or lease of a part or whole of any industrial undertaking of the sick industrial company;

[(da) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law;]

(e) such other preventive, ameliorative and remedial measures as may be appropriate;

(f) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses

(a) to (e).

... (6A) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.] recuperation of the company. Respondent No. 1 emerged as the favoured entity to take over these units and also entered into two tripartite settlements on 09.10.2002 and 22.10.2002, involving JKSL and two worker's unions, to pay off part of the dues of the former labourers of JKSL, as well as offer them employment under Respondent No. 1. The relevant terms and conditions of the agreement dated 09.10.2002, are as follows:

> "IV. TERMS AND CONDITIONS xxx xxx xxx
>
> 2. It is further agreed that while APPL will take over all the liabilities pertaining the workmen/employees of Sir Padampat Research Centre, as determined as per Annexure B even though the SPRC unit will not be transferred to APPL and will be retained by JKSL.
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> 3. The APPL will operate the Kota Complex .in the name and style of Arfat petrochemical Pvt. Ltd.

(APPL) as a new company and new employer.

They will issue their appointment letters as per requirements in a phased manner subject to suitability and covering terms of employment etc. The dues of employment under JKSL would be settled as full and final payment as summarized in Annexure-A. xxx xxx xxx" The rest of the agreement contains numerous clauses that are in furtherance of the absorption of the workers into Respondent No. 1's operations that were to start after the demerger of defunct units owned by JKSL. The second agreement of 22.10.2002 also contained similar provisions.

18. Eventually, AAIFR sanctioned a rehabilitation scheme for JKSL on 23.01.2003. The scheme referred to and validated the tripartite agreements/settlements entered into by JKSL, Respondent

No. 1, and the different labour unions. It was noted that the liabilities of the workers had been taken on by Respondent No. 1, alongside its obligation under those agreements to revive the industrial operations at Kota. A Joint Venture & Shareholder Agreement (hereinafter, "JV") was signed between Respondent No. 1 and JKSL on 13.05.2003, which cemented the former's obligation to discharge the liabilities outstanding on LIA, Kota, as well as the dues of the labourers. The AAIFR scheme was finalized on 07.01.2005, and it included an obligation on the part of Respondent No. 1 to honour the earlier tripartite agreements with the JKSL workers unions. Part of the rehabilitation scheme involved hiving off 227.15 acres of the land in the LIA, Kota, away from JKSL and to Respondent No. 1.

19. Respondent No. 1, as part of the aforementioned JV between itself and JKSL, continued to coordinate with the State Government on shifting the lease on LIA, Kota, away from JKSL and to itself. A letter to this effect was sent by Respondent No. 1 to the State Government on 07.01.2006, seeking the demarcation and transfer of the lease over LIA, Kota, to Respondent No. 1 solely, in light of the AAIFR scheme. The relevant part of this letter is reproduced below:

> "...This has reference to meeting with your goodself on 04/01/2006 regarding Bifurcation and Transfer of Lease Hold Land of J.K. Synthetics Limited, Kota to M/s Arafat Petrochemical Pvt. Ltd... ... We request your goodself for an expeditious approval-
>
> (c) for split of lease deed dated 06/10/1982 in to 2 portions – one covering area of 37.16 acres pertaining to SPRC which is not to be transferred as the same will continue in the name of JKSL and another for balance land.

(d) Permission to transfer to APPL all the remaining land except the aforesaid 37.16 Acres. We once again request your good self to kind accord you approval in the above matter..."

20. As per AAIFR's recommendations, the State Government through the Collector proceeded to execute 7 fresh lease deeds on the same date in favour of Respondent No. 1. The 7 deeds signed on 17.03.2007, collectively handed over the leasehold on the land to Respondent No. 1, in the following segments:

> i) 1st Deed: Plot No. 5A of 48.40 acres, meant for setting up a nylon plant and colony;
>
> ii) 2nd Deed: Plot No. 5B of 7.15 acres, for conducting R&D on acrylic fibre;
>
> iii) 3rd Deed: Plot No. 5C of 14.45 acres, for setting up a nylon tyre and cord plant;
>
> iv) 4th Deed: Plot Nos. 16, 17, & D of 30.56 acres, for setting up a polyester staple fibre plant;
>
> v) 5th Deed: Plot Nos. 23-30, A-C, of 70.66 acres, for construction of CDPH roads;

vi) 6th Deed: Plot Nos. 19-21B, 32B, 33, 34 & F of 26,16 acres, for setting up another acrylic/staple fibre plant;

vii) 7th Deed: Plot Nos. 19-21A, 22, 31, 32A & F1 of 29.77 acres, for setting up a synthetic staple fibre plant.

The terms of the lease deeds were largely pari materia. The relevant portion, contained in each of these fresh leases granting the land to Respondent No. 1, and relevant for our purposes, are as follows:

"NOW THIS INDENTURE WITNESSETH as follows:

...

(iii) That the lessee shall set up, construct, erect and build on the plot only such buildings, sheds and structures as are required by him for setting up the industry aforesaid and also such other residential quarters as are required for those: engaged or to be engaged in the said factory.

(iv) The lessee agrees not to construct or build any structures or buildings on the said plot of land or on a portion of it which may have the object. of using it as a commercial undertaking other than for the industry promotion aforesaid of or which the said plot has been leased to the lessee." What is clear from this series of documents is the paramountcy of using the land for its specific intended purpose, and for there to be no deviation from that industrial purpose for putting up commercial structures of any kind. The overall objective behind the lease, despite having changed hands from JKSL to Respondent No. 1, remained unaltered.

21. The AAIFR scheme contained various requirements that Respondent No. 1 was mandated to fulfil. Among these included the revival of the industrial units at the site which JKSL had no longer been in sufficient financial health to operate. Further, as also necessitated by the scheme, the aforementioned tripartite settlement agreements between Respondent No. 1, JKSL, and the workers unions was to be given effect to. The settlement agreements fixed the compensation payable to the workers at Rs. 40.42 Crores, and also envisaged that the workers in question would receive employment in the industrial units that would, henceforth, be managed by Respondent No. 1. The relevant portions of the AAIFR scheme are worth reproduction:

"9 Identification of JV Partner 9.1 The Arfat Group are identified by JKSL after an extensive search undertaken by the Company with the help of M/s Access International (Access) a Boston based consultancy Company... 9.2 Disposal of individual assets of Kota units was not possible or practical without resolution of the on-going labour disputes and settlement of labour liabilities. One the important consideration for revival was assumption of the labour liability by the prospective buyer as workers dues were very high and without settlement of the same revival was

> not possible. Therefore, in order to evaluate the offers received. It was decided by the Company in consultation with Access to analyse them on the basis of Quantum offer no. of units being restarted total no. of jobs being created and willingness of the higher regarding resolution of labour disputes and assumption of labour liabilities."

22. Pursuant to the AAIFR scheme, Respondent No. 1 initially restarted one of the units for manufacture of acrylic fibre. The remaining 6 units remained comatose. Unfortunately, the sole unit that was rejuvenated suffered a purported fire in October, 2007, after only a brief period of operation and just 6 months after the transfer lease deeds were signed, which resulted in the shutdown of the factory. Consequently, the overall objective of reviving the industrial units in the LIA, Kota, was frustrated. The offshoot of this was a decade of litigation primarily involving the workers unions and Respondent No. 1, regarding the latter's failure to revive the industrial units as contemplated in the AAIFR scheme.

23. The workmen initiated proceedings before multiple forums including the National Company Law Tribunal, the Rajasthan High Court, the BIFR and AAIFR, in their attempt to recover their dues and have the rehabilitation scheme implemented. Among these litigations was an SLP, and resultant Review Petitions filed before this Court concerning directions issued by AAIFR to Respondent No. 1. The directions were in favour of the workmen and in furtherance of the rehabilitation scheme that AAIFR had previously approved. However, in appeal, the Rajasthan High Court ruled that AAIFR had no jurisdiction over Respondent No. 1 as it was not a "sick company" under SICA. This was further appealed to the Supreme Court. The SLP by the Appellant Unions and others, was dismissed by this Court on 18.11.2016, and the subsequent Review Petitions were also rejected on 17.08.2017 and 06.03.2018, respectively, affirming that no directions could be issued to Respondent No. 1 but also noting that the AAIFR plan should be executed. Some of the other proceedings by individuals or groups of workers, remain pending in various forums and do not require recounting for our purposes. The relevant part of the order dismissing the SLP on 18.11.2016 2 is as follows:

> "12. Several contentions have been raised by both sides during the course of hearing of these Appeals which we have not adverted to as they are not relevant for adjudication of the dispute in these appeals. We express no opinion on the jurisdiction of BIFR under other provisions of the Act. It is open to the BIFR to review the implementation of the Sanctioned Scheme and pass suitable directions."

> 24. In the midst of the legal tussle between Respondent No. 1 and the different workers unions, the former made an attempt to have an affordable housing scheme developed on the LIA, Kota, under the Chief Minister Jan Aavas Yojana. This application was made, once again, to the District Collector, Kota. By this point, the industrial units in the area had been lying dormant for over 10 years. However, this application to be considered under the Jan Aavas Yojana was unsuccessful.

> 25. Subsequently, after having dealt directly with the Collector for over a decade on matters pertaining to LIA, Kota, Respondent No. 1 eventually sought a change of land use from industrial to commercial, to the extent of 23% of the land it possessed under

> the lease. However, this proposal was submitted to RIICO instead of the Collector. Respondent No. 1 shifted its position, having previously liaised with the District Collector for the execution of lease deeds in 2007 or for the Jan Aavas Yojana, to now coordinating with RIICO instead. The proposals were meant to effectuate the sub-division and change of land under the 1979 Rules. The proposals were considered by the Land Planning Committee constituted by RIICO on 03.10.2018 and approval was granted in-principle for the sub-

division and conversion, as recorded in the Minutes of the Meeting issued by RIICO on 05.10.2018. One day after this, on 06.10.2018, the Rajasthan State Assembly Elections process began and the Model Code of Conduct came into effect. The Infrastructure Development Committee of RIICO followed suit on 08.10.2018 and issued its own approval in this respect.

26. Following the completion of the process, supplementary lease agreements were executed between RIICO and Respondent No. 1 on 22.11.2018. Another supplementary deed for merger of plots was also signed between these parties on 13.12.2018. The conversion subsequently came under scrutiny after the change of government in the 2018 Rajasthan elections. The newly elected Council of Ministers constituted a Cabinet Committee on 01.01.2019 to review decisions made by the prior ruling government in the 6 months period preceding the elections. While this internal consideration was unfolding, RIICO directed its unit offices to cease grant of permissions for conversion of use of land under Rule 20(c) of the 1979 Rules on 27.05.2019, until further notice. The Kota branch of RIICO, however, proceeded to allow sub-division of the LIA, Kota, as requested by Respondent No. 1, on 05.07.2019. The mistake became clear only after the sub-division was sanctioned, necessitating the issuance of withdrawal orders by the office at Kota in respect of both the conversion of land and the sub- division of the plot, on 22.07.2019 and 25.07.2019, respectively.

27. Meanwhile, the internal deliberations by the Cabinet Committee set up by the State Government extended till 03.08.2019, when the Committee resolved to cancel all the permissions and approvals granted to Respondent No. 1 in respect of conversion of the property at LIA, Kota.

28. The State Government directed RIICO, by exercising the powers it believed were vested in it under Article 138 of RIICO's Articles of Association, to carry out the requisite steps to annul the approvals provided to Respondent No. 1. RIICO issued orders on 11.10.2019 and 14.10.2019, to finally cancel the permission for conversion of land, as well as cancel the supplementary leases themselves that had been subsisting in the name of Respondent No. 1.

29. Respondent No. 1 was aggrieved by these actions and made various representations to the State Government, as well as RIICO, seeking to have its lease and possession over the land restored. Eventually, it filed a Writ Petition before the High Court challenging the cancellation of its lease and the permission for conversion of the use of the land. The arguments raised included:

> (a) Article 138 of the AoA of RIICO did not have statutory force and a third party could not be adversely impacted by decisions made or directions issued under it;

(b) Even if Article 138 had statutory force, the manner in which the approvals and permissions accorded to Respondent No. 1 were quashed and set aside, was arbitrary, unreasoned, and unconstitutional due to falling afoul of Article 14 of the Constitution;

(c) Respondent No. 1 had not even been issued a show cause notice nor given a chance to defend itself. Thus, the Principles of Natural Justice had not been followed in the process of cancelling the allotment;

(d) The procedure under the 1979 Rules had to be followed, as the LIA, Kota had been transferred to RIICO under the 18.09.1979 Order.

30. The State Government and its authorities objected to the maintainability of the petition on the ground that Article 138 of the AoA of RIICO were not statutory in nature and, hence, a Writ could not be filed in this regard. Further contentions were raised defending the cancellation of the allotment and permission for conversion of the land, on the ground that the decision was taken in contravention of the Model Code of Conduct that had come into effect during the period when the Land Planning Committee and Infrastructure Development Committee of RIICO had decided to allow Respondent No. 1 to convert 23% of the land to commercial use.

31. While the matter was initially placed before a learned Single Judge, the then Chief Justice of the High Court decided to transfer the file to a Division Bench presided over by him. The various Appellant Unions which had been aggrieved by the non-implementation of the AAIFR scheme were impleaded into the proceedings. Eventually, the Division Bench heard detailed arguments and passed the impugned judgment, concurring with Respondent No. 1's position. It held:

i) The question as to whether RIICO could be directed under Article 138 of the AoA to carry out actions which may abrogate the fundamental rights of a third party was of vital importance. It required the Division Bench to adjudicate the dispute, rather than a Single Judge;

ii) The decision made by the State Government to direct RIICO to cancel the allotment of land to Respondent No. 1 was without following due procedure, and hence, a Writ under Article 226 of the Constitution was maintainable against this measure;

iii) The Government Order dated 18.09.1979, allocated all industrial areas in the State of Rajasthan to RIICO for the purpose of overseeing and facilitating their development. Whatever course of action was taken in respect of these lands from this point onwards would have to be under the 1979 Rules. These Rules had been completely ignored by the State Government and its authorities while quashing the supplementary leases and the conversion;

iv) The conversion of land was permissible under the Master Plan for the LIA, Kota. RIICO, given it was now in charge of these lands, had the authority under the 1979 Rules read with the Master Plan to allow conversion of land, if it was deemed necessary and appropriate;

v) There was no reason assigned by the Cabinet Committee for its conclusion on 03.08.2019 that the leases required cancellation. The Supreme Court in Mohinder Singh Gill v. The Chief Election Officer 3 had laid down that reasons behind certain actions had to be included in the final decision itself and could not be subsequently supplemented via affidavits. A change of government could not be a permissible catalyst for abrogation of the decisions made by the previous government. Further, Respondent No. 1 was kept in the dark about the deliberations throughout and had no forum to advocate its case for why the allotment and conversion of land were legally sound;

vi) The claim that the permission for conversion of the land from industrial use to commercial use violated the Model Code of Conduct was suspect, as no other similarly granted approvals had been set aside on this basis. It appeared that Respondent No. 1 had been specifically singled out and targeted;

vii) Respondent No. 1 had already spent significant amounts on the development of land, based on the supplementary lease deed and conversion that had been granted earlier. Hence, the doctrine of legitimate 3 (1978) 1 SCC 405.

expectations and estoppel would operate against the State and its authorities from reneging on this arrangement;

viii) The workers unions had failed to put in an appearance during the arguments, and their submissions could not be considered as a result.

Consequently, the High Court quashed the decision of the Cabinet Committee and the steps taken by RIICO to cancel the allotment to Respondent No. 1. The Appellant Unions, RIICO, and the State, have now come before us in appeal in this batch of matters.

B. ARGUMENTS

32. We have heard submissions from learned Senior Counsels, Mr. Dushyant Dave and Dr. Manish Singhvi, representing the State of Rajasthan and RIICO, respectively. They sought to point out the flaws in the impugned judgment through the following arguments:-

i) The land allotted to Respondent No. 1 in LIA, Kota, always remained with the State Government and was never allocated to RIICO despite the Order dated 18.09.1979 regarding industrial lands being moved under the control of RIICO. Various communications and activities by RIICO over the years indicate that it was also aware

of this fact. Hence, RIICO had no authority to consider the proposal by Respondent No. 1 for changing the usage of the land from industrial to commercial;

ii) When the fresh set of lease were executed with Respondent No. 1 pursuant to the AAIFR scheme and rehabilitation plan for JKSL, the agreements were signed by the District Collector, Kota. RIICO was not involved in this process. Respondent No. 1 had, in fact, acted all along in a manner which acknowledged the District Collector and the state revenue authorities were always managing the affairs of the subject - area;

iii) The land in question was to be regulated through the 1959 Rules rather than the 1979 Rules. This was because, as RIICO and Respondent No. 1 had already accepted through their conduct over decades, that the State Government retained control over LIA, Kota. Hence, only the State of Rajasthan through the District Collector, Kota, and not RIICO, could have considered the proposal for conversion of the land and the execution of supplementary lease deeds. Rule 12 of the 1979 Rules clearly envisaged that the newly inserted provisions would be applicable only to leases that were signed prospectively. In this instance, JKSL had already been put in charge of the area in LIA, Kota, under the 1959 Rules;

iv) Rule 8 of the 1959 Rules clearly states that the land in question is not to be used for any purpose other than the objective of industrial development. It is only with express authorization of the State Government that the usage can be changed. Rule 9 of the 1959 Rules mandates that permission of the government be taken when seeking subdivision of plots as well. Hence, this procedure had to be followed mandatorily by Respondent No. 1 if it desired the alteration of use of land and corresponding subdivision;

v) RIICO has never raised any demand for lease rent or service charges from Respondent No. 1. From the series of documents and communications, as already reproduced earlier, it is evident that RIICO had the same opinion regarding its own lack of authority and jurisdiction over the land in question. The land remained with the State Government at all times;

vi) Respondent No. 1 had abjectly failed to fulfil its obligation to revive the industrial units at LIA, Kota.

The mandatory terms of the rehabilitation plan by AAIFR had not been complied with and, as per SICA, the consequence of this default had to be the winding up of the company;

vii) The permission for conversion of the land from industrial to commercial was meant to benefit Respondent No. 1 and frustrate the purpose for which the land had been allotted in the first place. The prior government and Respondent No. 1 had acted in concert to hastily push through the process for changing the usage of the land, in defiance of the AAIFR scheme as well as the Model Code of Conduct, causing a loss to the public exchequer and stymying the industrial development of the Kota region;

viii) The new government was well within its rights to examine the decisions by the previous ruling class, as held by this Court in Krishna Ballav Sahay & Ors. v. Commission of Enquiry & Ors.4 Further, Article 138 of the AoA of RIICO explicitly gave power to the State of Rajasthan to issue directions to it for carrying out certain measures. This included the cancellation of the supplementary lease deed with Respondent No. 1 4 [1969] 1 SCR 387.

and the setting aside of the permission to convert the land's usage. A similar clause to Article 138 is contained in the Articles/Memorandum of almost every government controlled entity, and has been upheld in Management of Fertilizer Corporation of India v. Their Workmen5 and subsequently affirmed by a Constitution Bench in Sukhdev Singh & Ors. v. Bhagat Ram & Ors.6;

ix) As an arguendo, even if the land was deemed to be allocated to RIICO as per the Order dated 18.09.1979 and the Corporation was the competent authority to issue approvals and permissions vis-à-vis LIA, Kota, there was still no infirmity in the directions issued by the State of Rajasthan under Article 138 of the AoA. The State Government retained complete discretion to order RIICO to act according to its diktats in public interest;

x) RIICO itself had subsequently taken a decision to not allow any conversion in terms of the usage of land. This deliberation took place following the filing of Public Interest Litigations before the Rajasthan High Court. The final decision to freeze any further 5 [1969] 2 SCR 706.

6 (1975) 1 SCC 421.

conversions of this nature was issued on 05.07.2019 to the State Government and all RIICO unit offices across the state. Following this, the permissions granted to Respondent No. 1 for changing the land to commercial utilization and sub-division of the plot for this purpose, were both withdrawn on 22.07.2019 and 25.07.2019, respectively. The supplementary lease deed was then cancelled on 11.10.2019;

xi) There is no guarantee contained anywhere in the 1959 Rules, or even the 1979 Rules for that matter, against a change in policy by the Government. It is entirely permissible for the government to act in accordance with changing realities, especially when there is a clear case of public property being utilized for private gain, with the collusion of the erstwhile Executive Authorities and the management of RIICO;

xii) There can be no question of estoppel against statute.

The money spent by Respondent No. 1 on the land would not validate the contravention of the Master Plan for the LIA, Kota. The Plan clearly contemplated a purely industrial area which was undermined by Respondent No. 1's desire to set up commercial enterprises instead.

xiii) Respondent No. 1 had failed to show in concrete terms, the exact investments it had carried out on the land. Its equitable entitlement to seek restoration of the earlier decision permitting conversion of the land had not been proved from the records. Even if there was some merit to such

claim, this Court in Motilal Padampat v. State of Uttar Pradesh 7 had ruled that estoppel would be overridden by supervening public interest and provisions of binding statutes and/or rules;

xiv) The transfer of the case from the Single Judge to the Division Bench by the then-Learned Chief Justice was unjustified and irregular under the Rules of the High Court of Judicature for Rajasthan, 1952. On this procedural ground as well, the impugned judgment was unsustainable.

33. On the contrary, learned Senior Counsels, Mr. Mukul Rohatgi and Mr. A.N.S. Nadkarni, appearing for Respondent No. 1, have attempted to rebuff the submissions by the State of Rajasthan and RIICO in the following terms: -

> i) The Cabinet Committee decision dated 03.08.2019 was solely taken to single out Respondent No. 1 and 7 (1979) 2 SCC 409.

cancel the permissions/approval accorded by RIICO during the regime of the earlier government. The reasons for the cancellation were never provided and do not exist in either the file or the final decision. The grounds for cancellation were never mentioned subsequently either. All the reasons eventually cited by the Appellants before the High Court, were merely afterthoughts, such as:

> a) The Model Code of Conduct being in force;
>
> b) The sub-division of plots of change of use could not have been granted by RIICO and the Corporation did not possess the ability to transfer lands;
>
> c) Only the Collector had the power to grant permissions.
>
> ii) The Model Code of Conduct is irrelevant, as the application for conversion of the land to commercial, and permission for sub-division, was filed in August 2018, much before the election process even began. In between, there were several other decisions taken by the same Land Planning Committee and Infrastructure Development Committee none of which were cancelled. Even in regard to the Land Planning Committee, several other proposals were considered and granted during the same period when Respondent No. 1's application was pending. There were around 70 cases approved in September 2018, as well as December 2018, apart from Respondent No. 1's. None of these have been subsequently annulled by the Appellants, clearly showing that this is an act of pure arbitrariness and the arguments raised on the Model Code of Conduct are nothing but a lame excuse;

iii) There are 30 other instances of conversion in which RIICO has acted as the competent authority to grant permission, from 1996 to 2019. Out of these 30, 3 of the cases are from LIA, Kota. These three cases involved conversion of 100% of the land to commercial usage, as opposed to Respondent No. 1 which only sought conversion of 23%. The residential colonies that have been raised by Respondent No. 1 have not been objected to by the State. Further, as recently as in 2022, RIICO has been demanding lease rent and service charges from Respondent No. 1, clearly showing that it is in

charge;

iv) The Collector had only signed the initial transfer lease deeds of 2007 with Respondent No. 1 because the lease deeds in question were not fresh leases, but were executed for the remainder of the term of the already subsisting lease in favour of JKSL. The AAIFR scheme referred to the consent of the state government, which also necessitated the Collector's participation. This was the only reason for the 2007 deeds to have been executed with the Collector and not RIICO;

v) It is very clear that the land in LIA, Kota, had been transferred and allotted to RIICO and the Corporation was considered to be the sole authority, even by the State Government, which was capable of dealing with the land. The Order dated 18.09.1979 by the State Government states that industrial areas are to be transferred, pursuant to which the Joint Director of Industries allotted the land to RIICO on 28.09.1979 by an order.

vi) Under Section 100 of the Rajasthan Land Revenue Act, the State Government had framed the 1959 Rules, which were meant to govern the allotment of industrial plots across the state and the grant of leases over these areas. The 1959 Rules, were purposefully amended with insertion of Rules 11A & 12. Rule 11A states that industrial lands are to be allocated to RIICO for industrial development, and under Rule 12, the Company is empowered to further distribute land via leases to different entrepreneurs for development. Therefore, the allotment to RIICO is a statutory allotment, validated by the Rajasthan Land Revenue Act, and the 1959 Rules;

vii) Respondent No. 1 acted pursuant to the approvals granted by RIICO and, hence, Appellants are now bound by the principles of Promissory Estoppel and Legitimate Expectations. Respondent No. 1 has invested around Rs. 137.75 Crores in the LIA, Kota, and has also paid off the labour dues of the Appellant Unions, as agreed upon in the tripartite settlement agreements;

viii) As Respondent No. 1 has acted on the presumption that RIICO had validly approved the conversion of land and the sub-division of the plots, there is no scope for cancellation subsequently. Promissory estoppel squarely applies in favour of Respondent No. 1, and the Motilal Padampat (Supra) decision cited by Appellants is, on the contrary, beneficial to Respondent No. 1's position;

ix) The alteration in the ruling government cannot be the reason behind the cancellation of a decision taken by the earlier government. Such behaviour is arbitrary, discriminatory, and untenable in law. This Court in State of Tamil Nadu v. Shyam Sunder 8 had held that an instrumentality of the State cannot have a case whereby it pleads contrary to the position adopted by the State itself. Policies adopted in regard to certain projects should not keep altering as per changing governments. In a matter of governance of a State or with the execution of a decision taken by the prior ruling establishment, when the decision in question does not involve political philosophy, the succeeding government is required to see it through to its logical conclusion;

x) Governments cannot blow hot and cold and are not permitted to approbate and reprobate. RIICO had already taken a detailed decision, in compliance with the 1979 Rules which are the applicable regulations. They cannot resile from this on flimsy grounds which are merely afterthoughts.

Governance is a continuous 8 (2011) 8 SCC 737.

process and under the Constitution, there is no general power of review available to any government to examine, set aside, and recall the decisions of the earlier government. The Appellants' reliance on Krishna Ballav Sahay (Supra) is also misplaced as that case concerned an inquiry being conducted on the basis of serious allegations of corruption against government officers/ministers. It was only after these facts were ascertained did the government reverse the decision by the earlier ruling party. In the present scenario, no such allegations have been made and no inquiry was conducted either;

xi) The Appellants were also obliged to follow the Rules of Business framed under Article 166(3) of the Constitution when implementing their policies, which was once again bypassed entirely. Rule 5 of the Rules states that the Governor, acting on advice from the Chief Minister, will allocate business of the government to various Ministers and assign specific departments to their portfolio. Rule 9 goes on to require the Minster in charge of a particular department to be primarily responsible of carrying out business under that department. Under Schedule I of the Rules of Business, the Minister for Industries is to take decisions in matters connected to RIICO and industrial matters such as the cancellation of the supplementary lease deeds and/or revocation of permissions. The final decision of 03.08.2019 which directed the cancellation in question did not include participation by the Minister for Industries. Further, the decision needed to be placed before the Chief Minister for authentication before it was finally issued. This Court, in MRF v. Manohar Parrikar & Ors.9 has cemented the mandatory nature of the Rules of Business;

xii) Article 138 of the AoA of RIICO could not have been resorted to for directing cancellation of the supplementary lease deed and permission for using the land for commercial purposes. Such clauses in the Articles are for generally setting out the policy of the Company and not to make decisions that affect the rights of third parties. The cases relied upon by the Appellants to uphold the ability to issue orders to RIICO under Article 138 of its AoA, are unhelpful as the facts in those instances dealt with indoor management of the corporations in question. The action(s) taken in the present case do not concern an 9 (2010) 11 SCC 374.

internal matter of RIICO, but rather the abrogation of validly procured permissions and vested rights that had accrued to Respondent No. 1. An elaborate procedure for cancellation is already provided under the 1979 Rules, which needed to be followed if such drastic measures were to be taken. Unbridled and unfettered powers cannot be granted to the State Government to issue instructions to RIICO in this manner as it may be used brazenly and without paying heed to any procedure under law. The State Government has abused this alleged power which it claims to have been always vested in it;

xiii) This Court has already held in B. Rajagopala Naidu v. State Transport Appellate Tribunal, Madras & Ors.10 that powers such as those provided under Article 138 of RIICO's AoA cannot be used as appellate powers to take vengeance against specific entities. Such provisions do not accord a carte blanche authority to quash earlier decisions taken by RIICO, for oblique and unspecified reasons. Moreover, such an action is clear evidence of malice in law, as it is blatantly arbitrary and

discriminatory, as described by 10 (1964) 7 SCR 1.

this Court in Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.11;

xiv) The Order of 18.09.1979 had stated, in unequivocal language, that all industrial areas would be transferred to RIICO and this included the LIA, Kota. This decision was given effect to by the Joint Director on 28.09.1979 and the area over which Respondent No. 1 retained a lease came under the control of RIICO. The 1979 Rules were brought into force in the same year, and were meant to provide guidelines on the basis of which RIICO would carry out its functions, including permissions for sub-division, change of land use, and allotment of industrial areas.

xv) The State Government has, in fact, taken a stand in SLP (Civil) No. 8552 of 2021, filed in respect of neighbouring land situated in the same industrial area, whereby it accepts the transfer of such lands to RIICO has already taken place. It has acknowledged that RIICO has stepped into the shoes of the State Government and the Corporation provides services that are similar to that of a civic body or municipal corporation in the areas managed by it. That is why Rule 12 was specifically inserted into the 1959 Rules, 11 (2010) 9 SCC 437.

to accord all powers that the State Government would have had, to RIICO as well. Hence, the Corporation steps into the shoes of the government;

xvi) Further, as the 1979 Rules were mentioned in the 1959 Rules in Rule 12, the 1979 Rules were specifically incorporated into them. The 1979 Rules were not only given statutory recognition by virtue of this mention in the 1959 Rules, but additionally, all the allotments done under the 1979 Rules also received statutory endorsement and recognition;

xvii) In a similar matter concerning the Bharatpur Industrial Area, an allotment had been made by the Collector to Perfect Potteries. The lease stated that no use other than industrial use would be permissible. However, subsequently, the industrial area was transferred to RIICO and the Corporation granted permission for subdivision and conversion of the land. The Collector had terminated the lease as a result. The matter was referred to a High-Level Committee of the State of Rajasthan presided over by the Chief Secretary and comprising of the Advocate General, Principal Secretary of Law, Principal Secretary of Industries, and others. The Committee held that by virtue of the insertion of Rule 12 of the 1959 Rules, the actions taken by RIICO were valid and the Collector's order of termination was to be set aside. The relevant extracts of the Committee's decision are as follows:

> "DECISION OF THE COMMITEE After due deliberations, Members of the Committee were of the opinion that RIICO Is having undisputed jurisdiction. In the matter of all those industrial areas which were notified/developed by the State Government and came to be transferred to RIICO vide order dated 18.09.1979 and in view of subsequent amendment in Rajasthan Industrial Area Amendment Rule, 1959 vide notification dated 13.07.1982 by Insertion of rule 12.

> In view of the above, it was decided by the committee that the order dated 22.08.2019 of Collector Bharatpur needs to be set aside. For this purpose, RIICO should file a revision petition before the Govt. of Rajasthan in Revenue Department through Pr. Secretary, Revenue for consideration of the matter.

The meeting ended with a vote of thanks to the chair.

Sd/-

(Hukam Singh Rajpurohit) Secretary to Government & Member Secretary" x----------x----------x xviii) There has also been an admission on oath before the Rajasthan High Court in another similar matter.12 The affidavit submitted before the High Court lays out the following in terms of the State's position: a) RIICO has been authorized to act in accordance with the 1979 Rules in respect to industrial plots. The Rules themselves have acquired statutory force by virtue of reference to these Rules in statutory legislations/enactments. Given this, no other authority would be able to interfere in the sphere of activities that are regulated under the 1979 Rules; b) RIICO's own authority derives from Rules 11A and 12 of the 1959 Rules, by virtue of which the State Government had vested the responsibility to develop industrial areas upon the Corporation; (c) RIICO, as a public sector undertaking, would not have been able to function in the manner in which it does if express authorization had not been provided.

xix) The change of use of the land was permitted under the Master Plan. As the 1979 Rules were applicable by virtue of the 18.09.1979 Order transferring industrial lands to RIICO, the Corporation's only obligation was 12 Annex. R-47: D.B. WP (Civil) No. 19102 of 2018, "Ravindra Sharma v. State of Rajasthan & Ors." – Add. Affidavit on behalf of Respondents, by Mr. Rajendra Singh, Dy. Comm., JDA, Jodhpur.

to ensure that the sub-division and alteration of the utilization of the land was in consonance with said Rules read with the Master Plan. Moreover, the State of Rajasthan itself issued a circular on 19.03.2003 allowing conversion of industrial land for other purposes in order to promote economic growth, in light of the recession that had taken hold at the time;

xx) The initial agreement for transfer of the lands from JKSL to Respondent No. 1 was signed by the Collector, not because the State Government still had control, but rather because those were the requirements under SICA and the AAIFR scheme. Rule 9(iv) of the 1959 Rules had required a lessee which was declared a "sick company" under SICA, at that time JKSL, to seek permission from the State Government for transfer of its lease rights to a third entity. The permission was manifested through the District Collector, Kota, under the aegis of the AAIFR scheme. This was not a fresh lease, but only an extension of the already existing period of the subsisting lease. Hence, this was not an acknowledgement of any kind by Respondent No. 1 that the State of Rajasthan retained control over the land and was merely a procedural requirement that was being fulfilled under the 1959 Rules, due to JKSL's status as a sick company. Respondent No. 1 has consistently acted in consonance with the approach that RIICO has control over the land and the corresponding power to take further measures in respect of it, such as for conversion of use and sub- division of plots;

xxi) The letter dated 12.01.1995 relied upon by Appellants as a proof that the title over the land was retained by the State Government was later overridden by a letter dated 31.03.1995. By virtue of this letter, the files of transferred lands were directed to remain with RIICO;

xxii) The Jan Aavas Yojana scheme under which Respondent No. 1 had applied to the Collector, was purely because it was mandatory to do so under the Scheme itself. In no way does this act as an acceptance that the Collector and the State Government were in charge of the land in LIA, Kota. In fact, the Collector had sought the opinion of RIICO in the matter, clearly showing the Collector's own conviction that consent needed to be sought from the Corporation;

xxiii) The lack of a show cause notice or an opportunity to Respondent No. 1 to defend itself is fatal to the Appellants' case. Swadeshi Cotton Mills v. Union of India13 had made clear the need for principles of natural justice to be followed even for administrative decisions. A process for cancellation was provided already under Rule 24(1) of the 1979 Rules, which had to be adhered to.14
xxiv) The Appellants are making unfounded allegations regarding placement of the Writ Petition filed by respondent No.1 before Division Bench of the High Court. The Chief Justice being Master being Master of the Roster, was competent to enlist any matter before a Single or Division Bench. Challenge to Article 138 of AoA was an issue of paramount public 13 (1981) 1 SCC 664.

14 24. CANCELLATION The Corporation shall have the right to cancel the plot allotment after issuing a 45 days registered AD show cause notice to the allottee by the concerned Sr. DGM / Senior Regional Manager / Regional Manager for breach of any of these rules, condition of allotment letter or terms of lease agreement. The powers of plot cancellation shall vest with the Unit Head for all categories of the land/plot allotments except for the land/plots allotted under Rule 3(W).

In show cause notice the allottee would be asked to show cause why the plot allotment should not be cancelled, lease deed of the plot should not be terminated and plot should not be taken in possession, in view of the default committed by the allottee. In the notice it would also be clarified that, the said default shall be condoned only on payment of interest/retention charges or removal of breach of terms and conditions/ its regularisation. In case of no response or reply to the show cause notice without commitment for deposition of dues, for regularisation of delay / default or removal of breach of terms and conditions by the allottee, allotment of plot should be cancelled terminating the lease-deed of plot.

... importance, hence the case was rightly placed before a Division Bench.

xxv) The arguments regarding the failure of the AAIFR scheme were irrelevant and beside the point. This Court in its earlier order in the context of the petitions filed by the workers unions had already affirmed that SICA would not apply to Respondent No. 1, given it was not a "sick company". The land in question had been obtained as part of the AAIFR scheme by way of auction, but that did not mean that the BIFR or AAIFR itself would have jurisdiction over Respondent No. 1.

xxvi) As far as the SLPs filed by the Appellant Unions were concerned, the Supreme Court's earlier orders on 17.08.2017 and 06.03.2018 dismissing their Review Petitions had put a quietus to that

issue. Respondent No. 1 had paid the workers their agreed upon dues under the AAIFR scheme and no further directions could be issued to it in terms of the rehabilitation plan.

34. Learned Senior Counsels, Mr. Dave & Dr. Singhvi, provided the following rebuttals in their rejoinder, besides reiterating their earlier arguments once again: -

> i) The act of the new government, following elections, going into the decisions of the earlier ruling party is legally acceptable. Respondent No. 1 had failed to prove the alleged mala fide intent behind the cancellation of the supplementary lease deed and the quashing of the approval for sub-division and conversion of the usage of land;
>
> ii) There is no fetter on the power provided under Article 138 of the AoA of RIICO to issue directions to the Corporation. In terms of the requirement for reasons to be provided, Justice Chinnappa Reddy's opinion in Sachidananda Pandey v. State of West Bengal & Ors.15 outlined that the process, deliberations, and minutes of the meeting preceding a decision would be taken into account when ascertaining the reason for a particular measure to be taken. Contrary to Respondent No. 1's position, the entire rationale did not have to be laid out in the conveyance of the final verdict;

iii) It is only the subsequent government that is competent and capable of looking into the decisions taken by the previous regime. The current government had all the authority and rights to examine earlier decisions, and 15 (1987) 2 SCC 295.

annul them if irregularities were discovered. The State Government has acted in pursuance of its mandate and obligation in this matter;

iv) RIICO is nothing more than a company and the 1979 Rules are framed under its AoA. These Rules are subject to statutory mandates and requirements. The 1979 Rules are nothing more than a set of internal regulations of RIICO and are not comparable to the 1959 Rules that were enacted under the Rajasthan Land Revenue Act, 1956. This Court in Life Insurance Corporation of India v. Escorts Ltd. & Ors.16 has emphasized the character of such companies and the conduct of their business via the AoA and internal rules made in furtherance of the Articles;

v) Rule 11A is the appropriate provision in the 1959 Rules to govern the usage and utilization of the land. Since the land in question was never transferred to RIICO, RIICO could not have acted under the 1979 Rules at all. The State Government always continued to manage and control the subject land under the 1959 Rules.

16 (1986) 1 SCC 264.

35. The Appellant Unions have also made the following submissions in support of the rights of the former employees of JKSL:-

i) The unions have challenged the initial transfer lease deed to Respondent No. 1 signed in 2007. This petition has been pending before the HC and its outcome will have a knock-on effect on all other proceedings initiated thereafter. This includes the SLPs before us;

ii) The Appellant Unions had accepted the AAIFR scheme only on the basis that the industrial units at LIA, Kota, would be restarted. The workers had been owed over Rs. 250 Crores in dues, of which they had agreed to take only a small portion as the rehabilitation plan envisaged the restarting of the units and consequent employment for them. As the plan had abjectly failed and Respondent No. 1 was unsuccessful in restarting production, the labourers were owed the entirety of their dues.

C. ANALYSIS

36. With the assistance of the exhaustive and thorough submissions before us, we may now proceed to examine the controversy before us.

C.1. Whether the LIA, Kota has been always under the management and control of the State Government or it was transferred to RIICO pursuant to Government Order dated 18.09.1979?

37. From the recounting of the arguments raised on behalf of all the parties, the first question that arises for our determination is whether the LIA, Kota continued under the uninterrupted administrative control of the State Government, or whether it was transferred to RIICO. To uncover the answer, it is necessary to recapitulate the facts which have already been referred to in extenso. There is broadly no dispute that Government land was allotted to JKSL on a leasehold basis in the year 1958. The said allotment was made by the State Government in furtherance of its industrial policy, read with the power traceable to the Rajasthan Land Revenue Act, 1956. Section 100 of the said Act empowers the State Government to frame rules for regulating the sales of land in industrial and commercial areas, as well as the power to impose other conditions like annual assessment etc. In exercise of that power, the State Government formulated the 1959 Rules. The allotment of land to JKSL, thus, for all intents and purposes, came to be regulated under the 1956 Act read with the 1959 Rules. As an offshoot of the allotment of land, the State Government and JKSL entered into a bilateral relationship of lessor and lessee, respectively. It may be beneficial to refer to Rule 2 of the 1959 Rules at this stage which provides that the land in industrial area may be allotted on lease hold basis for 99 years "...by the State Government in the industrialist department....". Rule 4 contemplates that every such lease may be renewed for further period of 99 years at the option of the lessee.

38. We may now advert to Rule 8 of the 1959 rules, as reproduced in para 6, which mandates that the land given for industrial purposes shall not be used for any other purpose except constructing factory premises and such other residential quarters as are required for those engaged in that industry. Rule 8 further empowers the State Government to grant permission for establishment of industry other than for which the land was initially allotted.

39. In this context, the stipulations contained in the first lease deed executed by State Government in favour of JKSL in 1967 are relevant. Under this lease, the lessee was obligated to use the allotted land for the prescribed industrial purpose, failing which the land was liable to be reverted "to the lessor". This leads to the inescapable conclusion that the first formal lease of 1967 was strictly in conformity with provisions of the 1959 Rules.

40. The relationship of lessor and lessee between State of Rajasthan and JKSL continued uninterruptedly till JKSL was declared a `sick company'. Respondent No. 1 then stepped into the shoes of JKSL under the orders of AAIFR, and by virtue of the tripartite agreements executed with the labour unions, for the land at LIA, Kota. It is also an admitted fact that neither under the tripartite settlements dated 9.10.2002 and 22.10.2002, nor under the sanctioned rehabilitation scheme dated 23.1.2003, the relationship of lessor and lessee between State, JKSL, or Respondent No.1, as the case may be, was ever disrupted. This jural relationship was further cemented between the State and Respondent No.1 when 7 fresh lease deeds were executed in favour of Respondent No.1 by the State Government through the Collector, Kota. The details of these 7 leases have been provided in para 20 of this order. It is pertinent to mention that the terms and conditions contained in these fresh lease deed executed on 17.3.2007 were broadly the same as were incorporated while leasing out the subject land originally to JKSL.

41. What clearly emerges from this sequence of events is that from 1958 to 2007, and further onwards till the present date, there is no cessation in the relationship of lessor and lessee between the State and Respondent No. 1, or its predecessor JKSL. This contractual relationship duly governed under the 1956 Act read with the 1959 Rules, was never terminated expressly or otherwise and neither was it substituted by a supplementary conveyance deed.

42. We may now address some of the important intervening circumstances, events and Government Orders and circulars, heavily relied upon by Respondent No. 1. It is a matter of record that Government of Rajasthan issued an order on 18.09.1979 (reproduced in para 9) whereunder it was decided that "all the industrial areas of Rajasthan shall only be developed through Rajasthan State Industrial and Mining Development Corporation". The Government Order further declared that "the industrial areas operated by the Department of Industry shall be handed over to Rajasthan State Industrial and Mining Development Corporation Limited, Jaipur w.e.f. 1.10.1979". In purported compliance of the above-mentioned Government Order dated 18.09.1979, the Joint Director, District Industrial Centre, Kota issued an Order on 28.09.1979 (also reproduced in para 9) thereby transferring certain industrial areas to the Corporation including "Large Scale Industrial Area, Kota".

43. There is an unending debate between the parties with respect to the scope and import of Government Order dated 18.09.1979 and whether it was given effect to qua the land allotted to JKSL in LIA, Kota. It should be remembered that Respondent No. 1 had not appeared on the scene at the time when the Government Order in question was passed.

44. Firstly, we propose to analyse the purpose and effect of Government Order dated 18.09.1979. As we have been able to understand, all the industrial areas of Rajasthan were to be transferred to

RSIMDC for the purpose of "development" of those areas. The industrial areas were to be handed over only for this specific purpose. In other words, RSIMDC was entrusted with the task of a Local Authority to carry out development activities in the industrial areas like "(a) construction of roads;

(b) supply of electricity; (c) supply of water; (d) sewerage system; (e) all related amenities for the workers employed in industrial areas" etc. etc.

45. It is equally relevant here to appreciate that a lessee is liable to pay Development Charges for the allotted industrial land under Rule 3 of 1959 Rules. After subjecting the allottees with the levy of Development Charges, the State Government as a lessor was obligated to provide all amenities in the industrial area on the principle of quid pro quo. Whether such services and amenities are developed by the State Government at its own expense or through an agency hired for that purpose, is completely inconsequential, insofar as the subsistence of the relationship of lessor – lessee is concerned.

46. We say so also for the plain reason that the expression `handed over' contained in the Government Order dated 18.09.1979 does not and cannot be construed as the transfer of ownership of the industrial land from State Government to RSIMDC or RIICO. The word "transfer" used by the Joint Director in his Order of 28.09.1979 has to be read in conjunction with the Government Order dated 18.09.1979 which unequivocally says that handing over of the industrial areas was only for development purposes.

47. It appears to us that ownership or title of an immovable property cannot be transferred save and except by way of an act of legislation or a validly executed instrument of transferring such ownership rights. The omnibus administrative order issued for a purpose specified therein cannot be stretched to construe an implied transfer of ownership. There is no hidden treasure lying underneath Government Order dated 18.09.1979 to infer a non-existent consequence like vesting of lessor's rights in RIICO in respect of LIA, Kota.

48. Thus, we have no hesitation to hold that a relationship of lessor - lessee between State Government and JKSL/RIICO continued to subsist and has not been affected in any manner by virtue of Government order dated 18.09.1979.

49. Another strong plank of argumentation advanced on behalf of Respondent No.1 is founded upon Rules 11A and 12 of the 1959 Rules which came to be inserted by way of amendment in the years 1982 & 1983. We accordingly propose to minutely analyse both the Rules.

50. Rule 11A says that land "shall be allotted" to RIICO and Rajasthan Tourism Development Corporation "for setting up and developing industrial areas" on the terms and conditions prescribed therein. The Rule provides that the land shall be allotted to RIICO on a leasehold basis and RIICO shall be free to sub-lease the land on agreed terms and conditions. RIICO has been further authorised to levy and recover such lease rent and other charges as may be determined by it, in respect of lands sub-leased by it. The period of sub-leases shall not exceed 99 years. Clause (viii) of Rule 11A noticeably states that the land shall revert to the State Government, free from all

encumbrances and without payment of any compensation, in case RIICO or its sub-lessees use it for any purpose other than industrial, or commit breach of any other than condition of the lease or sub-leases. Rule 11A, contemplates allotment of land to RIICO on lease hold basis for a period of 99 years, with further authorization to execute sub-leases strictly for industrial purposes. The State Government has expressly reserved its rights to secure the land back free from all encumbrances if RIICO or its sub-lessees fail to use the allotted land for industrial purposes or commit a breach of any other condition. The expression "shall be" signifies allotment of land to RIICO in the future. Rule 11A is not attracted in respect of the lands which had already been leased out prior to insertion of this rule on 23.12.1983.

51. We have no reason to doubt that Rule 11A, per se, does not advance the cause of Respondent No. 1 for the reason that Respondent No. 1 has merely stepped into the shoes of JKSL and lease deeds were executed in the year 2007 directly by the State Government in favour of Respondent No.1, without resorting to Rule 11A, namely, through RIICO. Had it been a case of execution of fresh lease deeds in favour of Respondent No. 1 by RIICO in 2007, it could be convincingly argued that such allotment was in furtherance of the authorization conferred on RIICO under Rule 11A. The facts do not bear out such an eventuality.

52. That apart, the plain wording of Rule 11A clearly shows that the Corporation can have merely managerial power over the land that is allocated to it. As laid down very clearly under Rule 11A, the allotment to RIICO is done purely on a leasehold basis, and ownership and title remain unequivocally with the State Government. RIICO acts as nothing but an agent of the State in its efforts to increase industrial production and further economic progress. The State remains the overarching power in this dynamic and RIICO remains subservient to it.

53. As regard to Rule 12 (reproduced in para 11 of this order), it may be seen that the same is compartmentalised in two parts. The first part is a consequence of Rule 11A, namely, if the State Government has allotted land to RIICO on lease hold basis under Rule 11A, in that case, this segment of Rule 12 empowers RIICO "to make allotment" in accordance with its 1979 rules of "vacant plots" to entrepreneurs in the industrial areas notified by the State Government and transferred to the said Corporation.

54. To be more specific, the first part of Rule 12 authorises RIICO to execute sub-leases in respect of land which has been leased out to it by the State Government under Rule 11A of the 1959 Rules.

55. The second part of Rule 12 says that RIICO "shall also be authorised" to execute lease deeds, realize development charges, lease rent and other dues from the entrepreneurs to whom plots had already been allotted under the 1959 Rules. In our considered opinion, the second part is an enabling provision whereunder RIICO has been authorised to execute lease deeds or realize development charges/lease rents and other dues from pre-1982 group of allottees. A plain reading of this provision makes it abundantly clear that RIICO would execute lease deeds only in a case where land had been principally allotted but a formal agreement between a lessor and lessee or lessee and sub- lessee is yet to be executed. If a piece of land had already been allotted and a formal lease deed stood executed between the State and such an allottee, there arises no occasion to execute a second

lease deed in respect of the same leased out land. In that case, only development charges and lease rent etc. are to be recovered by RIICO for the reasons which we have already explained, and which is merely a cost factor towards the development activities to be undertaken by RIICO as per the Government order dated 18.09.1979. The second part of Rule 12 also does not fortify the claim of Respondent No. 1 for the reasons that:-

(a) lease deeds in favour of JKSL had been already executed in the year 1967 before Rule 12 came into force;

(b) no part of the land in dispute was ever allotted to RIICO under Rule 11A of the 1959 Rules;

(c) Respondent No. 1 is a substitute of JKSL and that is why fresh lease deeds were executed in favour of Respondent No. 1 only for the remainder of the period of the already subsisting lease;

(d) There was no independent lessor – lessee relationship between the State Government and Respondent No. 1 except that Respondent No. 1 substituted JKSL pursuant to AAIFR order;

(e) the non-applicability of second part of Rule 12 was reinforced when transfer lease deeds were executed in favour of Respondent No.1 in 2007 by the State Government through the Collector and not by RIICO;

(f) We are informed that even lease rent has also been deposited by Respondent No. 1 continuously for years post 2007 with the Tehsildar, Kota, and not with RIICO; and

(g) There has been no formal agreement as lessee and sub-

lessee between RIICO and Respondent No. 1 with the concurrence of State Government.

56. Another argument raised by Respondent No. 1 was that the transfer lease deeds were signed pursuant to the requirement of Rule 9(iv) of the 1959 Rules, which necessitates a sign off by the State Government for transfer of land from one company to another, when the entity that possessed the lease is declared a sick company. Rule 9 in its entirety has been reproduced in para 6 of this Order.

57. We are, once again, unmoved by this submission. If the 1959 Rules were not even applicable to begin with, there would have been no need to comply with Rule 9(iv) at all. Rather, the very fact that compliance with this provision was necessary, is sufficient indication that Respondent No. 1 was fully aware that the State Government had ownership, title, and control of LIA, Kota.

58. Having held so, there is no alternative but to conclude that the relationship of lessor and lessee between State and Respondent No. 1 has been validly subsisting at all times and RIICO was never

authorised either by Government order dated 18.09.1979 or under Rules 11A and 12 of the 1959 Rules, to by- pass the State Government and assume the self-styled role of the lessor in respect of LIA, Kota. Since, the 1967 and 2007 lease deeds in favour of JKSL and Respondent No. 1, respectively, were executed by the State Government in terms of Rule 2 of the 1959 Rules, RIICO had no authority whatsoever to permit Respondent No. 1 to change the land use or allow for the sub-division of plot without the prior approval of the State Government, which is the sole competent authority to accord such permission in exercise of its power under Rule 8 of the 1959 Rules. The contrary view taken by the High Court is plainly erroneous in law and is based on a misconstruction of the provisions of 1959 Rules read with the binding bilateral contracts between the parties.

59. Not that we are dependent in any manner upon the understanding of the Government Order dated 18.09.1979 or Rules 8, 9, 11A and 12 of the 1959 Rules, by the State Government or RIICO. Irrespective of their inconsistent stand taken before different forums with respect to the status of RIICO qua LIA, Kota, we have drawn our conclusion primarily on the basis of plain reading of the said Government Order and the 1959 Rules. We, however, hasten to add that the correspondence/circulars issued by the State Government and RIICO subsequently, which we have reproduced and discussed in paragraphs 12 to 15 of this judgment, unambiguously fortify our construction of both the Government Order and the 1959 Rules, referred to above.

C-2. Whether the 1979 Rules of RIICO are statutory in nature?

60. The question regarding whether the 1979 Rules formulated by RIICO are of statutory character, is more or less rendered academic as the fate of these appeals does not hinge upon this issue in view of our holding in Part C-I. Nevertheless, since the High Court has opined on this issue, we propose to answer the question so that there remains no uncertainty in the minds of State authorities, RIICO or the leaseholders.

61. It must be noticed at the outset that RIICO is not a statutory body. The Company was brought into being under the Companies Act, 1956 by the State of Rajasthan, which holds 100% shares in it. The distinction between companies that are brought into being “by” an Act, and those created “under” an Act, is that a company incorporated under the Companies Act is not a creation of the said Act but it has come into existence in accordance with the provisions of the Companies Act.

62. This was fleshed out further in S.S. Dhanoa v. Municipal Corporation, Delhi & Ors.17 which held:

> “9. Corporation, in its widest sense, may mean any association of individuals entitled to act as an individual. But that certainly is not the sense in which it is used here. Corporation established by or under an Act of Legislature can only mean a body corporate which owes its existence, and not merely its corporate status, to the Act. For example, a Municipality, a Zilla Parishad or a Gram Panchayat owes its existence and status to an Act of Legislature. On the other hand, an association of persons constituting themselves into a Company under the Companies Act or a Society under the Societies Registration Act owes 17 1981 (3) SCC 431.

its existence not to the Act of Legislature but to acts of parties though, it may owe its status as a body corporate to an Act of Legislature."

63. The importance of this difference in our context was summarized concisely in Executive Committee of Vaish Degree College v. Lakshmi Narain18:

> "10...In other words the position seems to be that the institution concerned must owe its very existence to a statute which would be the fountainhead of its powers. The question in such case to be asked is, if there is no statute, would the institution have any legal existence. If the answer is in the negative, then undoubtedly it is a statutory body, but if the institution has a separate existence of its own without any reference to the statute concerned but is merely governed by the statutory provisions it cannot be said to be a statutory body..."

64. What we have, very clearly, is a company incorporated "under" the Companies Act, 1956. RIICO does not owe its existence to a statute, but is rather created under the Companies Act and is subject to its provisions. It is only governed by the provisions of the Companies Act and not created by it. The 1979 Rules, which learned Senior Counsel Mr. Rohatgi had argued contained a "statutory flavour" were issued pursuant to Article 93 of RIICO's AoA. It is difficult to see how the status of "statutory rules" may be accorded to regulations that are 18 1976 (2) SCC 58.

brought into existence under the Articles of a non-statutory company.

65. Respondents have cited M.G. Pandke & Ors. v. Municipal Council, Hinganghat, Dist. Wardha & Ors. 19 to make their case regarding the 1979 Rules being statutory in nature. In that case, the State of Maharashtra had come out with the "Secondary School Code" via executive directions. The State then promulgated the Maharashtra Secondary Education Boards Act, 1965, and the associated Maharashtra Secondary Education Boards Regulations, 1966. Within the latter, a reference had been made to the Secondary School Code and it was mandated that schools comply with the Code under Regulation 19(7)(xvi). When a conflict between the Secondary School Code and the bylaws of the Respondent Municipal Council arose, this Court had to determine the legal status of the Code and proceeded to conclude as follows:

> "12. Learned Counsel for the appellants has raised the following contentions in support of his case:
>
> 1. Regulation 19(7)(xvi) of Maharashtra Regulations which is a statutory regulation makes it obligatory for the Municipal Council to follow the provisions of the Code. The Code itself may be non-statutory but the mandate to follow the Code flows from Regulations 19(7)(xvi) of the Maharashtra Regulations which is mandatory. The field having been occupied by the Code under the 19 1993 Supp (1) SCC 708.

statutory-mandate, no bye-law to the contrary could be framed by the Municipal Council. ...

13. When the Code was enforced in the year 1963, the Act and Regulations were holding the field in Vidarbha Division. Under the Act and the Regulations the age of superannuation being 60 years, the Code, while fixing 58 years as the age of superannuation for rest of Maharashtra, permitted the Vidarbha teachers to superannuate on attaining the age of 60 years. The Maharashtra Act which came into force on January 1, 1966 repealed the Act and the regulations. In Baboolal's case (AIR 1974 Bom 219) the High Court referred to the repealing and saving section of the Maharashtra Act and came to the conclusion that there was no provision thereunder to save the regulations. Assuming that the Regulations under the Act stood repealed, the Code which was framed by the Maharashtra Government continued to hold the field. It is not disputed by the learned Counsel for the appellants that the Code by itself is not statutory and is in the nature of executive instructions. But he strongly relies on Regulation 19(7)(xvi) of Maharashtra Regulations and contends that the said Regulation makes it obligatory for the Municipal Council Hinganghat to follow the provisions, of the Code. It is for the State Government to frame the Code in whatever' manner it likes but once the Code is in operation its provisions have to be followed by the Municipal Council Hinganghat under the mandate of Regulation 19(7)(xvi) of Maharashtra Regulations. We see considerable force in the argument of the learned Counsel. The Code has been framed with the purpose of bringing security of service, uniformity, efficiency and discipline in the working of non-Government High Schools. It has to be applied uniformly to the schools run by various Municipal Councils in the State. It is no doubt correct that the Municipal Councils have the power to frame bye-laws under the Maharashtra Municipalities Act, 1965 but if the field is already occupied under the mandate of statutory Maharashtra Regulations, the Municipal Council cannot frame bye-laws to the contrary rendering the mandate of the Maharashtra Regulations Nugatory. We are of the view that the Municipal Council Hinganghat has out stepped its jurisdiction in framing bye-law 4 of the bye-laws. We, therefore, direct that the conditions of service of the appellants shall be governed by the Code as enforced by Regulation 19(7)(xvi) of the Maharashtra Regulations. Bye-law 4 of the bye- laws shall not be applicable to the appellants."

66. We fail to see how this decision assists Respondent No. 1. There was a reference made to the Secondary School Code in the Maharashtra Regulations but at no point of time was there an indication that the Code was designated as "statutory". In fact, the legal force of the Code was bestowed upon it by the reference in Regulation 19(7)(xvi) of the Maharashtra Regulations, which were statutory in nature.

67. This cannot, in any way, be extrapolated to affirm the proposition that references in legislations and statutory rules, infuses a "statutory flavour" to regulations that are not of such character. In the present case, Rule 12 of the 1959 Rules merely states that lands allotted to RIICO will be further dealt with by the Corporation as per its 1979 Rules. At best, this imposes an obligation upon RIICO to abide by its own guidelines, which it had issued under Article 93 of its AoA. The obligation for RIICO to abide by the 1979 Rules stems from its own AoA under which those Rules came into being. By no stretch, does this make the 1979 Rules statutory in nature, as was accepted even in M.G. Pandke (Supra).

68. Thus, it is clear to us that no statutory force underpins the 1979 Rules and there is no question of them prevailing over or governing the subject area.

C.3 Whether failure to observe Principles of Natural Justice by the State Government vitiated its decision to annul the permissions/approvals granted by RIICO in favour of Respondent No.1?

69. Respondent No. 1, while vehemently objecting to the usage of Article 138 of RIICO's AoA to issue directions to the Corporation for cancellation of the supplementary lease deeds and attendant approvals/permissions, has equated such directions by the State Government to a "farman" whereby any semblance of procedure and due process are abandoned to its own prejudice. It was asserted that the method of undertaking these measures had to be followed and an opportunity of hearing needed to be provided to Respondent No. 1. This was further elaborated upon by emphasizing on the failure to provide Respondent No. 1 with a show cause notice, and blatant non-adherence to Principles of Natural Justice.

70. Both sides have raised contentions on the need for reasons behind the cancellation to be specified in the order itself or not. Learned Senior Counsel, Mr. Dave, had cited the judgement in Sachidananda Pandey (Supra) to argue that the consideration of whether reasons were provided would include the internal deliberations within the State Government, and not be confined merely to the order itself. The exact passage relied upon by him read as follows:

> "27. Dr. Singhvi cited before us the well-known decisions of this Court... to urge that even an administrative decision must be arrived at after taking into account all relevant considerations and eschewing irrelevant considerations and that the reasons for an order must find a place in the order itself and those reasons cannot be supplemented later by fresh reasons in the shape of an affidavit or otherwise. The submission was that neither the Cabinet memorandum of January 7, 1981 nor the Cabinet Memorandum of September 9, 1981 revealed that relevant considerations had been taken into account. What was not said in either of the Cabinet Memoranda, it was said, could not later be supplemented by considerations which were never present to the mind of the decision making authority. We do not agree with the submission of Dr. Singhvi. The proposition that a decision must be arrived at after taking into account all relevant considerations, eschewing all irrelevant considerations cannot for a moment be doubted. We have already pointed out that relevant considerations were not ignored and, indeed, were taken into account by the Government of West Bengal. It is not one of those cases where the evidence is first gathered and a decision is later arrived at one fine morning and the decision is incorporated in a reasoned order. This is a case where discussions have necessarily to stretch over a long period of time. Several factors have to be independently and separately weighed and considered. This is a case where the decision and the reasons for the decisions can only be gathered by looking at the entire course of events and circumstances stretching over the period from the initiation of the proposal to the taking of the final decision. It is important to note that unlike Mohinder Singh Gill's case where that Court was dealing with a Statutory Order made by a statutory functionary who could not therefore, be allowed to supplement the grounds of this order by later explanations, the present is a case where neither a statutory functions nor a statutory functionary is involved but the transaction bears a commercial though

> public character which can only be settled after protracted discussion, clarification and consultation with all interested persons. The principle of Mohinder Singh Gill's case has no application to the factual situation here."

71. We have no qualms with the logic employed by this Court in Sachidananda Pandey (Supra). However, this citation may not be helpful to the appellants in the present instance. The extracted passage refers to "consultation with all interested persons" and the earlier part of the judgment give the complete details regarding how representations and objections had been sent with regard to the construction of a hotel in the area in question, especially in the context of its impact on the ecology and migratory birds. It was in this factual background, coupled with the fact that the deliberations had been going on for around 2 years, that the Court was satisfied that relevant considerations had been appropriately accounted for. In our scenario, on the other hand, the deliberations by the Cabinet Committee which proceeded for around 7-8 months, do not indicate that Respondent No. 1 was ever heard or involved in the process.

72. The importance of Principles of Natural Justice, among which we are concerned with audi alterem partem in this case, have been deliberated upon by this Court numerous times in the past. As far back as in Union of India v. P.K. Roy20 the Court held:

> "12...But the extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case..." 20 (1968) 2 SCR 186.

73. Further, in A.K. Kraipak v. Union of India21 the nature of an administrative power and the obligations reposed upon the State to function in a just and fair manner was explained:

> "13. The dividing line between an administrative power and a quasi-judicial power is quite thin and is being gradually obliterated. For determining whether a power is an administrative power or a quasi-judicial power one has to look to the nature of the power conferred, the person or persons on whom it is conferred, the framework of the law conferring that power, the consequences ensuing from the exercise of that power and the manner in which that power is expected to be exercised. Under our Constitution the rule of law pervades over the entire field of administration. Every organ of the State under our Constitution is regulated and controlled by the rule of law. In a welfare State like ours it is inevitable that the jurisdiction of the administrative bodies is increasing at a rapid rate. The concept of rule of law would lose its vitality if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. The requirement of acting judicially in essence is nothing but a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a judicial power are merely to facilitate if not ensure a just and fair

> decision. In recent years the concept of quasi-judicial power has been undergoing a radical change. What was considered as an administrative power some years back is now being considered as a quasi-judicial power…" 21 (1969) 2 SCC 262.

74. In this context, it may be true that the Principles of Natural Justice entailed giving Respondent No. 1 an opportunity to defend its rights. However, the most decisive and crucial factor is whether any legally vested `right' ever accrued in favour of Respondent No. 1, which the State Government could not have despoiled behind its back. It has already been held by us categorically that RIICO had no authority whatsoever to accord permission for conversion and sub-division of the industrial land allotted to Respondent No. 1. We have further opined that the State Government has always retained its authority as lessor and was the only competent authority to grant such permissions to Respondent No. 1 within the framework of the 1959 Rules. The irresistible conclusion would be that the self-styled power exercised by RIICO, was without any sanction in law; it lacked inherent competence and RIICO acted beyond its jurisdiction in respect of LIA, Kota. The permissions accorded by RIICO in favour of Respondent No. 1 did not confer any rights whatsoever, much less any enforceable right in the eyes of law. RIICO usurped the powers vested in the State Government and passed palpably illegal orders in favour of Respondent No.1. The agreements between RIICO and Respondent No. 1 are nothing but brutum fulmen.

75. On the face of these findings, the question that arises is whether Respondent No. 1, which actively participated in RIICO's decision making process and secured benefits without any authority in law, can be permitted to complain of a deprivation of the opportunity of being heard. We are of the considered opinion that the principle of audi altrem partem should not be an empty formality nor a compulsory ritual that must always be performed. The principal issue that arose for consideration before the Cabinet Committee pertained to the legitimacy of the power assumed by RIICO in respect of LIA, Kota, and not whether the permissions granted to Respondent No. 1 suffered from any propriety or legality. It is true that the issue was raked up with a political flavour, but eventually the final resolution centred around the RIICO's lack of authority. We do not think that Respondent No. 1 could render any assistance to the Cabinet Committee in the formation of their views. In any case, we have carried out an in-depth analysis of the entire gamut of documents and statutory rules, and have come to a firm conclusion that it was the State Government alone which was competent to accord necessary permissions to Respondent No. 1 under the 1959 Rules, and not RIICO in purported exercise of its powers under the 1979 Rules. Our holding is not confined to the decisions taken in favour of Respondent No. 1 alone, and shall encompass all other similarly placed lease-holders, with no discretion to the State Government to blow hot and cold and/or to take ad hoc decisions on a pick and choose basis. The only exception can be in a case where land has been expressly leased out to RIICO under Rule 11A of 1959 Rules and RIICO has further sub- leased the same land as per the scheme envisaged under clause

(viii) of the said Rule.

76. We may at this stage refer to the observations made by this Court in S.L. Kapoor v. Jagmohan & Ors. 22 where the non- observance of Principles of Natural Justice was not condoned, but nonetheless forgone, on the following basis:

> "17. Linked with this question is the question whether the failure to observe natural justice does at all matter if the observance of natural justice would have made no difference, the admitted or indisputable facts speaking for themselves. Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue its writ to compel the observance of natural justice, not because it approves the non-observance of natural justice but because Courts do not issue futile writs. But it will be a pernicious principle to apply in other situations where conclusions are controversial, however, slightly, and penalties are discretionary."

77. Further affirmation on this point is found in K. Balasubramanian (Ex. Capt.) v. State of Tamil Nadu23:

> 22 (1980) 4 SCC 379.
>
> 23 (1991) 2 SCC 708.

"9...This High Court, has in our opinion rightly held that the directions contained in orders dated November 16, 1976, and June 15, 1977, were invalid being contrary to the provisions contained in Rule 35 of the General Rules. Since the said orders were invalid, the petitioners would not claim any right on the basis of the said orders and, there was, therefore, no question of affording them an opportunity of a hearing before passing the order dated March 3, 1980..."

78. These decisions fortify our conclusion that steps taken which are themselves vitiated, cannot form the basis for principles of natural justice to be applied. The supplementary lease deeds were signed by RIICO without any authority to do so. It similarly lacked the capacity to grant the permission for conversion of use for the land to commercial, and the allowance to sub-divide the plot. Thus, no legally vested right of Respondent No. 1 has been infringed and it has no legitimate ground to seek an opportunity to be heard in a matter strictly between RIICO and State Government.

C. 4 Whether the State Government could have exercised its powers under Article 138 of the AoA of RIICO to direct cancellation?

79. It has already been noted that RIICO is a 100% Government owned company incorporated under the Companies Act, 1956. RIICO, in deference to the statutory requirements of the Companies Act, has formulated its own Articles of Association (AoA). Article 138 of these Articles reads as follows:

> "138. Directions and instruction of the Governor.
>
> Notwithstanding anything contained in any of these articles, the State Government may from time to time, issue such directions or instructions as he may consider necessary in regard to the affairs of the conduct of the business of the Company or

> Directors thereof and in like manner may vary and annul any such direction or instruction. The Directors shall duly comply with and give immediate effect to director instruction so issued."

80. It is a matter of common knowledge that clauses of this nature are invariably inserted in AoAs of most Public Sector Undertakings and/or Corporations owned and controlled by the State. The State Government being the sole investor, its overriding powers have been acceded to by RIICO through Article 138 of its AoA. It is pertinent to note that Article 138 opens with a non obstante clause and, thus, the power given to State Government to issue directions under this provision cannot be curtailed and is not subject to any other provision within the Articles. It is categorically provided in Article 138 that the State Government may issue "such directions or instructions……in regard to the affairs of the conduct of the business of the Company or Directors thereof…". Article 138 also empowers the State Government to "vary and annul any such direction or instruction". The Directors are obligated to comply with the Government directions/instructions.

81. In the present case, the State Government has directed RIICO to recall its permission for conversion of the usage of land, sub-division of plots and supplementary lease deeds executed in favour of Respondent No. 1. All these actions of RIICO pertained to its business affairs. Since RIICO took these decisions exceeding its powers and in a completely unauthorised and illegal manner, the State Government, in our considered opinion, was well within its rights to invoke Article 138 of AoA and nullify the unauthorised and unlawful decisions taken by RIICO. The very objective behind reposing power in the State Government under Article 138 of the AoA is to enable it to undo and annul the decisions taken by RIICO in the conduct of its business affairs, which the State Government may find is derogating from public interest or in conflict with its own policy. The State Government is entitled to resort to Article 138 where it finds that the business affairs have been conducted by RIICO detrimental to the State's interest as a Principal stake holder.

C. 5 Whether the Rules of Business were not followed?

82. Respondent No. 1 has heavily relied upon the Rules of Business to urge that failure to comply with the procedure provided therein would lead to invalidation of the government decision. This Court's earlier pronouncement in MRF (Supra) was cited in support of this contention. The relevant extract of the judgment addressing this aspect of the matter is to the following effect:

> "67… In the case on hand, we are required to examine the contentions of the appellants on this issue with reference to the Business Rules framed by Governor of Goa under Article 166(3) of the Constitution of India.
>
> 68. Rule 7(2) of the Business Rules of the Government of Goa states, that, no proposal which requires previous concurrence of Finance Department under the said Rule, but in which Finance Department has not concurred, may not be proceeded with, unless the Council of Ministers has taken a decision to that effect. The wordings of this Rule are different from the provisions of Rule 9 of the Business Rules of Maharashtra and have to be read in context with the provisions of Rule 3 of the

> Business Rules of Government of Goa which states that the business of the Government shall be transacted in accordance with the Business Rules.

Under Rule 7(2) thereof, the concurrence of the Finance Department is a condition precedent.

69. Likewise Rule 6 of the Business Rules states, that, the Council of Minister shall be collectively responsible for all executive orders passed by any Department in the name of the Governor or contract made in exercise of the power conferred on the Governor or any other officer subordinate to him in accordance with the Rules, whether such orders or contracts are authorized by an individual minister on a matter pertaining to the Department under his charge or as the result of discussion at a meeting of the Council of Minister or otherwise. This Rule requires that an executive order issued from any department in the name of the Governor of the State should be known to the Council of Ministers so as to fulfil the collective responsibility of the Council of Ministers.

70. Further Rule 7 of the Business Rules requires that no Department shall without the concurrence of the Finance Department issue any order which may involve any abandonment of revenue or involve expenditure for which no provisions have been made in the Appropriation Act or involve any grant of land or assignment of revenue or concession, grant, lease or licence in respect of minerals or forest rights or rights to water, power or any easement or privilege or otherwise have a financial implications whether involving expenditure or not.

71. From a combined reading of the provisions of Rules 7, 3 and 6 of the Business Rules of the Government of Goa the conclusion would be irresistible that any proposal which is likely to be converted into a decision of the State Government involving expenditure or abandonment of revenue for which there is no provision made in the Appropriation Act or an issue which involves concession or otherwise has a financial implication on the State is required to be processed only after the concurrence of the Finance Department and cannot be finalized merely at the level of the Minister in charge…"

83. Learned Senior Counsel, Mr. Nadkarni, has emphasized on Schedule I of the Rules of Business, under which the matters related to RIICO would be addressed by the Industries Department. By extension, the Minister for Industries would be the nodal authority responsible for finalizing decisions that impact RIICO's functioning. Since the Minister for Industries was not included in the Cabinet Committee and was not involved while taking the final decision, his absence vitiates the decision taken on 03.08.2019.

84. The relevant portions of the Rules of Business relief upon by Respondent No.1 are as follows:

> "PART-II ALLOCATION AND DISPOSAL OF BUSINESS …
>
> 4. The Business of the Government shall be transacted in the Secretariat Departments specified in the First Schedule and shall be classified and distributed between those departments as laid down therein.

...

> 7. The Council shall be collectively responsible for all advice tendered to the Governor and also for all executive orders issued in the name of the Governor in accordance with these Rules, whether such advice is tendered or such orders are authorised by an individual minister on a matter appertaining to his portfolio or as a result of discussion at a meeting of the Council or a sub-

committee thereof or howsoever otherwise.

9. Without prejudice to the provisions of Rule 7, the minister-in-charge or the minister of State-in-charge of a department, shall be primarily responsible for the disposal of the business pertaining to that Department."

85. We are, however, unable to agree with the contentions placed by Respondent No. 1. It appears to us that the Rules of Business have been substantially complied with. The entire Cabinet was called on 29.12.2018 to consider various decisions taken by RIICO during the previous regime. Among these were the supplementary leases and connected permissions to Respondent No. 1 by RIICO. The Cabinet, which included the Minister for Industries, then proceeded to constitute three sub-committees to investigate these alleged irregularities, along with an inter-departmental committee. The Minister for Industries is not expected to look into each individual matter pertaining to RIICO as this would render the entire working of government unviable. The intention behind Article 166(3) under which the Rules of Business are framed, have been succinctly set out by this Court in Gulabrao Keshavrao Patil & Ors. v. State of Gujarat24:

> "7...Article 166(1) and (2) expressly envisage authentication of all the executive action and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the 24 (1996) 2 SCC 26.

Governor. Under Article 166(3), the Governor is authorised to make the rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not a business with respect to which the Governor is by or under the Constitution required to act in his discretion..."

86. Another decision in Lalaram and Ors. vs. Jaipur Development Authority and Ors.25 also laid down the following:

> "104... Thus, Article 166(3) mandates the making of the Rules of Business for more convenient transactions of the affairs of the Government. Clause (1) stipulates the mode of expression of an executive action taken in conformity therewith and Clause (2) ordains the manner of authentication of the consequential orders and instruments. Having regard to the role assigned to the Council of Ministers with the Chief Minister at the summit, the Rules of Business framed Under Article 166(3) meant for convenient transaction of the affairs of the Government, by allocation

> thereof among the Ministers, secures their collective participation in the administration of the governance of the State. This scheme of executive functioning, assuredly thus, is in assonance with the constitutional edict with regard thereto, modelling the steel frame of the State machinery."

87. The purpose behind Article 166(3) is to form regulations for the convenient administration of government. The Minister 25 (2016) 11 SCC 31.

of Industries was not, at any point, missing from the overall decision to review the actions taken by RIICO and to take necessary steps thereafter. The cabinet sub-committee was merely acting on behalf of the entire Council of Ministers, when carrying out the exhaustive fact-finding enquiries.

88. We must not overlook the overall objective of ensuring that governance is carried out in a convenient and efficient manner. Rule 7 of the Rules of Business embodies this spirit as well, in that it advocates for collective governance by the Council of Ministers in terms of recommendations made to the Governor. The Council was collectively involved in the decision to have sub-committees set up to revisit different decisions taken by the prior government, including with respect to actions by RIICO.

89. The judgment in MRF (Supra) formulated its final conclusion on the basis of a construction of the Rules of Business of Goa and only after interpreting the Rules, was the mandatory nature of the sign off from the Finance Department distilled. In our case, the sign off from the Minister for Industries is clear from the authorization granted on 01.01.2019 to the sub-committee to look into the decisions of the prior government and RIICO. Therefore, the spirit behind the Rules of Business stand complied with in the present case.

90. We hasten to emphasize once more that it was a collective decision of the Council of Ministers to constitute the Committees to look into irregularities of various kinds. The specific committee that was authorized to investigate RIICO and its alleged misuse of non-existent powers in favour of Respondent No. 1, was a creation of the entire Council, including the Minister for Industries. The sub-committee's actions in this context were completely validated and backed by the Minister and the rest of the Council. It is, thus, difficult to hold that Rules of Business have not been followed by the State Government in the course of its decision making process.

C.6 Does the Doctrine of Legitimate Expectations and Promissory Estoppel apply in favour of Respondent No. 1?

91. An additional point in this regard is the inapplicability of principles of estoppel and legitimate expectations. In line with our analysis on why the principles of natural justice will not be of relevance, these defences, similarly, cannot be raised by Respondent No. 1 on the strength of illegal actions or orders passed by RIICO. Moreover, there is no governmental action or order in favour of Respondent No.1 which can give rise to any legitimate expectations. The execution of the supplementary lease deed by RIICO in favour of Respondent No. 1, along with the attendant permissions in its favour for converting the usage of the land and sub-division, are actions taken

between them. This Court has clearly laid out the contours of legitimate expectations on numerous occasions, along with commenting on the scenarios where they are inapplicable. In Bannari Amman Sugars Ltd. vs. Commercial Tax Officer and Ors. 26 it was opined that:

> "8...It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right of a fair hearing before a decision which results in negativing a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such is involved. The protection of such legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest."

92. In Food Corporation of India v. Kamdhenu Cattle Feed Industries27, this Court also noted that legitimate expectations may not themselves give rise to defensible rights, but merely act as a bulwark against arbitrator decision making that does not take into account these interests. The Court outlined:

> 26 (2005) 1 SCC 625.
>
> 27 (1993) 1 SCC 71.

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself he distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non- arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

93. From this encapsulation of the law, it is clear to us that no legitimate expectation could have arisen in favour of Respondent No. 1. There was no implicit or explicit representation made by the State Government in favour of its request for conversion of the land, nor for sub-division of plots. RIICO, in completely untenable fashion, took over the role of the lessor without there being any right to do so, and issued the requisite permissions. Evidently, such approvals had no legs to stand on as they were devoid of any force of law. The lessor of LIA, Kota, was the State Government. When the entity purporting to exercise the powers of a lessor, RIICO in this case, does so without having

the requisite legal status to act in this manner, Respondent No. 1 as the beneficiary of these wrongful actions, cannot seek any legitimate expectation or promissory estoppel in its favour.

94. Furthermore, this Court in Food Corporation of India (Supra) had noted that other overriding public interests could outweigh the consideration of legitimate expectations in favour of a private party. Thus, even if we were to consider Respondent No. 1's arguments at their highest, the objectives of a private entity such as Respondent No. 1 could not outweigh the larger public interest behind the industrial development of the land. Respondent No. 1 cannot be permitted to act in defiance of the 1959 Rules, which are applicable to the land and which mandate the utilization of the land for industrial purposes, subject to the variations as may be permitted by the State Government.

95. On the very same logic, there can be no promissory estoppel working against the Appellants. In this regard, the view taken by this Court in Motilal Padampat (Supra) is worthy of reproduction:

> "24... But it is necessary to point out that since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promise and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and after this position and the public interest likely to suffer if the promise were required to be carried out by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it..."

96. Hence, supervening public interest, as we have already elaborated upon above, acts as a veto against the invocation of promissory estoppel. On these grounds as well, Respondent No. 1 cannot claim any right to the continuation of the supplementary lease deeds.

97. Our conclusion, incontrovertibly, is that Respondent No. 1 cannot lay claim to any legitimate expectation or promissory estoppel. The supplementary lease deeds and corresponding permissions were executed with/by RIICO which had no authority and power to do so. This, combined with the overriding public interest in having the land in LIA, Kota utilized for industrial purposes for the economic progression of the state or any revised purpose, as may be permitted by the State Government in public interest, leaves us in no doubt that Respondent No. 1 has no further valid defences against the cancellation of the supplementary lease deeds.

C.7 Whether the Appellant Unions are entitled to relief?

98. The one issue that remains for our consideration is with regard to the Appellant Unions. We are receptive and sensitive to the interests of the workers in this regard, especially given that a significant part of the AAIFR scheme remains unimplemented. We have been informed by learned counsels appearing for the Appellant Unions that an earlier petition challenging the transfer lease deeds of 2007, whereby the land was handed over to Respondent No. 1, is still pending before the Rajasthan High Court. This proceeding would, naturally, have a knock-on effect with regard to everything that happens subsequently, if the High Court were to ascertain that the transfer leases were invalid.

99. Regardless, we do not have the requisite material before us to comment on this point, and it would be inappropriate for us to do so in any case, especially when the matter is sub-judice before the High Court. Thus, the High Court will consider the workers' petition on its own merits, uninfluenced by anything that we have held in this judgment in the context of the dispute between the State Government, RIICO and Respondent No. 1. In the same breath, we also abstain from commenting on the other petitions filed by individual workers before various forums. These proceedings may continue and be decided eventually in accordance with law.

100. We note that despite the passage of 21 years since the tripartite agreements were signed between JKSL, Respondent No. 1 and the workers unions in 2002, and 16 years since the transfer lease deeds were signed in 2007, the LIA, Kota has remained dormant. The objective of restarting industrial production in the area, as envisaged by the AAIFR rehabilitation plan and required by virtue of the settlements of 2002, remains out of reach. The damage this causes to the former employees of JKSL, as well as the industrial and economic growth of the State, cannot be underestimated. While we are not in a position to direct or order the implementation of the AAIFR plan, we recall the earlier orders of this Court which had dismissed the workers unions' SLP, and the subsequent Review Petitions on 17.08.2017 and 06.03.2018, but with a note that the rehabilitation plan should be implemented.

101. Given that the earlier orders of the Supreme Court have already held that Respondent No. 1 is not a sick industrial company and that judgment has become final with the dismissal of the Review Petitions, there is no point reverting to SICA any longer. However, we re-emphasize the importance of finding a viable solution to this complex issue.

102. We reiterate the earlier observations made by this Court regarding implementation of the AAIFR scheme. The objective of the original transfer lease deeds of 2007 that were signed for the purpose of using the land for industrial development should be carried out, subject to altering the usage of the land under the 1959 Rules.

103. However, at the same time, our sympathy for the Appellant Unions cannot translate into any concrete relief in the context of the dues they seek. We are not appropriately positioned to consider their prayers in this context. Instead, we grant liberty to the Appellant Unions to approach the appropriate government and other forums as permitted by law, to seek their respective dues. We

clarify once again that we have expressed no opinion on the merits of this segment of the controversy.

D. CONCLUSION

104. Our final analysis is that the supplementary leases signed between Respondent No. 1 and RIICO are unsustainable. RIICO did not possess the authority to enter into these agreements, as the land in LIA, Kota remained under the ownership and control of the State Government uninterruptedly from the first lease signed with JKSL, till the present date. Respondent No. 1 was also cognizant of this fact as evinced by it entering into the 7 transfer lease deeds with the Collector, Kota, in 2007, after it stepped into the shoes of JKSL.

105. The leases with JKSL were executed under the 1959 Rules which remained applicable and there was no authority ever vested in RIICO to have issued the permissions for conversion and sub-division of plots in the LIA, Kota, and for signing the supplementary lease deeds with Respondent No. 1. There is no legal infirmity in the action of the Appellants in setting aside the decisions taken by RIICO or in directing to cancel the supplementary leases of 2018. Hence, we uphold the cancellation of the supplementary deeds and quashing of the approvals for conversion of land and sub-division of plots.

106. This shall, however, not preclude Respondent No. 1 from reapproaching the State Government and seeking conversion of the usage of land and attendant approvals under the 1959 Rules. The State Government shall be at liberty to consider such a proposal in public interest and in accordance with the 1959 Rules.

107. With regard to the Appellant Unions, we do not consider it expedient for us to enter into the demands made by the labour unions for the dues of JKSL's employees. We express no views on the content of the prayers by the Appellant Unions, and leave it open for them to seek their remedies under law from the Appropriate Government, and judicial forums.

108. We may summarize our overall conclusions in the following points:-

> A. There has been an uninterrupted and subsisting relationship of lessor and lessee between the State Government and either JKSL or Respondent No. 1, in the context of LIA, Kota. From the first lease deed executed in 1967, till date, the State Government has maintained the position of lessor;
>
> B. The lease with JKSL, and all leases thereafter with JKSL and/or Respondent No. 1, have been signed under the 1959 Rules. The terms of the lease are clearly in compliance with the 1959 Rules;
>
> C. The land in LIA, Kota was never transferred to RIICO under the Government Order dated 18.09.1979. The State Government has always maintained title and ownership of the area;

D. The land was also never allotted to RIICO on a leasehold basis under Rule 11A of the 1959 Rules. Thus, RIICO was never expressly given any leasehold rights, and had no authority to further sub-lease the land, along with other corresponding powers, under Rule 12 of the 1959 Rules;

E. In any case, Rule 11A of the 1959 Rules is of no importance, as there had to be an express allotment of the land to RIICO on a leasehold basis after the coming into force of Rules 11A and 12. No such express allocation was ever made in favour of RIICO;

F. The 1979 Rules are not statutory in nature. The reference to the 1979 Rules in Rule 12 of the 1959 Rules, does not accord any statutory recognition to the former;

G. There was no violation of the Principles of Natural Justice in this case. The entire basis for granting permission for conversion of the land, and subdivision of the plots, was on an incorrect assumption of power by RIICO under the 1979 Rules, to act as the lessor of LIA, Kota. RIICO was never given any leasehold rights over the land. When the basis for a benefit received by a party is itself invalid, there is no question of giving the party a chance to be heard;

H. The State Government was competent to issue directions under Article 138 of the AoA of RIICO, to cancel the supplementary lease deeds and attendant permissions. This fell squarely within the ambit of Article 138 of the Articles of Association;

I. There was no violation of the Rajasthan Rules of Business as the sub-committee which recommended the cancellation of the permissions/approvals to Respondent No. 1, was acting for and on behalf of the entire Council of Ministers. Hence, the Rules of Business were complied with;

J. There was no legitimate expectation nor promissory estoppel that could operate to the benefit of Respondent No. 1, as, once again, no such defences could be raised on the back of RIICO's own erroneous utilization of powers that vest only with the rightful lessor of LIA, Kota, which is the State Government. Further, public interest overrides both these doctrines, and cannot come to the aid of a private party, when the larger interests of society are involved;

K. The Appellant Unions and workers are at liberty to approach the Appropriate Government and various judicial forums to pursue their remedies in accordance with law.

109. The Appeals by the State of Rajasthan and RIICO are accordingly allowed; the impugned judgment dated 20.07.2021 passed by the High Court of Judicature for Rajasthan at Jaipur, is set aside. Consequently, the Writ Petition filed by Respondent No.1 before the High Court is dismissed save and except the liberty granted in Para 106 of this judgment.

110. Pending interlocutory applications, if any, also stand disposed of.

.....J. (SURYA KANT) .....J. (VIKRAM NATH) New Delhi;

April 20, 2023.