HIGH COURT OF MADHYA PRADESH : JABALPUR

Writ Petition No.4278/2001

Savita Rawat v. State of M.P. and others

Writ Petition No.836/2009

Namrata Upadhyay v. The Government of India

Writ Petition No.8612/2009

M/s Rajat Cement Pvt. Ltd. v. State of MP

Writ Petition No.9801/2009

Smt. Meera Khandelwal v. State of Madhya Pradesh

Writ Petition No.17175/2010

Amol Bhupendranath Nagpure (D) Th. Smt. Shubhangi Amol Nagpure v. Union of India

Writ Petition No.18791/2010

M/s. Anand Mining Corporation v. Union of India

Writ Petition No.4936/2011

M/s. Sharda Mineral Works v. State of Madhya Pradesh

Writ Petition No.5373/2011

M/s Jhakodia Minerals v. Secretary, Union of India

Writ Petition No.7158/2011

Kedar Prasad Pathak v. Union of India

Writ Petition No.7926/2011

M/s Eurobond Industries Pvt. Ltd. v. Union of India

Writ Petition No.7927/2011

M/s Eurobond Industries Pvt. Ltd. v. Union of India

Writ Petition No.8918/2011

Ambika Prasad Tulsian v. Union of India

Writ Petition No.11144/2011

M/s. Shri Mahadev Minerals v. State of M.P.

Writ Petition No.11541/2011

M/s Ganesh Mines Pvt. Ltd. v. State of M.P.

Writ Petition No.12431/2011

Korba Metals & Conductors Pvt. Ltd. v. Union of India

Writ Petition No.12438/2011

Korba Metals & Conductors Pvt. Ltd. v. Union of India

Writ Petition No.12472/2011

Korba Metals & Conductors Pvt. Ltd. v. Govt. of India

Writ Petition No.12474/2011

Korba Metals & Conductors Pvt. Ltd. v. Govt. of India

Writ Petition No.12478/2011

Korba Metals & Conductors Pvt. Ltd. v. Govt. of India

Writ Petition No.14714/2011

M/s Rani Mines & Minerals v. Govt. of India

Writ Petition No.14716/2011

M/s. Neha Mines & Minerals v. Govt. of India

Writ Petition No.14993/2011

Arvind Kishore Bhargava v. Union of India

Writ Petition No.15621/2011

Mamta Bhargava v. Union of India

CONC No.1658/2011

M/s. Sant Ishwar Mineral v. State of Madhya Pradesh

Writ Petition No.20119/2011

M/s Techech Ores & Minerals v. Union of India

Writ Petition No. 6152/2012

M/s. Magnum Mining Enterprises v. Union of India

Writ Petition No.18677/2012

M/s Bumbum Minerals v. Union of India

Writ Petition No.7006/2013

M/s. Khatri Minerals & Mining Co. v Union of India

Writ Petition No.11694/2013

Ashish P. Trivedi v. State of Madhya Pradesh

Writ Petition No.14928/2013

M/s. Samdariya Builders Pvt. Ltd. v. State of M.P.

Writ Petition No.2314/2014

Smt. Anita Tiwari v. Union of India

Review Petition No.276/2014

Ashish P. Trivedi v. State of Madhya Pradesh

Writ Petition No.8110/2015

M/s Chettinad Cement Corporation Ltd. v. Union of India

Writ Petition No.8950/2015

M/s. Olpherts Pvt. Ltd. v. Union of India

Writ Petition No.13647/2015

Ram Autar Agrawal v. State of Madhya Pradesh

Writ Petition No.15124/2015

Allied Mineral Industries Pvt. Ltd. v. Union of India

Writ Petition No.16632/2015

Ashok Kumar Singh v. Union of India

&

Writ Petition No.16771/2015

Anubhav Agrawal v. State of Madhya Pradesh

Shri Rajendra Tiwari, Senior Counsel with Shri Nikhil Tiwari, counsel and Shri T. K. Khadka, counsel for the petitioners in W.P. No.7158/2011.

Shri R. P. Agrawal, Senior Counsel with Shri A.M. Lal, counsel for the petitioners in W.P. Nos.14928/2013, 16771/2015.

Shri Sanjay K. Agrawal, counsel for the petitioner in W.P. Nos.5373/2011, 7006/2013 and 4936/2011.

Shri Nikhil Tiwari, counsel for the respondent in W.P.no.5373/2011.

Shri R.S. Jaiswal, Senior Counsel with Shri K. K. Gautam, counsel for the petitioners in W.P. Nos.4278/2001, 836/2009, 8612/2009, 9801/2009, 12431/2011, 12438/2011, 12472/2011, 12474/2011, 12478/2011, 14714/2011, 14716/2011, CONC No.1658/2011.

Shri Anil Khare, Senior Counsel with H. S. Chhabra, counsel for the petitioners in W.P. Nos.14993/2011, 15621/2011.

Shri Kishore Shrivastava, Senior Counsel with Shri Kunal Thakre and Shri Kapil Jain, counsel for the petitioner in W.P. Nos.8950/2015, 15124/2015.

Shri Naman Nagrath, Senior Counsel with Shri

Himanshu Mishra, counsel for the petitioners in W.P.Nos.11694/2013, R.P. No.276/2014.

Shri Akshay Dharmadhikari, counsel for the petitioners in W.P. Nos.17175/2010 and 16632/2015.

Shri Shreyas Dharmadhikari, counsel for the petitioners in W.P. Nos.18677/2012, 8110/2015.

Shri Abhijeet A. Awasthi, counsel for the petitioners in W.P.Nos.18791/2010, 7926/2011, 7927/2011, 8918/2011, 11541/2011, 20119/2011, 6152/2012, 13647/2015.

Shri Chandrahas Dubey, counsel for the petitioner in W.P. No.2314/2014.

Shri Samdarshi Tiwari, Dy. Advocate General for respondents/State.

Shri K.M.Nataraj, Additional Solicitor General of India.

Shri Vikram Singh, counsel for respondent/Union of India.

Writ Petition No.3909/2010

Tirupati Build-Con Pvt. Ltd. v. Union of India

Writ Petition No.4209/2010

Gangotri Green Gold Finance Pvt. Ltd. v. State of MP

Writ Petition No.11251/2010

Gangotri Green Gold Finance Pvt. Ltd. v. State of MP

Writ Petition No.14403/2010

Gangotri Green Gold Finance Pvt. Ltd. v. State of MP

Writ Petition No.5567/2011

M/s. Adhunik Corporation Ltd. v. Union of India

Writ Petition No.6165/2011

M/s. Adhunik Corporation Ltd. v. Union of India

Writ Petition No.6169/2011

M/s. Adhunik Corporation Ltd. v. Union of India

Writ Petition No.7005/2011

Sharda Maa Enterprises Pvt. Ltd. v. Union of India

Writ Petition No.7928/2011

M/s. Eurobond Industries Pvt. Ltd. v. Union of India

Writ Petition No.9124/2011

D.P.S Metals v. Union of India

Writ Petition No.17006/2011

M/s. Narsingh Minerals v. Union of India

Writ Petition No.20599/2011

Adhunik Corporation Ltd. v. Union of India

Writ Petition No.6109/2012

M/s. Aaryans v. Union of India

Writ Petition No.4043/2013

Mr. Abhishek Rai v. Union of India

Writ Petition No.16987/2014

M/s. Renoysons Mines & Minerals Pvt. Ltd. v. State of MP

Writ Petition No.18714/2014

Sanjay Tiwari v. Union of India

Writ Petition No.18848/2014

M/s. Jain Mines & Minerals (India) Pvt. Ltd. v. Union of India

Writ Petition No.18852/2014

Ashish Banerjee v. Union of India

Writ Petition No.4891/2015

M/s. Shree Mining v. State of M.P.

Writ Petition No.5167/2015

M/s. Samdariya Enterprises v. Union of India

Writ Petition No.5978/2015

Sheikh Iliyas Khan v. State of M.P.

Writ Petition No.8131/2015

M/s. Dileep Infrastructure Pvt. Ltd. vs. Secretary, Department of Mines and Minerals

Writ Petition No.9887/2015

Laxmikant Shukla v. State of M.P

Writ Petition No.11038/2015

M/s Samdariya Enterprises v. Starte of M.P.

Writ Petition No.11956/2015

Renaissance Mining and Mineral Pvt. Ltd. v. State of MP

Writ Petition No.1742/2016

Manju Singh v. State of M.P

Shri R. P. Agrawal, Senior Counsel with Shri S. M. Lal, counsel for the petitioners in W.P. Nos.11038/2015.

Shri R. S. Jaiswal, Senior Counsel with Shri K. K. Gautam, counsel for the petitioners in W.P. No.5978/2015.

Shri Naman Nagrath, Senior Counsel with Shri Himanshu Mishra, counsel for the petitioners in W.P.Nos.18714/2014, 18848/2014, 18852/2014.

Shri Siddharth Gupta, counsel for the petitioners in W.P. No.5167/2015, 1742/2016.

Shri Akshay Dharmadhikari, counsel for the petitioners in W.P. Nos.3909/2010, 5567/2011, 6165/2011, 6169/2011.

Shri Shreyas Dharmadhikari, counsel for the petitioners in W.P. Nos.4209/2010, 11251/2010, 14403/2010, 7005/2011, 9124/2011, 20599/2011, 6109/2012, 4043/2013, 4891/2015, 8131/2015, 11956/2015 and 16987/2014.

Shri Abhijeet A. Awasthi, counsel for the petitioners in W.P.Nos.7928/2011, 17006/2011.

Shri Manoj Kushwaha, counsel for the petitioner in W.P. No.9887/2015.

Shri Samdarshi Tiwari, Dy. Advocate General for respondents/State.

Shri K.M. Nataraj, Additional Solicitor General of India with Shri Vikram Singh, counsel for respondent/Union of India.

Writ Petition No.12826/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.12835/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.12836/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.12838/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.12840/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14724/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14725/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14726/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14731/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14732/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.14733/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No. 14734/2015

Allied Minerals Industries Pvt. Ltd. v. Union of India

Writ Petition No.1403/2016

Jyoti Pandey v. Madhya Pradesh State

Shri Kishore Shrivastava, Senior Counsel with Shri Kapil Jain, counsel for the petitioner in W.P. Nos.12826/2015, 12835/2015, 12836/2015, 12838/2015, 12840/2015, 14724/2015, 14725/2015, 14726/2015, 14731/2015, 14732/2015, 14733/2015, 14734/2015.

Shri Priyank Choubey, counsel for the petitioner in W.P. No.1403/2016.

Shri Samdarthi Tiwari, Dy. Advocate General for respondents/State.

Shri K.M. Nataraj, Additional Solicitor General of India with Shri Vikram Singh, Advocate for Union of India.

CORAM :
Hon'ble Shri Justice A.M. Khanwilkar, Chief Justice

Hon'ble Shri Justice Sanjay Yadav, J.

Reserved on : **02.02.2016**

Date of decision : **11.03.2016**

O R D E R

Per Sanjay Yadav, J.

Realizing the shortcomings in the existing Mines and Minerals (Development and Regulation) Act, 1957 (referred

to as 'MMDR Act') as to allocation of natural resources having direct relevance to the grant of mineral concessions, resulting in multiple litigation and experiencing the counter productive effect thereof, And the decisions in **Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1** and **Natural Resources Allocation, In re, Special Reference No.1 of 2012 (2012) 10 SCC 1**; led the Central Government promulgate Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 on 12.1.2015. In March, 2015 (27.3.2015), Parliament enacted the Mines and Minerals (Development and Regulation) Amendment Act, 2015 (referred to as Amendment Act, 2015).

2. The exhaustive statement of objects and reasons reveals that the extensive amendment in the MMDR Act were effected after extensive consultations and intensive scrutiny by Standing Committee on Coal and Steel, who gave their Report in May, 2013. As is evident from the statement that, the difficulties were experienced because the existing MMDR Act does not permit the auctioning of mineral concessions. It was observed that with auctioning of mineral concessions, transparency in allocation will improve. Government will get an increased share of the value of mineral resources. That, it will alleviate the procedural delay

which, in turn would hold slowdown which adversely affected the growth of mining sector.

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

4. The Amendment Act, 2015 ushered in the amendment of Sections, 3, 4, 4A, 5, 6, 13, 15, 21 and First Schedule. Substitution of new sections for Sections 8, 11 and 13. And, insertion of new sections 8A, 9B, 9C, 10A, 10B, 10C, 11B, 11C, 12A, 15A, 17A, 20A, 30B, 30C and fourth schedule.

5. These amendments brought in vogue (i) the auction to be the sole method of allotment (ii) extension of tenure of existing lease from the date of their last renewal to 31.3.2030 (in the case of captive mines) and till 31.3.2020 (for the merchant miners) or till the completion of renewal already granted, if any, or a period of fifty years from the date of grant of such lease (iii) establishment of District Mineral Foundation for safeguarding interest of persons affected by mining related activities (iv) setting up of a National Mineral Exploration Trust created out of contributions from the

mining lease holders, in order to have a dedicated fund for encouraging exploration and investment (v) removal of the provisions requiring "previous approval" from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process simpler and quicker (vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to Rs.5 Lakh per hectare and imprisonment up to 5 years and (vii) further empowering the State Government to set up Special Courts for trial of offences under MMDR Act.

6. With the introduction of the method of allocation of mineral resources through auctioning, newly introduced Section 10A delineated right of existing concession holders and applicants.

7. Whereas, sub-section (1) mandates that all applications received prior to the date of commencement of the Amendment Act 2015 (i.e. 12.1.2015) shall become ineligible; sub-section (2) carves out an exception and makes such person eligible for grant of prospecting licence and the mining lease who fulfils the stipulations contained under clause (a), (b) and (c) of sub-section (2).

8. Section 10A of Amendment Act, 2015 envisages:

> "10A. (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 fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:
>
> Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government."

9. That, Section 10B and Section 11, as brought in vogue, provide for that, the grant of mining lease in respect of notified minerals and the minerals other than notified minerals shall be through auction. That, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal or lignite, the provisions prescribed under Section 11A has to be adhered to.

10. These amendments by Amendment Act, 2015 has irked such concession-holders and applicants who faces extinction because of the stipulation under sub-section (1) of Section 10A. Accordingly, two broad categories of such concession-holders and applicants have approached this Court.

11. Batch of writ petitions comprising of W.P. No.4278/2001, W.P. No.836/2009, W.P. No.8612/2009, W.P. No.9801/2009, W.P. No.17175/2010, W.P. No.18791/2010,

W.P. No.4936/2011, W.P. No.5373/2011, W.P. No.7158/2011, W.P. No.8918/2011, W.P. No.11144/2011, W.P. No.14714/2011, W.P. No.14716/2011, W.P. No.14993/2011, W.P. No.15621/2011, W.P. No.20119/2011, W.P. No.8950/2015, W.P. No.7006/2013, W.P. No.8110/2015, W.P. No.13647/2015 and W.P. No.15124/2015 **are at the instance of applicants who suffered rejection of their applications for grant of prospecting licence/mining lease**. Whereas, petitioners in W.P. No.5373/2011, W.P. No.7926/2011, W.P. No.7927/2011, W.P. No.8918/2011, W.P. No.11541/2011, W.P. No.12431/2011, W.P. No.12438/2011, W.P. No.12472/2011, W.P. No.12474/2011, W.P. No.12478/2011, W.P. No.6152/2012, W.P. No.18677/2012, W.P. No.11694/2013, W.P. No.14928/2013, W.P. No.16632/2015, W.P. No.2314/2014 and W.P. No.16771/2015 **are those in whose favour the State Govt. has granted the in-principle approval; however, there is no order by the Central Govt. In case of some of the petitioners in this batch had order passed in their favour by the State Govt. of giving in-principle approval has been set aside by the Central Govt. in a Revision under Section 3, which is being challenged in these petitions**.

Petitioners in W.P. No.3909/2010, W.P. No.4209/2010, W.P. No.11251/2010, W.P. No.14403/2010, W.P. No.5567/2011, W.P. No.6165/2011, W.P. No.6169/2011, W.P. No.7005/2011, W.P. No.7928/2011, W.P. No.9124/2011, W.P.

No.17006/2011, W.P. No.20599/2011, W.P. No.6109/2012, W.P. No.4043/2013, W.P. No.16987/2014, W.P. No.18714/2014, W.P. No.18848/2014, W.P. No.18852/2014, W.P. No.4891/2015, W.P. No.5167/2015, W.P. No.5978/2015, W.P. No.8131/2015, W.P. No.9887/2015, W.P. No.11038/2015 W.P. No.11956/2015 and W.P. No.1742/2016 **are those in whose cases the Central Govt. has remitted the applications sent to it for approval for reconsideration**.

Petitioners in W.P. No.12826/2015, W.P. No.12835/2015, W.P. No.12836/2015, W.P. No.12838/2015, W.P. No.12840/2015, W.P. No.14724/2015, W.P. No.14725/2015, W.P. No.14726/2015, W.P. No.14731/2015, W.P. No.14732/2015, W.P. No.14733/2015, W.P. No.14734/2015 and W.P. No.1403/2016 **are those whose application for grant of prospecting licence are pending and no decision thereon is taken till 12.1.2015 when the Amendment Act, 2015 has been brought in vogue**.

12. Whereas, the concession-holders and the applicant whose applications are at nascent stage have questioned the validity of the Amendment Act, 2015. The other category claiming to be covered by the exceptions carved under clause (a), (b), and (c) of sub-section (2) of Section 10A seeks direction to the respondents to complete the grant. In other words, we are called upon to deal with cases wherein form (Form F, Form F-2 and Form K of the Mineral Concession

Rules, 1960) has not been executed by the competent authority and neither saved by amendment. This category seeks interpretation of sub-section (2) of Section 10A to include within the exceptional category of having right for grant of reconnaissance permit, prospecting licence or mining lease.

13. We have heard Shri Rajendra Tiwari, Shri R.P. Agrawal, Shri Sanjay K. Agrawal, Shri R.S. Jaiswal, Shri Anil Khare, Shri Kishore Shrivastava, Shri Naman Nagrath, learned Senior Advocates and Shri Nikhil Tiwari, Shri T.K. Khadka, Shri A.M. Lal, Shri K.K. Gautam, Shri Akshay Dharmadhikari, Shri Shreyas Dharmadhikari, Shri Abhijeet A. Awasthi, Shri Chandrahas Dubey, Shri Siddharth Gupta and Shri Manoj Kushwaha and Shri Samdarshi Tiwari, Deputy Advocate General for State of M.P. and Shri K.M. Nataraj, learned Additional Solicitor General with Shri Vikram Singh, Advocate for the Union of India.

14. Validity of Amendment Act, 2015 is questioned on the following grounds -

(i) The objects and reasons for Amending 1957 Act are based on misconceived notion of law laid down by the Supreme Court in the case of **Centre for Public Interest Litigation** and **Natural Resources Allocation** (supra).

(ii) Introduction of the aspect of auctioning of mineral concessions violates the Directive Principles mandated

under Article 39(b) of the Constitution.

(iii) That, it suffers from the vice of arbitrariness and thus, violates the mandate of Article 14 of the Constitution of India.

15. As to first ground of challenge that the objects and reasons are based on misconceived notion of law, it is contended that the judgments of the Supreme Court in **Centre for Public Interest Litigation** and **Natural Resources Allocation** (supra) said to be the harbinger of the Amendment in question did not lay down the law that even the mineral concessions under MMDR Act should be through auction. On the contrary, it is urged that, the Supreme Court in **Natural Resources Allocation** (supra) held that the auction is the only method of disposal of natural resources is based neither on law nor on logic and is not a mandate of Article 14 of the Constitution (reference is made to Paragraphs 81 to 83 and 108 to 120 of the Report). That being so, it is contended by learned Senior Counsel that the Amendment Act, 2015 which, as per the aims and objects, being brought on the bedrock of the Supreme Court judgment, is, in substance, on a sifting ground, as the judgment itself does not lay down that the auction of natural resources for grant of mineral concession is the only methodology in attaining the common good envisaged under clause (b) of Article 39 of the Constitution of India.

16. In furtherance of challenge that, taking recourse of auction of mineral concession as the only methodology since does not sub-serve common good, is contrary to the mandate of Article 39(b) of the Constitution which, it is contended, being a directive principle, must imperatively be observed. It is urged that though by introducing the methodology of auction of mineral concessions, competitive bidding is aimed at for an equitable distribution of Govt. largesse; however, a close reading of provisions and its operationalization suggests concentration of mineral concessions in few who can afford the higher price at bidding. The end result being anti-egalitarian is divorced from the object aimed at vide Article 39(b) of the Constitution.

17. To bring home these submissions, reliance is placed on the verdict of Supreme Court in **Jilubhai Nanbhai Khachar v State of Gujarat, 1995 Supp (1) SCC 596,** more particularly, paragraph 29; wherein, it is held by their Lordships that "the word 'distribution' equally must be construed broadly to include not only allotment of resources to public use but also dispensation of largess to the poor to provide access to equal opportunity. It other words, it is a board-based concept and it should not be confined within narrow confines. Mines, Minerals and Quarries embedded in the land are material recourse of the community amenable to public use or for distribution".

18. Moving on to third ground of challenge on the anvil of

Article 14 of the Constitution, it is urged that, the Amendment Act ignored that without predetermination of the quality and quantity of mineral, the auction is taken recourse to wherein the price is fixed on the basis of competitive bidding, which in case of a reconnaissance permit or the prospecting licence may turn out to be counter productive when the operation is undertaken as the permit holder or for that the prospecting licencee may not be able to get the commercial quality and quantity. In other words, it is urged that, unless the quality and quantity of the mineral(s) is determined through reconnaissance and prospecting, the grant thereof on the price determined through auction would be a pure gamble and the end result would not lead to attainment of common good. In respect of mining lease, it is urged that earlier policy of preferential right (as was provided under old Section 11) having been done away which would cause prejudice to such permit/licence holder who will have to compete afresh with the bidders of mining lease, who may not have undertaken reconnaissance/prospecting operation but are still at advantage to bid with permit/licence holders who had put in money in reconnaissance/prospecting operation.

19. On these grounds, petitioners seek that the Amendment Act, 2015 be declared *ultra vires*.

20. Another set of petitioners, who do not question the validity of Amendment Act, 2015; however, seek indulgence

to interpret sub-section (2) of Section 10A of Amendment Act, 2015 in such a manner to treat all such applications wherein in-principle approval is given by either of the Government but the permit/licence/lease in prescribed form, as the case may be, has not been executed as would lead to operational work, being covered by clause (b) and (c) of sub-section (2) of Section 10A.

21. It is urged that the decision in-principle to grant reconnaissance permit/prospecting licence/mining lease having been taken by competent government, State or the Central, as the case may be, a right accrues in favour of such aspirants which being protected by virtue of sub-section (2) of Section 10A of Amendment Act, 2015; therefore, it is urged that, the State Government cannot decline execution of deed in favour of such applicants.

22. In support of these contentions, reliance is being placed on the decisions in **Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO (2007) 5 SCC 447, State of Punjab v. Bhajan Kaur (2008) 12 SCC 112** and **Manohar Lal Sharma v. Principal Secretary (2014) 9 SCC 516**.

23. There is one more category of petitioners who when applied for reconnaissance permit/prospecting licence/mining licence, the minerals were major minerals; however, with issuance of notification dated 10.2.2015 published in the Gazette of India : Extraordinary Part II Section 3(ii) declaring

the minerals applied for to be minor minerals in addition to the minerals already declared by notification as minor minerals. These petitioners seek declaration that the minerals having been declared as minor minerals, the application cannot be held to be ineligible under sub-section (1) of Section 10A of the Amendment Act, 2015.

24. Shri K.M. Nataraj, learned Additional Solicitor General appearing for the Union of India, besides defending the constitutionality of the Amendment Act, 2015 and the provisions amended/inserted/substituted thereby, also contradicts the claim by the applicants whose applications though have crossed the stages of in-principle approval by the competent government have not culminated into an execution of formal permit/licence/lease in prescribed form by the competent authority; contending *inter alia* that, there is no accrual of vested right in favour of respective applicants.

25. It is urged, at the outset, that the validity of Amendment Act, 2015 and the provisions therein having been upheld by the Division Bench of High Court of Telangana and Andhra Pradesh in Writ Petition No.10364/2015 and batch of similar writ petitions decided on 11.9.2015, and since the issue of *vires* of Amendment Act, 2015 has been answered in favour of the respondents, the judgment since declared a Central Law to be constitutional it is not open for the petitioners to question the validity. It is further contended that since it is

within the competence of the Parliament to frame a law and the statute since is in the Ninth Schedule of the Constitution, such law cannot be declared to be *ultra vires* Constitution, merely because it has changed the methodology in allocating/granting mineral concessions. It is further urged that the legislation since have the protective umbrella of Article 31A(1)(e) of the Constitution, the same cannot be struck down on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution. As to the contentions regarding accrual of vested right, it is urged that merely because the application having been carried through various stages and availing of in-principle approval for grant from the appropriate Govt., the same, however does not culminate into a vested right as would be protected under sub-section (2) of Section 10A of Amendment Act, 2015. Furthermore, Article 299 of the Constitution is pressed into service to bring home the submissions that unless a contract is entered into in terms thereof, there is no accrual of right even with passing of an order regarding in-principle approval. It is urged that it is only on an execution of a contract in the manner provided under Article 299 of the Constitution, any right accrues in the applicants. Reliance is placed on decisions, to bring home these submissions, in **S.B. International Ltd. and Ors. vs. Asstt. Director General AIR 1996 SC 2921** (Paragraphs 5, 8, 8A and 9), **State of U.P. Avas Evam Vikas Parishad vs.**

Om Prakash Sharma 2013 AIR SCW 2484 (Paragraphs 24 & 27), **Commissioner of Municipal Corporation, Shimla v. Prem Lata Sood (2007) 11 SCC 40** (Paragraphs 13, 21, 36, 38 and 50), **Shanti Sports Club v. Union of India (2009) 15 SCC 705** (Paragraphs 44 and 45) and **Sri B. Raghunatha Reddy, Kadapa v. Principal Secretary to Govt. Rev, Hyd. WP 16364/2015** (High Court of Telangana and Andhra Pradesh) Paragraphs 6, 16, 26, 28.2, 31 and 34.

26. It is further contended that since the statute can be declared as *ultra vires* the constitution only on the ground of competency or in case of infringement of constitutional provisions and the same being not established by the petitioners, the petitions deserve to be dismissed. For the said proposition, learned Senior Counsel has placed reliance on the decisions in **State of A.P. v. McDowell & Co AIR 1996 SC 1627**, **Greater Bombay Cooperative Bank v. United Yarn Tex Pvt. Ltd. (2007) 6 SCC 236** (Paragraphs 82, 84, 85 and 87) and **Govt. of A.P. vs. P. Laxmi Devi (2008) 4 SCC 720** (Paragraphs 37 to 50).

27. Counsel appearing for the State of M.P. has adopted and supported the contentions raised on behalf of Union of India.

28. Considered the rival submissions.

29. Being not oblivious of the fact that the Division Bench of High Court of Telangana and Andhra Pradesh had an occasion to examine and upheld the validity of the Amendment Act, 2015 in **Sri B. Raghunatha Reddy,**

Kadapa (supra). However, in view of other issues, not raised in **Sri B. Raghunatha Reddy, Kadapa** (supra), we intend to examine the issue in these batch of petitions threadbare.

30. We intend to take up first the issue raised by the set of petitioners who seek interpretation of sub-section (2) of Section 10A of Amendment Act, 2015, wherein the ancillary issue would be as to whether there is accrual of vested right in favour of these petitioners as would entitle them for grant of prospecting licence/mining lease.

31. Evidently, insertion of Section 10A by the Amendment Act, 2015 ushers in the aspect of elimination. It stipulates that "all applications received" prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, "shall become ineligible". An exception, however is carved out vide sub-section (2); whereby, 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 fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval

of the Central Government."

32. Sub-section (1) as evident, is in absolute term, i.e. all applications received prior to the date of commencement of the Amendment Act 2015, shall become ineligible, because though an exception under sub-section (2) is carved out; however, the same is "**without prejudice**" to sub-section (1).

33. Sub-section (2) has clauses (a), (b) and (c) which carves out the applicants who remain eligible on and from the date of commencement of Amendment Act, 2015.

34. The first of these are those whose applications are received under Section 11A of the Act, with which we are not concerned in the case on hand.

35. Second category of the applicants covered by clause (b) of sub-section (2) of Section 10A of Amendment Act, 2015 are those wherein on the applications, "a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral".

36. The expression "has been" which appear in this clause has a definite connotation. It being the present perfect tense of the expression "to be", indicates that a state of thing has existed. In this context, reference can be had of a decision in **Secretary, Regional Transport v. D.P. Sharma AIR 1989 SC 509** wherein it is held -

> "15. ... whether the expression 'has been' occurring in a provision of a statute denotes transaction prior to the enactment of the statute in

question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision in which the said expression occurs or from the other provisions of the statute.

16. In the instant case, the words 'has been' contemplate the issuance of a special permit or a temporary permit as referred to in clauses (i) and (ii) of Section 3(g) of the Act after the enactment of the Act which is clear from the exclusion clause (ii) of Section 3(g) which excludes a stage carriage from the definition of 'contract carriage', if special permits issued under Section 62(1) or section 63(6) of the Motor Vehicles Act were in force on January 30, 1976. It is difficult to interpret clauses (i) and (ii) of Section 3(g) as contemplating the issuance of a temporary permit or a special permit. as referred to therein before the coming into force of the Act. Merely because of the use of the words has been in clauses (i) and (ii) of Section 3(g), such an interpretation is not possible to be made, particularly in view of the legislative intent apparent from the exclusion clause (ii), namely. that the Legislature only. excluded a stage carriage in respect of which a temporary contract carriage or a special permit issued under Section 62(1) or 63(6) of the Motor Vehicles Act was in force on January 30, 1976."

37. Thus, to be eligible under clause (b) of sub-section (2) of Section 10A, the first and foremost pre-condition is that a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral. Besides that,

imperative it is 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.

38. The aspect "has been granted" would mean actual order having been passed gets calcified from the provisions contained in Rule 7A, 15 and 31 envisaging "an order has been made" before executing the permit/licence/lease, as the case may be.

39. This aspect can be understood in the manner as has been observed by Lord Chancellor in the case of **Abbot v. The Minister for Lands, 1895 AC 425** at Page 431, "... **that the mere right (assuming it to be properly so called)**

existing in the members of the community or any class of them to take advantage of an enactment without any act done by an individual towards availing himself of that right cannot properly be deemed a "right accrued" within the meaning of the enactment." Approving this observation in the given case their Lordships in **Sakharam @ Bapusaheb Narayan Sanas v. Manikchand Motichand Shah AIR 1963 SC 354** (Paragraph 5) were pleased to hold "5. .. with all respect, are entirely correct, but have been made in the context of the statute under which the controversy had arisen. In that case, the appellant had obtained a grant in fee-simple of certain lands under the Crown Lands Alienation Act, 1861. By virtue of the original grant, he would have been entitled to claim settlement of additional areas' if he satisfied certain conditions laid down in the relevant provisions of the statute. The original settle had the right to claim the additional settlements, if he so desired, on fulfillment of those conditions. He had those rights to acquire the additional lands under the provisions of the Crown Lands Alienation Act,, 1861, but the Crown Lands Act of 1884, repealed the previous Act, subject to a saving provision to the effect that all rights accrued by virtue of the repealed, enactment shall, subject to any express provisions of the repealing Act in relation thereto, remain unaffected by such repeal. The appellants' contention that under the saving clause of the repealed enactment he had the right to make

additional conditional purchases and that was a 'right accrued' within the meaning of the saving clause contained in the repealing Act of 1884, was negatived by the Privy Council. It is, thus;, clear that the context in which the observations relied upon by the respondent, as quoted above, were made is entirely different from the context of the present controversy. That decision is only authority for the proposition that 'the mere right, existing at the date of a repealing statute, to take advantage of provisions of the statute repealed is not a 'right accrued' within the meaning of the usual saving clause'. In that ruling, their Lordships of the Privy Council assumed that the contingent right of the original grantee was a right but it was not a right accrued' within the meaning of the repealed statute. It was held not to have accrued because the option given to the original grantee to make additional purchases had not been exercised before the repeal. In other words, the right which was sought to be exercised was not in existence at the date of the repealing Act, which had restricted those rights."

40. In **Lalji Raja and Sons v. Firm Hansraj Nathuram AIR 1971 SC 974**, it has been held -

> "19. That a provision to preserve the right accrued under a repealed Act "was not intended to preserve the abstract rights conferred by the repealed Act .... It only applies to specific rights given to an individual upon happening of one or the other of the events specified in statute case

> Lord Atkins' observations in Hamilton Gell v. White (1922) 2 KB 422. The mere right. existing at the date of repealing statute; to take advantage of provisions of the statute repealed is not a "right accrued" within the meaning of the usual saving clause-see Abbot v. Minister for Lands (1895 AC 425 and G. Ogden Industries Pty. Ltd. v. Lucas (1969) 1 ALL ER 121."

41. The provision in vogue i.e. clause (b) of sub-section (2) of Section 10A when understood in the context of above principle of law leaves no iota of doubt that unless the conditions stipulated therein are fulfilled i.e. upon granting of reconnaissance permit/prospecting licence, the incumbent has further fulfilled the conditions stipulated in sub-clauses (i) (ii), (iii) and (iv) of clause (b) of sub-section (2) only then a right accrue for obtaining a prospecting licence followed by a mining lease or a mining lease. It in no unambiguous terms obliterate, consideration of any application irrespective of the stage it is.

42. An attempt on the part of the petitioners to interpret clause (b) of sub-section (2) through Rule 63A of Rules 1960, would be to rewrite sub-clause (b), which being beyond the scope of judicial review, has to be discarded.

43. The reason being that Rule 63A of 1960 Rules provides for disposal of the application for grant of reconnaissance permit, prospecting licence or mining lease within the period respectively prescribed and not that if the application is not

disposed within the time stipulated, the same will amount to allowing the application. Though reliance is placed on second proviso to said Rule, to bring home the submission that once in-principle approval is granted, the same would amount to disposal of an application, may sound somewhat attractive but, when examined juxtapose with Rule 7A, 15 and 31 of the Rules 1960, which, in clear terms, mandates that an execution of deed granting such licence is only after an order has been made for the grant of such licence. It leaves no scope to interpret the provision that disposal of the application would mean passing of an order of grant. Thus, an existence of a specific order for the grant of such licence is *sine qua non* for execution of a deed granting such licence, paving the path for reconnaissance/ prospecting/mining operations.

44. Thus, a disposal of an application as contemplated under Rule 63A of 1960 Rules *ipso facto* does not tantamount to passing of an order for grant of licence much less execution of permit, licence or lease deed in prescribed form, as the case may be, so as to create any right in the applicants to claim exemption from sub-section (1) of Section 10A of Amendment Act, 2015.

45. In **Commissioner of Municipal Corporation, Shimla v. Prem Lata (2007) 11 SCC 40**, it has been observed by their Lordships:

> "36. It is now well-settled that where a statute

provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra.

..

38. The question again came up for consideration in Howrah Municipal Corpn. and Others v. Ganges Rope Co. Ltd. and Others [(2004) 1 SCC 663], wherein this Court categorically held : "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 or settled expectation has been nullified not only by the Corporation but also by the State by amending the Building 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."

46. Furthermore, relying on the decisions in **S.L. Srinivasa Jute Twine Mills Private Ltd. v. Union of India (2006) 2 SCC 740, Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector and Etio (2007) 5 SCC 447** and **State of Punjab v. Bhajan Kaur (2008) 12 SCC 112,** which dwells upon the general principle of prospectivity of statutes and its exceptions and the promissory estoppel, it is contended that the vested right accrued in favour of the petitioners for grant of prospecting licence and mining lease, having successfully carried out the reconnaissance operations/prospecting operations, is protected by virtue of Section 6 of the General Clauses Act, 1897.

47. True it is that promissory estoppel, as held in **Southern Petrochemical Industries Co. Ltd.** (supra), “gives rise to a cause of action. It indisputably creates a right. It also acts on an equity” (Paragraph 122 of the report). However, equally

true it is that "its application against constitutional or statutory provisions is impermissible in law". In this context, reference can be had of a decision in **State of Bihar v. Project Uchcha Vidya, Sikshak Sikshak Sangh (2006) 2 SCC 545,** wherein it is held -

> "77. We do not find any merit in the contention raised by the learned counsel appearing on behalf of the Respondents that the principle of equitable estoppel would apply against the State of Bihar. It is now well known, the rule of estoppel has no application where contention as regard constitutional provision or a statute is raised. The right of the State to raise a question as regard its actions being invalid under the constitutional scheme of India is now well recognized. If by reason of a constitutional provision, its action cannot be supported or the State intends to withdraw or modify a policy decision, no exception thereto can be taken. It is, however, one thing to say that such an action is required to be judged having regard to the fundamental rights of a citizen but it is another thing to say that by applying the rule of estoppel, the State would not permitted to raise the said question at all. So far as the impugned circular dated 18.02.1989 is concerned, the State has, in our opinion, a right to support the validity thereof in terms of the constitutional framework."

48. In the case on hand, the interpretation of Section 10A of Amendment Act, 2015 as it turns on, does not preserve the right of the petitioners, who are not covered by the exception carved out under sub-section (2) of Section 10A of

Amendment Act, 2015. No right having been preserved in favour of respective petitioners, no cause of action arises in their favour to bind the State. The contentions based on the principle of promissory estoppel, therefore, fails.

49. As regard to claim of protection of right on the anvil of Section 6 of the General Clauses Act, 1897, it provides -

> "**6. <u>Effect of repeal</u>**. - Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not -
>
> (a) revive anything not in force or existing at the time at which the repeal takes effect, or
>
> (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or
>
> (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or
>
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or
>
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,
>
> and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

Whereas, clause (a) of Section 6 provides for that unless a different intention appears, the repeal shall not "revive

anything not in force or existing at the time at which the repeal takes effect"; clause (c) protects "any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed". However, unless established that there exists a concretized right or a right crystallized for grant of prospecting licence/mining lease under the unamended provisions, the petitioners cannot gain from the verdict in **S.L. Srinivasa Jute Twine Mills Private Ltd.** and **Bhajan Kaur** (supra). Under unamended Section 11 of MMDR Act, what was assured was preferential right of certain persons for obtaining a prospecting licence or a mining lease, as the case may be, in respect of any land over any other person. Even this right was subjected to the overall prerogative of the State Government conferred vide sub-section (5) of unamended Section 11, which stipulated -

> "5**.** Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or a mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:
>
> Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section."

50. Thus, there being no absolute acknowledgment of right by the statute for grant of prospecting licence or mining lease, the petitioners do not gain from the provisions contained under Section 6 of the General Clauses Act, 1897. Besides, as held in **Geomin Minerals and Marketing Private Limited v. State of Orissa (2013) 7 SCC 571** [Para 41), "it is well settled that no applicant has a statutory or fundamental right to obtain prospecting licence or a mining lease". The contention that the right for grant of prospecting licence or a mining lease having accrued under unamended provision is preserved by virtue of Section 6 of General Clauses Act is, therefore, negatived.

51. Another contention raised on behalf of some of the petitioners that their application having been kept pending in one form or the other, either being subjected to challenge of the in-principle approval or at the stage just prior to the execution of permit/licence/lease, they are not effected by sub-section (1) of Section 10A but are to be treated as being within the exempted category under clause (c) of sub-section (2). These submissions deserve to be negated. Since there is no accrual of right prior to execution of permit/licence/lease, the petitioners in whose cases there is no execution of instrument as provided under Rules 7A, 15 and 31 respectively, cannot be treated to be a class under clause (b) of sub-section (2) of Section 10A of Amendment Act, 2015. In this context, reference can be had of the decision in **State**

of Tamil Nadu v. Hind Stone (1981) 2 SCC 205 wherein their Lordships, while dwelling on the submissions in the context of Rule 8-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 brought in vogue w.e.f. 7.12.1977 prohibiting grant of quarry lease of black granite to private person that it was not open to the Govt. to keep applications for grant of leases and applications for renewal pending for long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force, were pleased to hold :

> "13. … While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of

> renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C did not exist."

52. We, accordingly, hold that irrespective of the stage the application for reconnaissance permit/prospecting licence/mining lease is, unless the instrument as contemplated under Rules 7A, 15 or 31 of 1960 Rules is executed i.e. unless Form F or Form F-2 or Form K of the Mineral Concession Rules, 1960, as the case may be, are executed and acted upon, these applicants are not covered by clause (b) of sub-section (2) of Section 10A of the Amendment Act, 2015. Further, the applicant must also fulfil the requirement of clause (c) to be treated as falling under the preserved category.

53. In respect of clause (c) of sub-section (2) of Section 10A of Amendment Act, 2015, it is contended on behalf of the petitioners that with the communication of previous approval as required under sub-section (1) of Section 5, there is an accrual of right in such applicants for grant of mining lease. It is further contended that the letter issued by the State Government of intimating about the in-principle approval by the State Government and the Central Government would tantamount to be a letter of intent and the same would create right in favour of such applicants for grant of lease.

54. These contentions are refuted by learned Additional Solicitor General. It is urged that there are 90 major minerals

of which about 70 major minerals are non-schedule, i.e., they do not find mention in First Schedule, comprising A, B and C Parts. It is contended that in respect of scheduled major minerals finding mention in First Schedule, the procedure for grant of lease as mandated under Section 5(1), gets attracted whereunder proviso it is mandatory to have prior approval of the Central Government. Whereas, in respect of major minerals which are non-scheduled, the procedure, as is stipulated under Section 11 of MMRD Act gets attracted. And in such cases, it is urged that, the State Government issues letter of intent. It is contended that the stipulations contained under clause (c) has to be understood by harmoniously reading the entire sub-section (2) of Section 10A to understand the object and the intention of the Parliament giving an interpretation to clause (c) to mean that any form of expression by the Central Government including the in-principle approval, would be causing violence to the entire methodology introduced vide Amendment Act, 2015, because in that case though there is no crystallization of right for grant of lease, yet a right accrues in him for such grant. It is contended that such is not the intention of the Parliament.

55. To appreciate these submissions, clause (c) of sub-section (2) of Section 10 A of Amendment Act, 2015, needs to be restated. Its stipulates -

> "(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 fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:
>
> Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this sub-section except with the previous approval of the Central Government."

56. The provision, as is evident therefrom, speaks of the event which has happened prior to introduction of Section 10A in the Statute book. In other words, it refers to an act of past under unamended provisions. Whereas, the first part of clause (c) deals with action contemplated under unamended sub-section (1) of Section 5, which provided for the grant of lease in respect of scheduled major minerals. And, the second part dwells with the action contemplated under Section 11, which lays down the procedure to be adhered to in respect unscheduled major minerals.

57. Proviso under Section 5(1) as it stood prior to its substitution w.e.f. 12.1.2015 provided for "that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease

shall be granted except with the previous approval of the Central Government", which when read with Rule 31 of the Rules 1960, contemplates passing of an order for grant of such lease. Thus, an order of grant of lease is a condition imperative as would protect such applicants.

58. The second part of clause (c) of sub-section (2) of Section 10A of Amendment Act, 2015, would govern the cases pertaining to non-scheduled major minerals wherein the grant of previous approval is not a condition imperative. Such cases, as is evident, were governed by unamended Section 11 of MMDR Act which provided for 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, as the case may be, in respect of that land over any other person". However, evident it is from unamended sub-section (1) of Section 11 of MMDR Act that fulfillment of four conditions were still necessary before the preferential right is considered and these are those very conditions which are brought under clause (b) of sub-section (2) of Section 10A of Amendment Act, 2015: Thus, even with the issuance of letter of intent, unless the four condition under sub-section (1) of Section 11 of unamended Section of MMDR Act are fulfilled, there is no accrual of right as could be protected under clause (c) of sub-section (2) of Section 10A.

59. Further contention on behalf of the petitioners on the bedrock of Article 14 and Article 39(b) of the Constitution that if the amendment brought in vogue by Amendment Act, 2015, if allowed to continue in the statute book, the same would lead to monopolization and the control of supply of mineral resources in the hands of few having capacity to pay the market price does not impress us, as in our considered opinion, is taken care of vide Section 6 which mandates-

> "**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 kilometres; 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 in writing, increase the aforesaid area limits in respect of prospecting licence or mining leases, insofar as it pertains to any particular mineral, or to any specified category of deposit of such mineral, or to any particular mineral located in any particular 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 the 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.
(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.
(3) For the purposes of determining the total area referred to in sub-section (1), the area held under a reconnaissance permit, prospecting licence or mining lease by person as a member of a co-operative society, company or other corporation or a Hindu undivided family or a partner of a firm, shall be deducted from the area referred to in sub-section (1) so that the sum total of the area held by such person, under a reconnaissance permit, prospecting licence or mining lease, whether as such member or partner, or individually, may not, in any case, exceed the total area specified in sub-section (1).”

60. In view whereof, the contention that the amended provisions would lead to monopolization and control of mineral resources in few hands, must fail.

61. Now coming to the cases wherein the minerals for which the applications were made were in the First Schedule but later on vide notification dated 10.2.2015 were declared as minor minerals. It is contended on behalf of these

applicants that being a minor mineral, they are exempted from applicability of Sections 5 to 13 by virtue of Section 14 of 1957 Act. In a given situation wherein an application for mineral concessions as minerals declared to be minor mineral vide notification dated 10.2.2015, the applicants are well within their right to claim that their application will not be governed by rigours of sub-section (1) of Section 10A, as the same is made inapplicable by virtue of Section 14 which mandates that the provisions of Sections 5 to 13 (inclusive) shall not apply to quarry lease, mining lease or other mineral concessions in respect of minor minerals.

62. However, in the case at hand, the fact situations are different. It was by virtue of Ordinance promulgated on 12.1.2015, Section 10A was brought in vogue, ushering in the applicability of sub-section (1) from said date. Since on 12.1.2015, the minerals in schedule which were declared to be minor minerals in law, vide notification dated 10.2.2015, were major minerals, the applications for such minerals became ineligible. In such cases also, no relief can be granted to the petitioners as each of these applications were concerning major minerals and have been rendered ineligible in law, w.e.f 12.1.2015. The notification issued subsequently treating it to be minor mineral cannot revive their claim. That at best can be done only by law made by Parliament. Further, even if the applications were to be treated as concerning minor mineral, as per the Madhya Pradesh Minor Mineral

Rules, 1996, grant is only by auction process. Even for this reason, the said applications will be of no avail.

63. In the first place, on the above interpretation of relevant provisions, applications filed by each petitioner has been rendered ineligible. At the instance of such petitioners, the question regarding validity of the enactment need not be examined any further. Nevertheless, we proceed to examine the question and at the end of the analysis, we find no substance to the challenge to validity of the Amendment Act, 2015. For, as rightly contended on behalf of Union of India, a legislation can be declared to be invalid or *ultra vires* only in the event of it being without competence or if it infringes any of the Fundamental Rights guaranteed in Part III of the Constitution or of any other constitutional provisions. "The power of the Parliament or for that matter, the State Legislature is restricted in two ways. A law made by the Parliament or the Legislature, can be struck down by courts on two grounds and the two grounds alone, viz., (1) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provision. There is no third ground"; is what has been held in **State of Andhra Pradesh v. McDowell AIR 1996 SC 1627.** Their Lordships were pleased to hold -

> "45. ... It is enough for us to say that by whatever name it is characterized, the ground of invalidation must fall within the four corners of

the two grounds mentioned above. In other words, say, if an enactment challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom".

64. In **Greater Bombay Coop. Bank Ltd. v. United Yarn Tex Ltd, (2007) 6 SCC 236**, it is held -

"84. As observed by this Court in CST v. Radhakrishnan (1979) 2 SCC 249 in considering the validity of a Statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. For sustaining the constitutionality of an Act, a Court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. It must always be presumed that the legislature understands and

> correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations. It is also well- settled that the courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a Statute is silent or is inarticulate, the Court would attempt to transmutate the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of "reading down" the provisions if it becomes necessary to uphold the validity of the law.

65. In **Govt. of A.P. v. P. Laxmi Devi (2008) 4 SCC 720**, it is held-

> "46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it

violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Mark Netto vs. Government of Kerala and others AIR 1979 SC 83 (para 6). Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise.

50. In our opinion judges must maintain judicial self-restraint while exercising the power of judicial review of legislation.

"In view of the complexities of modern society", wrote Justice Frankfurter, while Professor of Law at Harvard University, "and the restricted scope of any man's experience, tolerance and humility in passing judgment on the worth of the experience and beliefs of others become crucial faculties in the disposition of cases. The successful exercise of such judicial power calls for rare intellectual disinterestedness and penetration, lest limitation in personal experience and imagination operate as limitations of the Constitution. These insights Mr. Justice Holmes applied in hundreds of cases and expressed in memorable language:

"It is a misfortune if a judge reads his conscious or unconscious sympathy with one side or the other prematurely into the law, and forgets that what seem to him to be first principles are believed by half his fellow men to be wrong."

(See. Frankfurter's 'Mr. Justice Holmes and the Supreme Court')

51. In our opinion the legislature must be given

> freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits."
>
> The present piece of legislation when tested on these statutory principles of law laid down by the Supreme Court leads no iota of doubt that it does not suffer any such constitutional inhibition as would render it invalid. If it is the legislative wisdom that the grant of mineral shall be though to sub-serve the common good, it does not get invalidated if merely because auction of natural resources is not one of the only fact to satisfy the parameters laid down by Article 14 of the Constitution."

66. Furthermore, MMDR Act is placed at Serial No.90 in the Ninth Schedule of the Constitution. Article 31B provides immunity to the Act and Regulations specified in the Ninth Schedule from attack based on inconsistency with or takes away or abridges any of the rights conferred by any provisions of Part III of the Constitution.

67. The Amendment Act, 2015 which ushers in the amendment in MMDR Act, having been brought to attain the goal set out under clause (b) of Article 39 "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good." And, the amendments resulting in extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any material or mineral oil, or the premature termination or

cancellation of any such agreement, lease or licence is immuned from attack by virtue of Article 31A(1)(e).

68. Article 31A(1)(e) of the Constitution envisages that "notwithstanding anything contained in Article 13, no law providing for the extinguishment or modification of any rights accruing by virtue of any agreement, lease or license for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence, shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution". It is contended on behalf of Union of India, and rightly, that, even applications for reconnaissance permit/prospecting license/mining lease which has reached the stage of in-principle approval by either of the government and even if there is accrual of right in such applicants for an execution of reconnaissance permit/prospecting license/mining lease, such right is not saved because of strict construction of the stipulations contained under clause (a), (b) and (c) of sub-section (2) of Section 10A of Amendment Act, 2015. In other words, no absolute right enure in favour of the applicants to carry on reconnaissance operations/prospective operations/mining operations. Giving a wider meaning to the expression "winning" as it appears in Article 31A(1)(e) of the Constitution, it has been held by the Constitution Bench of

the Supreme Court in **M/s. Gujarat Pottery Works Private Ltd. v. B. P. Soodand AIR 1967 SC 964** that -

> "17. The expression 'to win' interpreted in the English cases was in respect of the context of the expression used in certain leases. The expression 'winning in a Constitutional provision like Art 31A (1) (e) should be given a wider meaning as the Constitution-makers would be using it to cover cases which deal with the obtaining of minerals and in that case that wider meaning would be 'to get or extract the mineral from the mine'. The object of the Constitutional provision was to make the law providing for the extinguishment or modification of a lease, etc, in connection with mineral rights immune from the provisions of Arts. 14, 19 and 31. There could be no logical reason for not to cover the leases which allowed the working of the mines after the minerals in the mines had been won, in the narrow sense, i.e., the making of such arrangements which would allow the working of the mine. Modifying the provisions of any lease merely for making arrangements for the working of the mine could not be effective in making the law free from the requirements of the various minerals in the public interest. Modification of the leases governing the working of the mines could be necessary for the public interest. Section 2 of both the 1948 and the 1957 Acts declared that it was 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 thereinafter provided".

69. In **Sanjeev Coke Manufacturing Company vs.**

Bharat Cooking Coal Ltd. (1983) 1 SCC 147, a Constitutional Bench of the Supreme Court, testing the validity of Coking Coal Mines (Nationalisation) Act, 1972, a law directing the policy of the State towards securing "that the ownership and control of the material resources of the community are so distributed as best to subserve the common good, held :-

> 20. … The distribution between public, private and joint sectors and the extent and range of any scheme of nationalisation are essentially matters of State policy which are inherently in appropriate subjects for judicial review. Scales of justice are just not designed to weigh competing social and economic factors. In such matters legislative wisdom must prevail and judicial review must abstain.

70. In **K.T. Plantation (P) LTd. v. State of Karnataka (2011) 9 SCC 1,** it is held –

> 205. Plea of unreasonableness, arbitrariness, proportionality, etc. always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy.

71. In view whereof, challenge to the constitutional validity of Amendment Act, 2015 fails.

72. This brings us to the challenge on the anvil of Article 14

of the Constitution that the provisions suffer the vice of arbitrariness.

73. Article 14 of the Constitution of India frowns upon discrimination, but permits reasonable classification (See. **Union of India v. Ajay Wahi (2010) 11 SCC 213**).

"Ringing note of caution against fanciful classification bringing about artificial inequalities or illusory equality, stress has been for fair, intelligible and reasonable classification based on facts and circumstances of each case and object sought to be achieved". (See. **B. Manmad Reddy v. Chandra Prakash Reddy (2010) 3 SCC 314)**. In this context, a reference can be had of the principle of law as stated in **Natural Resources Allocation, In re, Special Reference No.1 of 2012 (2012) 10 SCC 1**, wherein it is observed by their Lordships :

> 157. The concept of equality before law and equal protection of laws, emerges from the fundamental right expressed in Article 14 of the Constitution of India. Equality is a definite concept. The variation in its understanding may at best have reference to the maturity and evolution of the nation's thought. To start with, breach of equality was a plea advanced by individuals claiming fair treatment. Challenges were raised also on account of discriminatory treatment. Equality was sought by those more meritorious, when benefits were bestowed on those with lesser caliber. Gradually, judicial intervention came to be sought for equitable treatment, even for a section of the society put together. A jurisdiction, which in due course, came to be described as public interest

litigation. It all started with a demand for the basic rights for respectable human existence. Over the years, the concept of determination of societal rights, has traversed into different directions and avenues. So much so, that now rights in equality, sometimes even present situations of conflict between individual rights and societal rights. The present adjudication can be stated to be a dispute of such nature. In a maturing society, individual rights and plural rights have to be balanced, so that the oscillating pendulum of rights, fairly and equally, recognizes their respective parameters. For a country like India, the pendulum must be understood to balance the rights of one citizen on the one side, and 1,24,14,91,960 (the present estimated populations of India) citizens of the country on the other. The true effect of Article 14 of the Constitution of India is to provide equality before the law and equal protection of the laws not only with reference to individual rights, but also by ensuring that its citizens on the other side of the balance are likewise not deprived of their right to equality before the law, and their right to equal protection of the laws. An individual citizen cannot be a beneficiary, at the cost of the country (the remaining 1,24,14,91,960 citizens) i.e. the plurality. Enriching one at the cost of all others would amount to deprivation to the plurality i.e. the nation itself. The gist of the first question in the Presidential Reference, raises the issue whether ownership rights over the nation's natural resources vest in the citizens of the country. An answer to the instant issue in turn would determine whether or not it is imperative for the executive while formulating a policy for the disposal of natural resources, to ensure that it subserves public good and public interest.

74. Can the allocation of natural resources by taking

recourse to auction be said to be unfair, unreasonable, discriminatory or arbitrary ?

75. The answer can be traced in the case of **Centre for Public Interest Litigation v. Union of India (2012) 3 SCC 1**, wherein it is observed :

> "85. As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-à-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-à-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties."
>
> ..
>
> 89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.
>
> ..
>
> 94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. In matters involving award of contracts or grant of licence or

permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications. Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the Government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all others who may have a better claim.

95. This Court has repeatedly held that wherever a contract is to be awarded or a licence is to be given, the public authority must adopt a transparent and fair method for making selections so that all eligible persons get a fair opportunity of competition. To put it differently, the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property and no attempt should be made to scuttle the claim of worthy applicants. When it comes to alienation of scarce natural resources like spectrum etc., it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in protection of national/public interest.

96. In our view, a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. In other words, while transferring or alienating the natural

> resources, the State is duty bound to adopt the method of auction by giving wide publicity so that all eligible persons can participate in the process."

76. True it is that in **Natural Resources Allocation, In re, Special Reference No.1 of 2012** (supra), it is held that an "Auction as a method of disposal of natural resources cannot be declared a constitutional mandate under Article 14 of the Constitution". The reason being that "a constitutional mandate is an absolute principle that has to be applied in all situations, it cannot be applied in some and not tested in others". The absolute principle is then applied on a case-by-case basis to see which auctions fulfil the requirements of the constitutional principle and which do not [(Please see : paragraph 108 and 112) and paragraph 120-129)]. It is further held -

> 132. It was also argued that even if the method of auction is not a mandate under Article 14, it must be the only permissible method, due to the susceptibility of other methods to abuse. This argument, in our view, is contrary to an established position of law on the subject cemented through a catena of decisions.
>
> …
>
> 135. Therefore, a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions. In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an

unconstitutional methodology either. These drawbacks include cartelization, the “winner's curse” (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licenses for exploitation of more resources than he can pragmatically execute), etc. However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse.

...

149. Regard being had to the aforesaid precepts, we have opined that auction as a mode cannot be conferred the status of a constitutional principle. Alienation of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximizing private entrepreneurs, adoption of means other than those that are competitive and maximize revenue may be arbitrary and face the wrath of Article 14 of the Constitution. Hence, rather than prescribing or proscribing a method, we believe, a judicial scrutiny of methods of disposal of natural resources should depend on the facts and circumstances of each case, in consonance with the principles which we have culled out above. Failing which, the Court, in

exercise of power of judicial review, shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution."

It was also observed -

"156.Before venturing into the area of consideration expressed in the foregoing paragraph, it is necessary to record, that there was extensive debate during the course of hearing, on whether, maximization of revenue must be the sole permissible consideration, for disposal of all natural resources, across all sectors and in all circumstances. During the course of this debate, the learned Attorney General for India acknowledged, that auction by way of competitive bidding, was certainly an indisputable means, by which maximization of revenue returns is assured. It is not as if, one would like to bind the learned Attorney General to the acquiesced proposition. During the course of the days and weeks of erudite debate, learned counsel emphasized, that disposal of assets by processes of tender, tender-cum-auction and auction, could assure maximization of revenue returns. Of course, there are a large variety of tender and auction processes, each one with its own nuances. And we were informed, that a rightful choice, would assure maximization of revenue returns. The term "auction" expressed in my instant opinion, may therefore be read as a means to maximize revenue returns, irrespective of whether the means adopted should technically and correctly be described as tender, tender-cum- auction, or auction.

...

186. Based on the legal/constitutional parameters /requirements culled out in the preceding three paragraphs (i.e. paras 183 to 185),

I shall venture an opinion on whether there are circumstances in which natural resources ought to be disposed of only by ensuring maximum returns. For this, I shall place reliance on a conclusion drawn in the main opinion, namely, Distribution of natural resources is a policy decision, and the means adopted for the same are thus, executive prerogatives. However, when such a policy decision is not backed by a social or welfare purpose, and precious and scarce natural resources are alienated for commercial pursuits of profit maximising private entrepreneurs, adoption of means other than those that are competitive and maximise revenue, may be arbitrary and face the wrath of Article 14 of the Constitution." (refer to para 149 of the main opinion, above). I am in respectful agreement with the aforesaid conclusion, and would accordingly opine, that when natural resources are made available by the State to private persons for commercial exploitation exclusively for their individual gains, the State's endeavour must be towards maximisation of revenue returns. This alone would ensure that the fundamental right enshrined in Article 14 of the Constitution of India (assuring equality before the law and equal protection of the laws), and the directive principle contained in Article 39(*b*) of the Constitution of India (that material resources of the community are so distributed as best to subserve the common good), have been extended to the citizens of the country.

...

188. In the main opinion, it has been concluded that auction is not a constitutional mandate, in the nature of an absolute principle which has to be applied in all situations. And as such, auction

> cannot be read into Article 14 of the Constitution of India, so as to be applied in all situations (refer to paras 108 and 109 of the main opinion, above). Auction is certainly not a constitutional mandate in the manner expressed, but it can surely be applied in some situations to maximise revenue returns, to satisfy legal and constitutional requirements. It is therefore, that I have chosen to express the manner of disposal of natural resources by using the words "maximisation of revenue" in place of the term "auction", in the foregoing two paragraphs (i.e. paras 186 and 187). But it may be pointed out, the Attorney General for India had acknowledged during the course of hearing, that auction by way of competitive bidding was certainly an indisputable means, by which maximisation of revenue returns is assured (in this behalf other observations recorded by me in para 156 above may also be kept in mind). In the aforesaid view of the matter, all that needs to be stated is, that if the State arrives at the conclusion, in a given situation, that maximum revenue would be earned by auction of the natural resource in question, then that alone would be the process which it would have to adopt, in the situations contemplated in the foregoing two paragraphs."

77. Applying the principles of law laid down by the Supreme Court to the amendments brought in vogue in MMDR Act, 1957 vide Amendment Act, 2015, we do not perceive any substance in the challenge to the Amendment Act. 2015 on the anvil of its being arbitrary and violative of the mandate of Article 14 of the Constitution. Clause (b) of

sub-section (2) of Section 10A makes an exception for the case of holders of reconnaissance permit or prospecting license granted before commencement of the Amendment Act, 2015, to obtain a prospecting licence, as the case may be, a mining lease, subject to fulfilling the conditions laid down in the said sub-section. Reconnaissance permit or prospecting license holder who completes operations to establish the existence of mineral contents have a vested right accrued in them. This provision, thus, protects such right subject to compliance of the conditions mentioned in sub-clause (i) to (iv) of this clause. Similarly, clause (c) of sub-section (2) of Section 10A makes an exception for the cases of applications received for grant of mining leases, subject to fulfillment of the conditions stipulated therein. For that, we leave it to the Competent Authority concerned to examine individual cases in the light of interpretation of Section 10A. The challenge, to that provision, however, fails.

78. This takes us to the next contention of the petitioners that since in-principle approval has been granted by the respective State Government and the execution of reconnaissance permit/prospecting license/mining lease, being a ministerial act, there is accrual of vested right in favour of these applicants, which is protected under clause (b) and (c) of sub-section (2) of Section 10A. These submissions are based on the decision in **M/s. Gujarat Pottery Works Private Ltd.** (supra) wherein it is held -

> "7. The granting of lease is different from the formal execution of the lease deed. The Mineral Concession Rules, 1949, made under S. 5 of the 1948 Act and hereinafter referred to as the 1949 rules, deal with the procedure for the grant of mining leases in respect of land in which the minerals belong to Government, under Chap. IV. Rule 27 deals with applications for mining leases. Rule 28A provides that when a mining lease is granted the formal lease shall be executed within six months of the order sanctioning the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. It is really the sanctioning of the lease which amounts to the granting of the lease. Execution of the formal lease is only compliance with the legal requirements to make the grant legally enforceable."

79. Trite it is that a decision is only an authority for the point it decides. It is only the *ratio decidendi,* which is binding [See. **Heinz India Private Limited v. State of U.P. (2012) 5 SCC 443** and **Sahara India Real Estate Corporation Limited v. Securities and Exchange Board of India (2012) 10 SC 603**. It is also a settled law that observations of the Courts are not to be read as Euclid's theorem nor as a provision in the statute. The observations must be read in the context in which they appear (Please see. **Natwar Singh v. Director of Enforcement (2010) 13 SCC**

255). And that, dictum stated in a judgment as held in **Offshore Holdings Private Ltd. v. Bangalore Development Authority (2011) 3 SCC 139** should be applied with reference to facts of case as its cumulative impact.

80. Thus, the observation made in paragraph 7 of the case in **M/s. Gujarat Pottery Works Private Ltd**. (supra) has to be understood in the context of the controversy therein, which can be borne out from paragraph 5 and 6. That, one Jairam Jagmal originally held a perpetual lease from Chimanlal Chandulal Jani and others, inamdars and owners of the mineral rights for excavating white clay from the area leased and for taking it away. The lessors entered into an agreement for executing the perpetual lease, on December 2, 1939. Witnessing handing over of the possession of the land for excavating white clay with a stipulation that from the date of agreement continuously for three years, the lessee does not excavate and thus, do not pay royalty, the "agreement is at an end". And, as observed by their Lordship in paragraph 9 that "Thus, the deed of agreement really granted the lease to Jagmal. It was the mere execution of the proper lease which was put off and the proper formal lease was to be executed later". It was in the context of these facts, their Lordships were pleased to observe in paragraph 7 that ".. Execution of the formal lease is only compliance with the legal requirements to make the grant legally enforceable."

81. Present case, however, is not similar to that of **M/s.**

Gujarat Pottery Works Private Ltd. (supra). In the case on hand, as already observed, unless a deed is executed for reconnaissance permit/ prospecting license/mining lease as contemplated under Rules 7A, 15 and 31 of 1960 Rules respectively, neither the possession nor the permission of operating reconnaissance permit/prospecting license /mining lease is granted. Thus, the execution of deed for reconnaissance permit/prospecting license/mining lease is a condition precedent to avail the grant and treated as eligible as per the amended provision.

82. Furthermore, right to grant of mining lease is also claimed by some of the petitioners having made substantial investments in setting up industry (cement industry), in anticipation of being granted the mining lease. This submission is based on the anvil of unamended Section 11 of MMDR Act, which acknowledged preferential right of the reconnaissance permit holder or prospecting licence for obtaining prospecting licence or mining lease, as the case may be, on fulfillment of conditions stipulated therein and more particularly, under sub-section (2) of unamended Section 11; clause (d) whereof, stipulating "the investment which the applicant proposes to make in the mines and in the industry based on the minerals". Apparently, it is the proposed investment which is relevant and not the investment made in past. In this context, reference can be had of the decision in **Sandur Manganese and Iron Ores Ltd. v. State**

<u>of Karnataka</u> (2010) 13 SCC 1 : JT 2010 (10) SC 157 : **(2010) 9 SCALE 492,** wherein it has been held -

> "76. … Section 11(4) and even the second proviso to Section 11(2) provide that the State Government may grant, inter alia, a mining lease after taking into consideration the matters specified in Section 11(3). Section 11(3)(d) specifies "the investment which the applicant proposes to make in the mines and in the industry based on the minerals" as one of such matters and on a plain interpretation, it is clear that only the proposed investment is a relevant factor. If the Legislature had intended that it should include past investments also, the use of the word "proposed" is superfluous, which could never be the case. Learned senior counsel appearing for the respondents have not pointed out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments or for captive purposes in existing industries."

83. In view whereof, the inevitable conclusion is that even if in anticipation the concerned person has caused investment by setting up an industry (in anticipation of having the licence/grant in future), will not, in our considered opinion, create any right in such incumbent for the prospecting licence and mining lease, as the case may be. Even otherwise, sub-section (6) of Section 10B of Amendment Act, 2015 provides for that :

> "(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."

84. In written submissions by the Government of India, it is stated that Ministry of Mines, keeping in mind the stipulation in sub-section (6) of Section 10 B of Amendment Act, 2015 has framed the Mineral (Auction) Rules, 2015 (referred to as Auction Rules) vide notification dated 20.5.2015 laying down the eligibility for the purpose of participating in mining lease, which also includes a provision empowering State Government to reserve any mine for any particular end use. These submissions are made to meet out the contention in some of the petitions as to formation of cartels and the occurrence of inter-trade rivalry with the introduction of auction as a mode for grant of mineral concessions. However, since these Auction Rules were not referred to during the course of hearing, we are not inclined to dwell upon the submissions based thereon.

85. Next contention on behalf of the petitioners borders on the aspect of uncertainty. It is urged that as the reconnaissance operations are undertaken for preliminary

prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation [(See : Section 3(ha)] which defines “reconnaissance operations”). And, prospecting operations are any operations undertaken for the purpose of exploring, locating or proving mineral deposits [(See : Section 3(h) which defines “prospecting operations”], there being no certainty of the quality, quantity and nature of mineral having commercial value. It is urged that because of such uncertainty, recourse taken to auction of reconnaissance permit/prospecting licence and a contract entered therefor would be hit by Section 29 of the Indian Contract Act, 1872 which stipulates that “Agreements, the meaning of which is not certain, or capable of being made certain, are void”. These contentions are taken note of and are rejected at the outset. What may be true in respect of a contract, being void of it being uncertain, is not, in our considered opinion, apply for a statute enacted by the legislature. Reason being that, it is an expression of collective wisdom of the legislature. The reason and object for which the MMDR Act has been amended is clear. It aims at not only for a transparency in allocation of natural resources through auction but also to enable the Government to get an increased share of value of mineral resources. And also, to alleviate procedural delay

which adversely affected the growth of mining sector. On a general scheme of the Amendment Act, 2015, we do not see any ambiguity. Rather, the converse is true. With the amendment being in vogue, the State Governments have been empowered, in respect of minerals enlisted in Part C of the First Schedule, to establish a system for preparation, certification, and monitoring of mining plans. Furthermore, Section 17A has been amended by insertion of new sub-section (2A), (2B) and (2C). Sub-section (1A) of Section 17A provides for reservation of area for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it. Sub-section (2) of Section 17A provides for reservation of area for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it. Newly inserted sub-section (2A) casts an obligation on the part of the State Government to grant a prospecting licence or mining lease, as the case may be, to such Government company or corporation in whose favour a reservation of an area has been made as per sub-section (1A) or sub-section (2). Sub-section (2B) prescribes the nature of the joint venture in case the Government company or corporation is desirous of carrying out the prospecting operations or mining operations in a joint venture with other persons, the joint venture partner shall be selected through a competitive process, and such Government company or corporation shall

hold more than seventy-four per cent of the paid up share capital in such joint venture. This will ensure prevention of misuse of the reservation or preference provision by private companies who may take recourse to mining by forming joint ventures with Government companies with the intention of obviating the auction route. Sub-section (2C) makes the grant of a mining lease granted to a Government company or corporation, or a joint venture, referred to in sub-section (2A) and (2B), subject to condition of payment of such amount as may be prescribed by the Central Government.

86. In **Tinsukhia Electric Supply Co. Ltd v. State of Assam AIR 1990 SC 123** their Lordships were pleased to hold:

> "49. The Courts strongly lean against any construction which tends to reduce a Statute to a futility. The provision of a Statute must be so construed as to make it effective and operative, on the principle "*ut res majis valeat quam periat*". It is, no doubt, true that if a Statute is absolutely vague and its language wholly intractable and absolutely meaningless, the Statute could be declared void for vagueness. This is not in judicial-review by testing the law for arbitrariness or unreasonableness under Article 14*;* but what a Court of construction, dealing with the language of a Statute, does in order to ascertain from, and accord to, the Statute the meaning and purpose which the legislature intended for it. In Manchester Ship Canal Co. v. Manchester Racecourse Co., [1900] 2 Ch. 352 Farwell J. said:
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> > "Unless the words were so absolutely senseless that I could do nothing at all

> with them, I should be bound to find some meaning and not to declare them void for uncertainty." (See pages 360 and 361).
>
> In Fawcett Properties v. Buckingham County Council, [1960] 3 All ER 503 Lord Denning approving the dictum of Farwell, J. said:
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> "But when a Statute has some meaning, even though it is obscure, or several meanings, even though it is little to choose between them, the Courts have to say what meaning the Statute to bear rather than reject it as a nullity." (Vide page 516).
>
> It is, therefore, the Court's duty to make what it can of the Statute, knowing that the Statutes are meant to be operative and not inept and that nothing short of impossibility should allow a Court to declare a Statute unworkable. In Whitney v. Inland Revenue Commissioners, 1926 AC 37, Lord Dunedin said :
>
> a statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.” (vide page 52).”

87. The decision in **Keshavlal Lallubhai Patel vs. Lalbhai Trikumlal Mills Ltd. AIR 1958 SC 512** since relates to contract is of no assistance to the petitioners, in the present context.

88. In the result, for the foregoing reasons, all the

contentions urged by the petitioners in support of their challenge to the Amendment Act, 2015 fail.

89. The petitions are **disposed of** accordingly. However, in the circumstances, there will be no order as to costs.

(A.M. KHANWILKAR)
CHIEF JUSTICE

(SANJAY YADAV)
JUDGE

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