IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P(C) No. 454 of 2016

Kohinoor Steel Private Limited, a Company incorporated under the Companies Act, 1956 having its registered office at 16A, 'Everest House', 46C, Jawaharlal Nehru Road, Kolkata-700071 through its Senior Corporate Executive, Sri Anindya Sengupta, son of late Achintya Sengupta, r/o LIG-2K/5, Harmu Housing Colony, PO-Harmu, PS-Argora, District-Ranchi

..... **Petitioner**

Versus

1. Union of India, through the Secretary, Ministry of Mines, having its office at Shastri Bhawan, P. O & PS -Parliament Street, District New Delhi.
2. Director, Ministry of Mines, Government of India, having its office at Shastri Bhawan, PO-Shastri Bhawan, PS-Parliament Street, District-New Delhi
3. The State of Jharkhand through the Chief Secretary, having its office at Project Bhawan, PO and PS-Dhurwa, Town & District-Ranchi
4. Secretary, Department of Mines and Geology, Government of Jharkhand, having its office at Nepal House, PO & PS-Doranda, District-Ranchi
5. Deputy Commissioner, Chaibasa, PO & PS-Chaibasa, District-West Singhbhum
6. District Mining Officer, Chaibasa, PO & PS-Chaibasa, District-West Singhbhum .... **Respondents**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Petitioner	:	Mr. Indrajit Sinha, Advocate Mr. Ankit Vishal, Advocate
For the Respondent-UOI	:	Mr. Anil Kumar, ASGI Mr. Shiv Kumar Sharma, CGC
For the Respondent-State	:	Mr. Gaurang Jajodia, AC to GP-II

C.A.V on 17th October 2024 **Pronounced on 19th November 2024**

Per, Sujit Narayan Prasad, J.

Prayer

In the present writ petition under Article 226 of the Constitution of India the petitioner-Firm has prayed for the following reliefs:

a. For issuance of an appropriate writ, order or direction, declaring that Section 10A(1) of the Mines and Minerals (Development & Regulation) Act, 1957 (as amended by Mines and Minerals (Development & Regulation) Amendment Act, 2015) is unconstitutional and ultra vires the Article 14 of Constitution of India.

b. For issuance of further appropriate writ, order or direction, including writ in the nature of certiorari, for quashing the letter issued by the Ministry of Mines, Government of India, bearing No.5/89/2010-MIV dated 12.11.2015, by which the proposal for grant of prospecting licence for Iron Ore and Manganese Ore over an area of 71.914 Ha. in Mauja Barabaljori and Merelgarha, District West Singhbhum in favour of the petitioner for a period of three years has been declared as ineligible in the light of Section 10A (2) of the Mines and Minerals (Development & Regulation) Act, 1957 (as amended by Mines and Minerals (Development & Regulation) Amendment Act, 2015) (hereinafter to be referred as 'MMDR Act') and has been closed;

c. For issuance of further appropriate writ, order or direction, declaring that the application/proposal of the petitioner for grant of mineral concession is otherwise eligible in terms of Section 10A(2)(c) of the MMDR Act, for the reason that the State Government has communicated its approval in terms of Section 5(1) of the MMDR Act and has recommended for grant of

prospecting licence vide its letter dated 13.8.2010 prior to coming into force of the Amendment Act.

Factual Matrix

2. The brief facts of the case as per the pleadings made in the writ petition are that the petitioner-Firm is incorporated on or about 16.02.2005 and established its industry at village Kuchidih within the district Saraikela (Jharkhand) under the provisions of Companies Act, 1956.

3. The Petitioner-Firm is an integrated steel plant which commenced production in April, 2006. On 18th July 2005 the petitioner-Firm entered into a Memorandum of Understanding with the Government of Jharkhand whereby and whereunder the Government of Jharkhand agreed to provide all assistance to the petitioner in procuring iron ore and industrial minerals in accordance with the need of the petitioner's proposed integrated steel plant.

4. On the date of entering into the Memorandum of Understanding (MOU) between the petitioner-Firm and the State Government, i.e., on 18th July 2005 the petitioner-Firm has not set up its establishment but on the assurance of the State Government the petitioner-Firm invested a sum of Rs.400 crores to set up the said integrated Steel Plant in Jharkhand State. Thereafter the petitioner-Firm applied for a Mining Lease of Iron ore over an area of 177.70 acres in the Mouza Barabaljori, West Singhbhum, Jharkhand but the State authorities has granted "Tati Buru" Block for the mining to the petitioner-firm which was claiming by Indian Iron and Steel Company Limited on lease.

5. Being aggrieved, the petitioner-Firm approached this High Court by filing writ petition being W.P (C) No.2846 of 2007 before this Court in which this Court directed the State authority to allot a alternative iron ore block to the petitioner-Firm whereupon on 3rd April, 2008, the Secretary, Department of Mines and Geology, Government of Jharkhand was directed to appear in Court to explain the position of the Government and it was further directed that no further recommendation would be made in the meantime.

6. On 15th April 2008, the Secretary, Department of Mines and Geology, Government of Jharkhand appeared in Court and stated that the petitioner could opt for the allotment of any other iron ore block whereupon the same would be considered and disposed of before 25.5.2008. The State authority assured that the same will be allotted to it before 25.5.2008 but thereafter the State authority repeatedly requested for extension of time instead of allotment of the iron ore block to the petitioner-Firm.

7. Upon this, for willful and deliberate violation of the order of this Court dated 15.04.2008 passed in W.P(C) No.2846 of 2007 a contempt case being Contempt Case (Civil) No. 709 of 2008 was filed before this Court by the petitioner-Firm.

8. Thereafter, a committee by its recommendation dated 18.03.2009 recommended that the Mining Lease in respect of Barabljori Block be granted to the petitioner-Firm but the State Government refused to accept such recommendation and to forward the same to the Union Government. Vide order dated 28.06.2010 passed in Contempt Case (Civil) No.709 of 2008, the Hon'ble Court directed the Secretary concerned to appear in the

Court in person and in pursuance thereof the Secretary concerned had requested some more time to make recommendation in favour of the petitioner-Firm and ultimately, a recommendation was made vide its letter dated 13.8.2010 for grant of mining lease to it which is a different area situated at Mouza Barabaljori and Maralgarha, District-West Singhbhum ad-measuring 50.908 Ha.

The aforesaid Contempt Case was disposed of by this Court vide order dated 16.08.2010, by taking into consideration of the recommendation as made by the state Government on 13.08.2010.

9. It is further pleaded that the respondent nos. 1 and 2 wrote to the respondent nos.4 and 6, calling upon them to provide diverse papers, documents and clarifications in support of the recommendation made in favour of the petitioner-Firm. Thereafter, the petitioner-Firm requested the respondent no.1 to allot the area actually applied for by it and not the area recommended for allotment by letter dated 13.8.2010.

10. It is pleaded that having regard to the fact that a copy of the said letter dated 01.11.2010 was endorsed to it, the petitioner-Firm vide its letter dated 1.12.2010 also wrote to the Respondent no.1 to provide all clarifications and documents and gave detailed particulars of the exact area applied for by the petitioner-Firm together with copies of maps so as to remove all doubts as to the area allotted to it.

11. By letter dated 30.12.2010, the Government of India, Ministry of Mines called upon the Government of Jharkhand, Department of Mines and Geology to offer its comment with regard to the letter of the petitioner-Firm dated 01.12.2010.

12. It is the case of the petitioner that in spite of repeated requests by the Government of India and in spite of the facts of all related information and documents were duly provided by the petitioner-Firm for being forwarded to the Government of India, the Government of Jharkhand deliberately and in order to harass and victimize the petitioner-Firm failed to forward the necessary documents to the Government of India.

13. Consequently, by its letter dated 07.06.2011 addressed to the Director of Mines and Geology, Government of Jharkhand, the petitioner-Firm once again made a detailed representation to the State respondents to ensure that the clarifications, information and documents sought by the Central Government be provided to it forthwith. At the request of the State-respondents, the petitioner-Firm under cover of its letter dated 15.06.2011, submitted yet another map of the Area applied for by it duly certified by the Circle Officer, Noamundi, Jharkhand that the said area had not been allotted to anyone else.

14. Thereafter, on the further request of the State-respondents, the petitioner-Firm by letter dated 10.08.2011; forwarded the village map, Topo Sheet, land schedule, etc. to the State-respondents with a request to forthwith forward the same to the Central Government. On 29.11.2011, Assistant Mining Officer, Chaibasa submits an enquiry report regarding the area applied for by the petitioner-Firm. The said report confirmed the original area, original plan and topo sheet of the petitioner-Firm.

15. Thereafter, a meeting was held between the authorized representative of the petitioner-Firm and Director and Deputy Director, Department of Mines and Geology, Ranchi on 07.12.2011. Believing in

and relying upon the said representation made by and on behalf of the respondent Nos. 4 and 6 and being desirous of normalizing the acrimonious relations between the petitioner-Firm and State authorities, the petitioner-Firm on/or about 05.12.2011 withdrew the Cr.M.P No. 1500 of 2009 which was filed against the State authorities for misleading the Court by making false statement.

16. The District Mining Officer, Chaibasa made a thorough inquiry and submitted his report vide letter No. 180 dated 30.01.2012 whereby and whereunder he specifically mentioned that there is a slight difference in the rectified map/topo sheet and the original topo sheet only with respect to the eastern boundary. Although the difference between the original topo sheet and the rectified map/topo sheet was negligible, as is apparent from the said report, the Additional Director, Mines with an intention to somehow further delay the matters vide letter dated 09.02.2012 directed the petitioner-Firm to submit a clarification as to why there is a difference in both the maps.

17. The Petitioner-Firm vide letter dated 29.02.2012 immediately replied and stated that the negligible difference was only due to oversight at the time of making recommendation by the State Government. The petitioner-Firm had already clarified vide letters dated 11.11.2010 and 01.12.2010 that due to oversight, the State Government had forwarded the wrong map/topo sheet without proper verification.

18. It is the case of the petitioner that in order to further delay the matters, the Additional Director, Mines vide letter No. 499 dated 15.03.2012 again directed the Assistant Mining Officer, Chaibasa to

submit a clarification with respect to the differences found in the said map/topo sheet.

19. In response thereof, the Assistant District Mining Officer, Chaibasa vide letter No. 1027 dated 05.06.2012 submitted a clarification whereby the said Mining Officer has, by means of a map signed by him and enclosed with the said letter clearly demarcated the area to be actually allotted to the petitioner-Firm in green ink and confirmed that the said area marked in green ink corresponds to the area applied for allotment by it.

20. In spite of the same, the Additional Director, Mines again vide letter No. 1136 dated 11.06.2012 requested the Assistant Mining Officer, Chaibasa to clarify as to whether the verification of the map/topo sheet and the boundary description was factually done or not. In response thereof, the Assistant Mining Officer, Chaibasa vide letter No. 1263 dated 11.07.2012 gave a detailed report stating the boundary of the land applied with the maps confirming that the boundary provided was in accordance with the maps and topo sheets submitted by it. Thereafter, the Director, Department of Geology wrote to the petitioner-Firm informing that the area applied by it is correct as per the topo sheet.

21. Even after lapse of considerable time and requesting the authorities of the State Government to decide the application of the petitioner-Firm, the same was not decided upon and recommendation was not made, which constrained the petitioner-Firm to file another writ petition before this Hon'ble Court, being W.P.(C) No.5059 of 2012, inter alia, praying therein for issuance of an appropriate writ, order or direction, commanding the State authorities to recommend and grant

prospecting licence to the petitioner-Firm for the year applied for. In the aforesaid writ petition, an interlocutory application, being I.A. No.1012 of 2013, was filed praying for a direction on the State Government to send the documents and clarification as sought by the Central Government vide its letters dated 1.11.2010 and 30.12.2010.

22. Upon hearing the parties, this Hon'ble Court vide order dated 11.12.2013 directed the State Government through the Secretary, Department of Mines to send the required information and clarification to the Central Government within two weeks from the date of receipt/production of a copy of the order.

23. Deliberating the issue further, the petitioner-Firm kept on communicating with the State as well as the Central Government vide its several letters. On 08.01.2014, 24.10.14 and 24.01.2015, the petitioner-Firm wrote letters to the Hon'ble Chief Minister of Jharkhand, requesting him to direct the concerned department to dispose of the application of the petitioner-Firm and to make a recommendation concerning the exact area of grant of prospecting licence.

24. Meanwhile, Mines and Mineral (Development and Regulation) Amendment Ordinance, 2015 came into force. Vide another letter dated 15.04.2015, the petitioner-Firm sought immediate rectification of recommendation already allotted as Barabaljori Block and expedite the issue for grant of prospecting licence.

25. Vide letter, bearing no.1338 dated 3.7.2015 the Department of Mines, Government of Jharkhand sent its clarification to the Ministry of Mines regarding grant of area of prospecting licence. Thereafter, the petitioner-Firm again requested the Ministry of Mines, Government of

India to issue a direction upon the State Government to approve the allotment of Barabaljori Iron Block in its favour at the earliest in terms of the order of the Hon'ble High Court failing which the petitioner-Firm shall suffer closure of its plant affecting the lives of more than ten thousand people.

26. Upon this, the petitioner-Firm received letter bearing No.5/89/10/MIV dated 12.11.2015 by which the petitioner-Firm has been communicated that upon amendment of the MMDR Act, the application of the petitioner-Firm for grant of prospecting licence has become ineligible on 12.1.2015 in terms of section 10A(1) of the MMDR Act(Amended) 2015, as it was not saved in terms of Section 10A(2) of the said Act.

27. Therefore, the petitioner Firm has preferred the instant petition for redressal of grievances by challenging the vires of the amended provision i.e. section 10A(1) of the MMDR Act and other consequential relief.

28. It is evident that petitioner-Firm had established its industry at village Kuchidih within the district Saraikela (Jharkhand). The petitioner-Firm is an integrated steel plant which commenced production in April, 2006. On 18th July 2005 the petitioner-Firm entered into a Memorandum of Understanding with the Government of Jharkhand whereby and whereunder the Government of Jharkhand agreed to provide all assistance to the petitioner in procuring iron ore and industrial minerals in accordance with the need of the petitioner’s proposed integrated steel plant.

29. Thereafter the petitioner-Firm applied for a Mining Lease of Iron ore over an area of 177.70 acres in the Mouza Barabaljori, West Singhbhum, Jharkhand but the State authorities has granted “Tati Buru” Block for the mining to the petitioner-firm which was claiming by Indian Iron and Steel Company Limited on lease.

30. Being aggrieved, the petitioner-Firm approached this High Court by filing writ petition being W.P (C) No.2846 of 2007 in which on 15th April 2008, the Secretary, Department of Mines and Geology, Government of Jharkhand appeared in Court and stated that the petitioner could opt for the allotment of any other iron ore block whereupon the same would be considered and disposed of before 25.5.2008 but thereafter the State authority repeatedly requested for extension of time instead of allotment of the iron ore block to the petitioner-Firm.

31. Upon this, for willful and deliberate violation of the order of this Court dated 15.04.2008 passed in W.P(C) No.2846 of 2007 a contempt case being Contempt Case (Civil) No. 709 of 2008 was filed before this Court by the petitioner-Firm.

32. In aforesaid Contempt Case, in light of the direction passed by this Court a recommendation was made vide its letter dated 13.8.2010 for grant of mining lease to it which is a different area situated at Mouza Barabaljori and Maralgarha, District-West Singhbhum ad-measuring 50.908 Ha. Thereafter, the petitioner-Firm requested the respondent no.1 to allot the area actually applied for by it and not the area recommended for allotment by letter dated 13.8.2010.

33. It is the case of the petitioner that in spite of repeated requests by the Government of India and in spite of the facts of all related

information and documents were duly provided by the petitioner-Firm for being forwarded to the Government of India, the Government of Jharkhand deliberately and in order to harass and victimize the petitioner-Firm failed to forward the necessary documents to the Government of India.

34. At the request of the State-respondents, the petitioner-Firm under cover of its letter dated 15.06.2011, submitted yet another map of the Area applied for by it duly certified by the Circle Officer, Noamundi, Jharkhand.

35. It is evident that The District Mining Officer, Chaibasa made a thorough inquiry and submitted his report vide letter No. 180 dated 30.01.2012 wherein he specifically mentioned that there is a slight difference in the rectified map/topo sheet and the original topo sheet only with respect to the eastern boundary, accordingly, the Additional Director, Mines vide letter dated 09.02.2012 directed the petitioner-Firm to submit a clarification as to why there is a difference in both the maps.

36. The Petitioner-Firm vide letter dated 29.02.2012 immediately replied and stated that the negligible difference was only due to oversight at the time of making recommendation by the State Government.

37. Further the Assistant Mining Officer, Chaibasa vide letter No. 1263 dated 11.07.2012 gave a detailed report stating the boundary of the land applied with the maps confirming that the boundary provided was in accordance with the maps and topo sheets submitted by it. Thereafter, the Director, Department of Geology wrote to the petitioner-Firm informing that the area applied by it is correct as per the topo sheet.

38. It is the case of the petitioner that even after lapse of considerable time and requesting the authorities of the State Government to decide the application of the petitioner-Firm, the same was not decided upon and recommendation was not made, which constrained the petitioner-Firm to file another writ petition before this Hon'ble Court, being W.P.(C) No.5059 of 2012, inter alia, praying therein for issuance of an appropriate writ, order or direction, commanding the State authorities to recommend and grant prospecting licence to the petitioner-Firm for the year applied for.

39. Upon hearing the parties, this Hon'ble Court vide order dated 11.12.2013 directed the State Government through the Secretary, Department of Mines to send the required information and clarification to the Central Government within two weeks from the date of receipt/production of a copy of the order.

40. It is evident that during the happening of aforesaid procedure, Mines and Mineral (Development and Regulation) Amendment Ordinance, 2015 came into force, then vide another letter dated 15.04.2015, the petitioner-Firm sought immediate rectification of recommendation already allotted as Barabaljori Block and expedite the issue for grant of prospecting licence.

41. Upon this, the petitioner-Firm received letter bearing No.5/89/10/MIV dated 12.11.2015 by which the petitioner-Firm has been communicated that upon amendment of the MMDR Act, the application of the petitioner-Firm for grant of prospecting licence has become ineligible on 12.1.2015 in terms of section 10A(1) of the MMDR Act, as it was not saved in terms of Section 10A(2) of the said Act.

42. Hence, the petitioner Firm has preferred the instant petition for redressal of grievances by challenging the vires of the amended provision in section 10A (1) of the MMDR Act and for other consequential relief.

Argument by the learned counsel for the petitioner:

43. Mr. Indrajit Sinha, the learned counsel assisted by Mr. Ankit Vishal, the learned counsel appearing for the petitioner-Firm has raised the following grounds in assailing the impugned judgment:

I. It has been contended on behalf of the petitioner-Firm that the benefit of section 10A(2)(c) is required to be extended in favour of the petitioner-Firm in view of the fact that the State has already made recommendation for grant of mining lease. But due to laches on the part of the State or the Central Government the letter of intent has not been issued.

II. The submission, therefore, has been made that the recommendation since has been made for seeking approval from the Central Government as required under the MMDR Act, 1957 it may be considered to be letter of intent and in that view of the matter the case of the petitioner-Firm will come under the fold of the eligibility as has been carved out under the provision of section 10 A (2) (b) and in that view of the matter the provision of section 10A(2)(c) the petitioner-Firm is entitled to extend the benefit of mining lease to carry out the mining operation.

III. The learned counsel appearing for the petitioner-Firm has submitted that although the validity of section 10A(1) has also been challenged but in course of argument it has been submitted that the petitioner-Firm since is emphasizing his argument to treat the

recommendation as a letter of intent so that the case of the petitioner-Firm may come within the fold of section 10 A (2) (c) and that is the reason it has been argued to consider the recommendation as the letter of intent.

Argument by the learned counsel for the respondents:

44. Per contra, Mr. Anil Kumar, the learned Addl. SGI as also Mr. Gaurang Jajodia, the learned State counsel submitted that the issue has already been decided by the Hon'ble Apex Court in the case of ***Bhusan Power and Steel v. State of Odisha, (2017) 2 SCC 125.***

The submission, therefore, has been made that since the Hon'ble Apex Court has already decided the issue by setting it at rest, hence, no further issues is required to be adjudicated in the present case.

Analysis

45. We have heard the learned counsels for the parties and gone through the pleadings made in the writ petition as also in the counter-affidavit.

46. This Court after having heard the learned counsel appearing for the petitioner-Firm has gathered that the following issues have been raised:

I. The recommendation which has been made by the State is to be treated as a letter of intent so as to get the benefit of the provision of section 10 A(2)(C) of the MMDR Act, 1957.

II. The said recommendation is to be treated as letter of intent, since, there is no laches on the part of the petitioner-Firm and that is the reason the same is to be treated as letter of intent so as not to deprive from the effect of the

insertion of the amended rule as enshrined under section 10A(2)(b) and 10A(2)(c) of the Act.

III. The main argument of the writ petitioner is to treat the recommendation made by the State Government vide communication dated 13.08.2010 before the functionary of the Central Government be treated as the letter of intent so as to get the benefit of section 10A(2)(c) and that is the reason the issue as per the prayer made in the writ petition which is with respect to the validity of the provision of section 10A (1) has not been argued as to how the aforesaid provision is ultra vires.

47. Thus, this Court is of the view that since the said fact has not been agitated as to how the said provision is statutorily being invalid hence decided not to consider the same, rather, the second prayer to extend the benefit of section 10A(2)(c) is to be considered in view of the argument advanced on behalf of the petitioner-Firm based upon that the issues have been referred herein.

48. This Court before deciding the aforesaid issues needs to refer herein the relevant Articles of Constitution of India and the provisions of the MMDR Act, 1957.

49. It needs to refer herein that Article 246 of the Constitution of India stipulates legislative powers of Central and State Government. Wherein, the Seventh Schedule of the Constitution of India provides the subject-matter of legislation by the Parliament and State Legislatures. As per Entry 54 of List 1 (Union List), the Central Government has powers for “Regulation of Mines and Mineral Development to the extent to which

such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". According to Entry 23 of List II (State List), the State Governments have powers for "Regulation of Mines and Mineral Development subject to the provisions of List I with respect to regulation and development under the control of the Union."

50. As per the aforesaid stipulation the Mines and Minerals (Development &. Regulation) Act, 1957 was enacted by the Parliament wherein by virtue of Section 2 of the MMDR Act it has been declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided. Section 2 of the MMDR Act 1957 reads as follows: -

> *"2. Declaration as to the expediency of Union control- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."*

51. The MMDR Act 1957, inter-alia, provides for procedures to grant mineral concessions, regulate mining activities and provisions for mineral development in the country. Section 4 of the MMDR Act 1957 reads as follows:-

> *"4. Prospecting or mining operations to be under licence or lease.— (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder. .....*
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> *(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder."*

52. Section 6 of the MMDR Act, 1957 reads as follows: -

> *"6. Maximum area for which a prospecting licence or mining lease may be granted.—[(1) No person shall acquire [***] in respect of any mineral or prescribed group of associated minerals [in a State]— (a) one or more prospecting licences covering a total area of more than twenty-five square kilometres; or (aa) one or more reconnaissance permit covering a total area of ten thousand square kilometres: Provided that the area granted under a single reconnaissance permit shall not exceed five thousand square kilometers; or] (b) one or more mining leases covering a total area of more than ten square kilometres: Provided that if the Central Government is of the opinion that in the interest of the development of any mineral or industry, it is necessary so to do, it may, for reasons to be recorded by it in writing, permit any person to acquire one or more prospecting licences or mining leases covering as area in excess of the aforesaid total area; (c) any reconnaissance permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous: Provided that if the State Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire a reconnaissance permit, prospecting licence or mining lease in relation to any area which is not compact or contiguous.]*
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> *(2) For the purposes of this section, a person acquiring by, or in the name of, another person a reconnaissance permit, prospecting licence or mining lease] which is intended for himself shall be deemed to be acquiring it himself."*

53. The aforesaid provision specifically mentioned with regard to the maximum area for which a prospecting licence or mining lease may be granted. If it exceeds the area as contained in clauses (a), (aa) and (b), it is protected under the proviso to the effect that if the Central Government is of the opinion that in the interest of the development of any mineral or industry, it is necessary so to do, it may, for reasons to be recorded by it in writing, permit any person to acquire one or more prospecting licences or mining leases covering as area in excess of the

aforesaid total area. Thereby, the rights have been protected by such proviso incorporated under Section 6 (b) of the Act itself.

54. Section 11 of the MMDR Act, 1957 reads as follows:-

> *"11. Preferential right or certain versions•- (I) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining, a prospecting licence or mining lease, as ease may be, in respect of that land over any other person:*
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> *Provided that the State Government is satisfied that the permit holder or the licensee. as the case may be,- (a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land; (b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence: (c) has not become ineligible under the provisions of this Act: and (d) has not failed to apply for grant o Iprospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government. (2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area For grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied fora reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose, application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later: Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the*

case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section: Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be. to such one of the applicants as it may deem fit.

xxx xxxx xxx."

55. On perusal of the aforesaid section, it is made clear that where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining, a prospecting licence or mining lease. That preferential right is subject to Section-5 mentioned above. As per sub sections (1) and (2) of Section 11, the right given to the applicants is a preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be over the applicants whose applications are received latter. Thereby, the provision has carved out a preferential right in favour of the applicants, who seek for Reconnaissance Permit, Prospecting Licence or Mining Lease and they are entitled to get preferential right over and above the applications received later.

56. In view of the provisions contained in MMDR Act, 1957, once the Reconnaissance Permit or Prospecting Licence or Mining Lease of an

area granted to an applicant, the operation thereof was not done in proper perspective for the benefits of the public at large and the revenue to be earned from the minerals. Therefore, amendments to the MMDR Act, 1957 were required to bring in necessary changes, keeping with the changing scenario in the mining sector as also with the requirement of complying with various judgments of the Hon'ble Apex Court.

57. The MMDR Act, 1957 and the Rules made thereunder forms a complete code in respect of minerals. As would be evident from Sections-3(e), 14 and 15 of the Act, the regulation and control of minor minerals have been vested with the State Government. So far as major minerals are concerned, Sections 5(1)(b), 5(2)(b), 7(2), 8(3), 10A(2)(b), 10A(2)(c), 17A(2) and 17(A)(2A) of the Act provide that in case of major minerals under the statutory scheme, the regulation and control has been exclusively vested with the Central Government.

58. The reforms in the mining sector through the amendment to the MMDR Act, 1957 were required to bring in necessary changes in keeping with the changing scenario in the mining sector as also with the requirement of complying with judgments of the Hon'ble Apex Court. The amendment to the MMDR Act, 1957 was required to be carried out to expedite the mining operation across the country and for the revenue generation for the State Governments in the interest of public at large.

59. The said Act has been amended several times over the years, notably in 1972, 1986, 1994 and 1999.

60. The reasons for Amendment Act, 2015 is crystal clear that the mining sector has been subjected to numerous litigations in the past few years. The judgements related to the mining sector have been pronounced

by the Hon'ble Apex Court, besides judgments on the issue of allocation of natural resources which have direct relevance to the grant of mineral concessions.

61. Therefore, the statement of objects and reasons for Amendment Act, 2015 reads as follows:-

> *"1. xxx xxx xxx*
>
> *2. xxx xxx xxx*
>
> *3. The mining sector has been subjected to numerous litigations in the past few years. Important judgments related to the mining sector have been pronounced by the Supreme Court, besides judgments on the issue of allocation of natural resources which have direct relevance to the grant of mineral concessions.*
>
> *4. The present legal framework of MMD Act, 1957, does not permit the auctioning of mineral concessions. Auctioning of mineral concessions would improve transparency in allocation. Government would also get an increased share of the value of mineral resources. Some provisions of the law relating to renewals of mineral concessions have also been found to be wanting in enabling quick decisions. Consequently , there has been a slowdown in the grant of new concessions and the renewal of existing ones. As a result, the mining sector started registering a decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government has therefore felt it necessary to address the immediate requirements of the mining sector and also to remedy the basic structural defects that underlie the current impasse.*
>
> *5. In view of the urgent need to address these problems, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was promulgated on 12th January,2015 The Present Bill is to replace this Ordinance. This bill is designed to put in place mechanism for: (i) Eliminating discretion; (ii) Improving transparency in the allocation of mineral resources; (iii) Simplifying procedures; (iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country; (v) Obtaining for the government an enhanced share of the value of the mineral resources of the country; and (vi) Attracting private investment and the latest technology;*

6. The salient features of MMDR Amendment Bill, 2015 are as follows: (i) Removal of discretion; auction to be sole method of allotment The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral concessions. The tenure of mineral leases has been increased from the existing 30 years to 50 years. There is no provision for renewal of leases. (ii) Impetus to the mining sector: The mining industry has been aggrieved due to the second and subsequent renewals remaining pending. In fact, this has led to closure of a large number of mines. The Bill addresses this issue also. The Bill provides that mining leases would be deemed to be extended from the date of their last renewal to 31st March, 2030 (in the case of captive mines) and till 31st March, 2020 (for the merchant miners) or till the completion of the renewal already granted, if any, or a period of fifty years from the date of grant of such leave, whichever is later. (iii) Safeguarding interest of affected persons: There is provision to establish District Mineral Foundation in the districts affected by mining related activities. (iv) Encouraging exploration and investment: The Bill proposes to set up a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration in the country. Transfer of mineral concessions granted through auction will be permitted in order to encourage private investors. (v) Simplification of procedures and removal of delay: The amendment removes the need for "previous approval" from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process quicker and simpler. Similarly, the State Governments will devise a system for filling of a mining plan obviating the need for prior approval of the Mining Plans by the Central Government The Central Government will have revision powers in case State Governments fail to decide issues within the prescribed time. (vi) Stronger provisions for checking illegal mining: In order to address the serious problem of illegal mining, the penal provisions have been made further stringent by prescribing higher penalties up to 5 laid) rupees per hectare and imprisonment up to 5 years. State Governments will now be able to set up Special Courts for trial of offences under the Act."

62. As the method of auction provides for transparent mechanism in the allocation of mineral resources and a need was felt to revisit the

provisions of the existing MMDR Act, 1957 for adoption of auction as a method of grant of mineral concessions. Accordingly, the MMDR Act was amended in 2015 (w.e.f. 12.01.2015) mandating that mineral concessions for major minerals shall be granted through auction by a method of competitive bidding. However, an exception to this was created under Section 10A.

63. Clause (b) of Section 10A(2) provided that a reconnaissance permit (RP) holder or prospecting licence (PL) holder who was granted RP or PL before 2015 amendment (12.01.2015), had a right to obtain a PL followed by a mining lease (ML), or a ML, as the case may be, if the State Government is satisfied that such RP or PL holder meets the conditions mentioned in sub-clauses (i) to (iv) of Section 10A(2)(b). Further, the proviso to section 10A(2) provided another condition that previous approval of the Central Government for grant of PL and ML was mandatory in respect of any mineral specified in the First Schedule of the Act.

64. The MMDR Act, 1957 was comprehensively amended in 2015 to bring several reforms in the mineral sector, notably, mandating auction of mineral concessions to improve transparency, establishing District Mineral Foundation and National Mineral Exploration Trust and stringent penalty for illegal mining, The Act was further amended in the years 2016 and 2020 to allow transfer of leases for non-auctioned captive mines and to deal with the emergent issue of expiry of leases .

65. Taking into consideration the object and reasons of Amendment Act, 2015, the procedure for obtaining prospecting licence or mining

lease in respect of land in which the minerals vest in the Government was indicated in Section 10, 10A, 10-B, which are quoted herein below:-

> *"10. Application for prospecting licences or mining leases.—*
> *(1) An application for 1 [a reconnaissance permit, prospecting licence or mining lease] in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.*
> *(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.*
> *(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the permit, licence or lease].*
> *10A. Rights of existing concession holders and applicants.—*
> *(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.*
> *(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—*
> *(a) applications received under section 11A of this Act;*
> *(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—*
> *(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;*
> *(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;*
> *(iii) has not become ineligible under the provisions of this Act; and*
> *(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the*

expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act: Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government.

10-B. Grant of mining lease in respect of notified minerals through auction.—

(1) The provisions of this section shall not be applicable to cases covered by section 10A or section 17A or to minerals specified in Part A or Part B of the First Schedule or to land in respect of which the minerals do not vest in the Government.

(2) Where there is inadequate evidence to show the existence of mineral contents of any notified mineral in respect of any area, a State Government may, after obtaining the previous approval of the Central Government, grant a prospecting licence-cum-mining lease for the said notified mineral in such area in accordance with the procedure laid down in section 11.

(3) In areas where the existence of mineral contents of any notified mineral is established in the manner prescribed by the Central Government, the State Government shall notify such areas for grant of mining leases for such notified mineral, the terms and conditions subject to which such mining leases shall be granted, and any other relevant conditions, in such manner as may be prescribed by the Central Government.

(4) For the purpose of granting a mining lease in respect of any notified mineral in such notified area, the State Government shall select, through auction by a method of competitive bidding, including e-auction, an applicant who fulfils the eligibility conditions as specified in this Act.

(5) The Central Government shall prescribe the terms and conditions, and procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(6) Without prejudice to the generality of sub-section (5), the Central Government shall, if it is of the opinion that it is necessary and expedient to do so, prescribe terms and conditions, procedure and bidding parameters in respect of categories of minerals, size and area of mineral deposits and a State or States, subject to which the auction shall be conducted: Provided that the terms and conditions may include the reservation of any particular mine or mines for a particular end-use and subject to such condition which allow only such eligible end users to participate in the auction.

(7) The State Government shall grant a mining lease to an applicant selected in accordance with the procedure laid down in this section in respect of such notified mineral in any notified area."

66. In view of the aforementioned provisions, it is apparent that Section 10 deals with application for prospecting licenses or mining leases, which states about submission of applications in the prescribed form accompanied by the prescribed fee. On receipt such application, the application of the applicant will be sent with an acknowledgement of its receipt within the prescribed time and the prescribed form and on receipt of an application under this section, the State Government may, having regard to the provisions of this Act and the Rules made thereunder, grant or refuse to grant the permit, licence or lease. By inserting Section 10A, all applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, i.e. 12.01.2015, shall become ineligible.

67. Section 10A (2) carves out an exception to Section 10A (1) holding that without prejudice to sub section (1), the following, i.e. clause

(a) to clause (c) shall remain eligible on and from the date of commencement of the Amendment Act, 2015. Section 10A(2)(a) prescribes the applications received under Section 11-A of this Act, which deals with granting reconnaissance permit, prospecting licence or mining lease in respect of an area containing coal or lignite, to which the present case is concerned.

68. Coming to Section 10A(2)(b), before commencement of the Amendment Act 2015, a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be, satisfies the requirement as prescribed under sub-clause (i) to sub-clause (iv) of Section 10A(2)(b).

69. Section 10A(2)(c) specifically prescribes that the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act. In the proviso, it has been mentioned that no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government. Therefore, the time limit has been prescribed for two years from the date of commencement of the Amendment Act, 2015 and that too with prior approval of the Central Government.

70. On close scrutiny of the aforementioned provisions, it has to be held that under the new regime Section 10A made all pending

applications in respect of major minerals ineligible. Thus, pending applications for Prospecting Licence (PL), Mining Lease (ML) or Reconnaissance Permit (RP) lapsed and the new auction regime set in.

71. However, Section 10A(2)(b) & 10A(2)(c) of the Amendment Act, 2015 temporarily saved some pending applications from before the 2015 Amendment. These exceptions were applicable to the cases where an applicant for mining lease had prospected the area, or in respect of whom a recommendation was made by the State Government and grant of approval by the Central Government was pending.

72. It is further clarified that for the applications saved under Section 10-A(2)(b) & l0-A(2)(c) of the Act, Central Government's approval was necessary before the grant of Mining Lease. For pending applications under Section 10A(2)(b) of the Act, proviso to Section 10A(2)(c) of the Act mandated the prior approval of the Central Government before a Mining Lease was granted. Similarly, for pending applications under Section 10A(2)(c) of the Act, the Mining Lease shall be granted within two years of fulfillment of the conditions mentioned in the Letter of Intent ("LOI" for short), only where prior Central Government's approval has been communicated. Therefore, in both the cases, i.e. Section 10A(2)(b) and Section 10A(2)(c), previous approval of the Central Government is necessary in view of the proviso to Section 10A(2)(c).

73. Further, Section 10A(2)(b) provides that a Reconnaissance Permit (RP) holder or Prospecting Licence (PL) holder who was granted RP or PL before 2015 Amendment, i.e. 12.01.2015, had a right to obtain a PL followed by a Mining Lease (ML), or a Mining Lease, as the case may be, if the State Government is satisfied that such RP or PL holder meets

the conditions mentioned in sub-clauses (i) to (iv) of Section 10A(2)(b). The Proviso to Section 10A(2) provides another condition that previous approval of the Central Government for grant of PL and ML was mandatory in respect of any mineral specified in the First Schedule of the Act.

74. It needs to refer herein that the Amendment Act, 2015 has undergone further amendment by the Amendment Act, 2021 with effect from 28.03.2021 by insertion of proviso to Section 10A(2) to Section 10A(2)(b).

75. The aforesaid amendment has been made with a view to further reforms in the mining sector to increase mineral production and creation of employment. To achieve this, more mineral blocks have to be brought into auction regime and any method of grant of mineral concession other than through a competitive, transparent and non-discriminatory method had to be brought to an end. Therefore, to resolve the impasse created by the exception provided in Section 10A(2)(b), the MMDR Act, 1957 was further amended in the year 2021 to remove any exception to the grant of mineral concession through auction.

76. The MMDR Act was amended in 2021 with an objective to fully harness the potential of the mineral sector, increase employment and investment in the mining sector including coal, increase the revenue to the States, increase the production and time bound operationalisation of mines, maintain continuity in mining operations after change of lessee, increase the pace of exploration and auction of mineral resources and resolve long pending issues that have slowed the growth of the sector.

77. It is apt to mention that many of the applications covered under Section 10A(2)(b) of the Act, which were pending for decision, in the absence of a sun-set clause in the Pre-Amended Act, became an anachronism in the auction-based regime. Therefore, in order to bring these pending cases to a closure and to enable auction of these mineral blocks in national interest, it was proposed to amend Section 10A(2)(b) of the Act.

78. This Court in view of the aforesaid provisions, as referred hereinabove, is of the view that the MMDR Act, 1957, before amendment of the year 2015 the lapsing period was not there, i.e, as has been inserted by amendment carved out in the year 2015 by insertion of section 10A (1) of the MMDR Act, 1957 as has been referred hereinabove.

79. It is evident from section 10A(2)(c) that the effect of 10A(1) will not be there subject to fulfillment of the condition as provided under section 10A(2)(b) r/w section 10A(2)(c) wherein and whereunder it has been provided that if the Central Government has granted approval as required under sub-section 1 to section 5 of the MMDR Act, 1957 or the letter of intent has been issued by the State Government and if the condition so incorporated in the letter of intent has been undertaken to be fulfilled within a period of two years either from the date of approval by the Central Government or from the date of issuance of letter of intent, then the mining lease can be issued.

ISSUES

80. In the aforesaid backdrop of factual aspects as well legal provisions as discussed above, the question which requires consideration herein is:

(i) As to whether the recommendation letter issued by the State Government seeking approval from the Central Government can be construed to letter of intent.

(ii) The second issue which requires consideration is that the recommendation letter issued by the State Government which has been sought to be considered as letter of intent can create a vested right so that the provision of the amended act will not adversely affect the interest of the petitioner-Firm.

81. Since both the issues are interlinked and, as such, are being answered together. But before answering the said issues the legal position is needed to be referred herein that the amended provision will adversely affect the right of the party concerned and, if yes, under which circumstances.

82. It needs to refer herein that the law is well settled that the statutory provision is not to be implemented with retrospective effect unless provided under the statute for applying with retrospective effect, the reference in this regard is made to the judgment rendered by the Hon'ble Apex Court in ***P.Mahendran v. State of Karnataka, (1990) 1 SCC 411*** wherein at paragraph-5, it has been observed which reads as

> *"**5.** It is well settled rule of construction that every statute or statutory rule is prospective unless it is expressly or by necessary implication made to have retrospective effect. Unless there are words in the statute or in the Rules showing the intention to affect existing rights the rule must be held to be prospective. If a rule is expressed in language which is fairly capable of either interpretation it ought to be construed as prospective only. In the absence of any express provision or necessary intendment the rule cannot be given retrospective effect except in matter of procedure. The amending Rules of 1987 do not contain any express provision giving the*

amendment retrospective effect nor there is anything therein showing the necessary intendment for enforcing the rule with retrospective effect. Since the amending Rules were not retrospective, it could not adversely affect the right of those candidates who were qualified for selection and appointment on the date they applied for the post, moreover as the process of selection had already commenced when the amending Rules came into force, the amended Rules could not affect the existing rights of those candidates who were being considered for selection as they possessed the requisite qualifications prescribed by the Rules before its amendment moreover construction of amending Rules should be made in a reasonable manner to avoid unnecessary hardship to those who have no control over the subject matter."."

83. In another judgment rendered by Hon'ble Apex Court in ***K.S. Paripoornan v. State of Kerala, (1994) 5 SCC 593***, it has been held which reads as hereunder:

"A substantive law is held to be prospective as a matter of legal policy since it is founded on public policy that no right be so created as to work to the disadvantage for whom it is created as it if be so, "it would be betrayal of what the law stands for.""

84. The Hon'ble Supreme Court in ***Kusumam Hotels Private Limited v. Kerala State Electricity Board, (2008) 13 SCC 213*** has held that all administrative orders ordinarily are to be considered prospective in nature. For giving it a retrospective effect, it must be stated so expressly or by necessary implication.

85. Further, law is also settled that by virtue of the amended rule the same will be said to be repealed and the saving clause will only come if any right has been accrued in favour of the party concerned said to be vested right so as to follow the principle that by virtue of the amendment carved out in a Statute the right already accrued in favour of the party concerned is not to be snatched away, reference in this regard may be

taken from ***Railway Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623*** wherein at para 24 it has been held as under:

> *24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576] , B.S. Vedera [AIR 1969 SC 118 : (1968) 3 SCR 575*

86. The Hon'ble Apex Court in the case of ***State of M.P. v. Yogendra Shrivastava*****, (2010) 12 SCC 538 has** held that it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. For ready reference the relevant paragraph is being quoted as under:

> ***15.*** *-- But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C. Singhal v. Armed Forces Medical Services [(1972) 4 SCC 765] ; K.C. Arora v. State of Haryana [(1984) 3 SCC 281 : 1984 SCC (L&S) 520] and T.R. Kapur v. State of Haryana [1986 Supp SCC 584 : (1987) 2 ATC 595] .) Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. ---*

87. The amendment of year 2015 in MMDR Act, 1957 has come into force in order to generate more revenue so far as the mining resources are concern. Such decision has been taken after the judgment having been

rendered by the Hon'ble Apex Court in the case of ***Goa Foundation v. Union of India and Others,. [(2014) 6 SCC 590]***.

88. In ***Manohar Lal Sharma V. The Principal Secretary & Ors. (W.P.(Crl) No. 120/2012 disposed of on 25.08.2014),*** wherein the subject-matter of consideration was the allocation of coal blocks for the period from 1993 to 2010, the apex Court observed that allocation of natural resources has to meet the twin constitutional tests, one, the distribution of natural resources that vest in the State is to sub-serve the common good and, two, the allocation is not violative of Article 14. In paragraphs 71 and 99 of the judgment dated 25.08.2014, the apex Court observed as follows:-

> *"71. xxx xxx xxx Obviously, therefore, such allocations has to meet twin constitutional tests, one, the distribution of natural resources that vest in the State is to sub-serve the common good and, two, the allocation is not violative of. Article 14.*
>
> *99. xxx xxx xxx We are fortified in our view by a recent decision of this Court (3 Judge Bench) in (Goa Foundation v. Union of India and Others,. [(2014) 6 SCC 5901) Goa Foundation wherein ,follolving Natural Resources Allocation Reference, it is stated, ".., it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitution provisions."*

89. The parliamentarian, therefore, has taken decision to amend the statutory provision in the year 2015, i.e., with effect from 12.01.2015 by which the provision of 10A (1) has been inserted. Section 10A (1) has put embargo by making reference of ineligibility criteria of one or the other party in getting the mining lease on or after the commencement of the said amendment. But exception has been carved out wherein subject to

fulfillment of the conditions as provided under section 10A(2)(b) there will be no effect of embargo put as under section 10A(1) of the Act of 1957 (Amendment Act, 2015).

90. Section 10A(2)(b) is the condition of eligibility while section 10A(2)(c) is the criteria to be fulfilled by one or the other for the purpose of getting the mining lease which is first approval of the central Government is required as referred under sub-section 1 of section 5 of the MMDR Act, 1957 and second the letter of intent, if issued by the State Government, and the concerned party has given an undertaking to fulfil the conditions as stipulated in the letter of intent.

91. The aforesaid conditions therefore specify that subject to fulfillment of two conditions, i.e., the prior approval of the Central Government or the letter of intent if issued by the State Government or if the conditions stipulated in the letter of Intent is being undertaken to be complied with within a period of two years then the mining lease irrespective of the embargo as provided under section 10A(1) is to be issued.

92. It is evident that by issuance of the approval by the Central Government or the letter of intent the issue has been taken in to consideration that if the right has been accrued in favour of one of the other by virtue of issuance of approval by the Central Government or the letter of intent, if issued by the State Government, then, there will be no adverse affect by the amendment incorporated in the statutory provision of the Act of 1957.

93. It is, thus, evident that the purport of the aforesaid relaxation which has been given is only with respect to the fact that in case a right

has been accrued in favour of one or the other, then, there will not adverse effect by the amended provision.

94. The accrual of right is to be considered as per the argument advanced on behalf of the petitioner-Firm who has made an advanced argument that the State since has already issued a recommendation letter which be construed to be the letter of intent as has been issued by the State Government and thereby the same be treated to be the accrual of right and, hence, the amendment incorporated in the statutory provision will not have any adverse impact upon the interest of the petitioner-Firm.

95. This Court, in order to appreciate the said issue, is of the view that the reference of the interpretation of the aforesaid vested right needs to be referred herein.

96. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights." Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.

97. "Vested right" has been defined by the Hon'ble Apex Court in the case of ***MGB Gramin Bank v. Chakrawarti Singh [(2014) 13 SCC 583]*** at paragraph 11, 12 and 13, which read hereunder as:—

> *"**11.** The word "vested" is defined in Black's Law Dictionary (6th Edn.) at p. 1563, as:*

*"**Vested.**—fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'."*

***12.** In Webster's Comprehensive Dictionary (International Edition) at p. 1397, "vested" is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.*

***13.** Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed.*

98. Further, so far as the question of taking away the vested right is concerned, the Hon'ble Apex Court has laid down the proposition in the case of ***Chairman, Railway Board v. C.R. Rangadhamaiah, (1997) 6 SCC 623*** at paragraph-24, which reads hereunder as follows:—

"24. In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [AIR 1967 SC 1889], B.S. Vedera [AIR 1969 SC 118]

and Raman Lal Keshav Lal Soni [(1983) 2 SCC 33].”

99. It is evident that the vested right as has been defined in the aforesaid judgment will be a right which has been accrued in favour of the parties concerned and once the right will be accrued there will not adversely impact on the amendment if incorporated in the statutory provision after the right as has been accrued.

100. In the instant case the learned counsel for the petitioner-Firm has tried to impress upon the Court that the recommendation letter is to be construed as the letter of intent.

101. But this Court is not in agreement with such submission because the recommendation cannot be said to be the accrual of right and moreover, the letter of intent which is to be extended in favour of the petitioner-Firm as required under the Act has not been issued in favour of the party concerned.

102. Admittedly herein, the petitioner-Firm has harped upon to accept the said recommendation to be the letter of intent so that a right is being said to be accrued in favour of the petitioner-Firm and thereby the amendment incorporated in the statute be not adversely affect the interest of the party concerned.

103. But the recommendation cannot be said to be an accrual of right rather the interpretation of the word “recommendation” cannot be said to be the binding upon the other, rather the same is to be accepted and not to be accepted, as such, when the two options are there, i.e., to be accepted or not to be accepted then such decision cannot be said to bind the authority who has to take decision.

104. Further, the said recommendation as would be evident from the content of the said letter dated 13.08.2010 is not showing any willingness by the State rather the same is by making a request to the Central Government to grant the approval as required to be granted MMDR Act, 1957.

105. The letter of intent while on the other hand, if issued, then, it will be said to the accrual of right and once the letter of intent has been issued, then the substantial right is said to be created, however, subject to fulfillment of the conditions as per the requirement under section 10A(2)(c) within a period of two years, then the mining lease will be issued.

106. The contention of the petitioner-Firm is also not fit to be accepted to treat the recommendation letter to be binding in view of the specific insertion under section 10A(2)(c) wherein in addition to the two conditions, i.e., the prior approval of the Central Government or the letter of intent to be issued by the State Government, the condition stipulated in the letter of intent is to be fulfilled within a period of two years.

107. Admittedly, and it cannot be that in the recommendation letter dated.13.08.2010. there is no condition stipulated and as such the said recommendation letter in terms of the provision of section 10A(2)(c) cannot be construed to be letter of intent.

108. Further, the letter of intent is to be issued by the State, then the question arises why the State has made a recommendation only and letter of intent has not been issued even though the issuance of letter of intent was within the domain of the State.

109. Apart from the above, it has to be observed that mere making of the application for grant of mineral concessions by the petitioner, does not create any right, much less a vested right, and the petitioner cannot claim that it had pre-existing right to such licence or lease. Its right is only to make an application, which was given by the policy then existing, and if the policy is changed, may be by way of an amendment to the Act, one cannot be stated to have any right on the basis of the earlier policy, which now does not hold good or find any place in the Statute.

110. Further, merely because the applications were kept pending for long period by the concerned authorities would not create any right or an applicant cannot be stated to have a vested right for seeking mining lease on the basis of the provision which has been substituted by the Amendment Act.

111. Further, the Hon'ble Apex Court in ***Geomin Minerals and Marketing Private Limited v. State of Orissa (2013) 7 SCC 571*** wherein an applicant had sought direction to the State Government to dispose of all pending applications for Mineral Concessions filed by the applicant in accordance with its vested right to preferential consideration, has observed which reads as follows:

> *"It is well settled that no applicant has a statutory or fundamental right to obtain prospecting licence or a mining lease. In this connection one may refer to this Court's decision in Monnet Ispat [Monnet Ispat and Energy Ltd. v. Union of India, (2012) 11 SCC 1. Therefore, the High Court before interfering with the recommendation, ought to have looked into the nature of recommendation".*

112. Further, it needs to refer herein that natural resources are public property and any change introduced by the Parliament by way of

amendment for the benefit of public at large shall prevail over personal interest.

113. In ***Howrah Municipal Corporation V. Ganges Rope Company Limited, (2004) 1 SCC 663***, the apex Court has observed that the benefit of public at large shall prevail over the individual interest. It has further been held that while introducing transparent and fair procedure for distribution of State largesse, interest of few individuals is bound to be affected for taking care of the larger public interest. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> *"37. The argument advanced on the basis of so-called creation of vested right for obtaining sanction on the basis of the Building Rules (unamended) as they were on the date of submission of the application and the order of the High Court fixing a period for decision of the same, is misconceived. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word "vest" has also acquired a meaning as "an absolute or indefeasible right" [see K.J. Aiyer's Judicial Dictionary (A Complete Law Lexicon), 13th Edn.) The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to "ownership or possession of any property" for which the expression "vest" is generally used What we can understand from the claim of a "vested right" set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a "legitimate" or "settled expectation" to obtain*

the sanction. In our considered opinion, such "settled expectation", if any, did not create any vested right to obtain sanction. True it is, that the respondent Company which can have no control over the manner of processing of application for sanction by the Corporation cannot be blamed for delay but during pendency of its application for sanction, if the State Government, in exercise of its rule- making power, amended the Building Rules and imposed restrictions on the heights of buildings on G. T. Road and other wards, such "settled expectation" has been rendered impossible of fulfilment due to change in law. The claim based on the alleged "vested right" or "settled expectation" cannot be set up against statutory provisions which were brought into force by the State Government by amending the Building Rules and not by the Corporation against whom such "vested right" or "settled expectation" is being sought to be enforced. The "vested right" of "settled expectation" has been nullified not only by the Corporation but also by the State by amending the Byuilding Rules. Besides this, such a "settled expectation" or the so called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the Building Rules and the resolution of the Corporation issued thereupon".

114. It needs to refer herein that as per Amendment Act, 2015 wherein stipulation has been made in, sub-section (1) of Section 10A that all applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible. The saving clause, i.e., Section 10A(2)(b), which has been inserted vide MMDR Amendment Act 2015, w.e.f. 12.01.2015 does not create vested right automatically. Even the right to obtain a mining lease is subject to compliance of the terms and conditions mentioned in

Section 10A(2)(b), which has also lapsed on coming into effect of the MMDR Amendment Act, 2021.

115. While dealing with the right of an applicant under Section 10A (2)(b), it has been provided that the permit holder or licensee shall have a right for obtaining a mining lease whereas in the case of Section 10A(2)(c), it has been provided that the mining lease shall be granted subject to the fulfillment of the conditions of the previous approval.

116. Thus, it is evident that the Section 10A(2)(b) inserted in MMDR Amendment Act, 2015 w.e.f. 12.01.2015 does not create any vested right. The right to obtain a mining lease is subject to compliance of the terms and conditions mentioned in Section 10A(2)(b) has also lapsed on coming into effect of the MMDR Amendment Act, 2021. Further, in view of the provisions contained in Clause (c) of Section 10A(2), it is mandated that mining lease cannot, without the previous approval of the Central Government, be granted, therefore, the proviso to Section 10A(2)(c) is very clear.

Conclusion

117. The recommendation of the State Government for grant of previous approval of the Central Government for granting mining lease is the statutory requirement for grant of mining lease by the State Government, which is mandatory. The proviso to Section 10A(2)(c) expressly states that a prospecting license under Section 10A(2)(b) shall not be granted without prior approval of the Central Government. Therefore, construed contextually, an application is to be treated as ‘pending’ until Central Government has considered the application and granted it’s approval and the petitioner's application is to be construed as

a ‘pending case’ as the Central Government's approval was awaited. Therefore, the first proviso cannot be read to vest any right before Central Government’s approval is granted.

118. It needs to refer herein that the Hon’ble Apex Court in the case of ***Bhusan Power and Steel v. State of Odisha, (2017) 2 SCC 125*** while taking into consideration the aforementioned provisions, has reiterated the object of Amendment Act 2015 and held that the State must ensure that it maximizes revenue and “receives adequate compensation for the allotted resource”.

119. The ***Bhusan Power & Steel Ltd. (supra),*** arose out of contempt petition wherein the Contemnor-State Government had disregarded the Court’s direction to recommend the case for grant of a mining lease to the Central Government. Based on this direction and Section 10A (2)(c) of the Act, the petitioners therein claimed their rights to a ML. The Hon’ble Apex Court, did not grant any relief for the reason that no prior approval had been granted by the Central Government to the State Government’s recommendation.

120. As such on the basis of the aforesaid discussion, the argument advanced by the learned Counsel appearing for the petitioner that pendency of the application for grant of mining lease pursuant to recommendation made by the State Government, a right has been accrued in favour of the petitioner for consideration, is not fit to be accepted.

121. Both the issues are answered accordingly.

122. This Court, in view of the above, is of the view that merely because the recommendation has been made by the State the same cannot be construed to be letter of intent creating any vested or accrued right in

favour of the petitioner-Firm, as such, in absence of any accrued right the amended provision will automatically adversely impact the interest of the petitioner-Firm and whatever decision is to be taken on the basis of the amended provision which has come into being said to be prospectively affected.

123. As a consequence, thereof, the writ petition merits no consideration and the same stands dismissed.

(Sujit Narayan Prasad, J.)

I agree.

(Navneet Kumar, J.)

(Navneet Kumar, J.)

Sudhir
Dated: 19 /11/2024
Jharkhand High Court, Ranchi
AFR