SUPREME COURT OF INDIA

Monnet Ispat and Energy Ltd

Vs.

Union of India

C.A.No.3285 of 2009

(H.L.Gokhale and R.M.Lodha, JJ.)

26.07.2012

JUDGMENT

R.M.Lodha, J.

1. Introduction

This group of six appeals occupied considerable judicial time. These matters were heard on ten days between November 2, 2011 and November 29, 2011. Although the facts differ from one another in some respects but since fundamental issues appeared to be common and all these matters arise from a common judgment dated April 4, 2007 passed by the Division Bench of the Jharkhand High Court at Ranchi, we have heard all these matters together which are being disposed of by this common judgment. Prayers

2. The prayers in the writ petitions filed by the appellants before the High Court also differ. However, principally the reliefs prayed for by the appellants in their writ petitions were for quashing (i) the decision of the Department of Mines and Geology, Government of Jharkhand contained in the letter dated September 13, 2005 whereby the State Government sought to withdraw the recommendation for grant of mining lease made in favour of the appellants in the subject iron ore bearing areas in Mauza Ghatkuri, West Singhbhum District, Jharkhand (ii) the order of the Ministry of Mines, Government of India where under the said Ministry returned the recommendation made by Government of Jharkhand in favour of each of the appellants (iii) for declaring the Notifications dated December 21, 1962 and February 28, 1969 issued by the Government of Bihar and the Notification dated October 27, 2006 issued by the Government of Jharkhand null and void and (iv) directing the respondents to proceed under Rule 59(2) of the Mineral Concession Rules, 1960 (for short, '1960 Rules') for grant of mining lease to each of the appellants in the iron ore bearing areas in Ghatkuri as applied. Bihar Land Reforms Act

3. Bihar Land Reforms Act, 1950 (for short, '1950 Bihar Act') came to be enacted by the Bihar Legislature to provide for the transference to the State of the interest of proprietors and tenure holders in land of the mortgagees and lessees of such interest including interest in mines and minerals and other matters connected therewith. It came into force on September 25, 1950. Chapter II of the 1950 Bihar Act deals with vesting of an estate or tenure in the State and its consequences. The State Government has been empowered under Section 3 to declare that the estates or tenures of a proprietor or tenure holder, as may be specified in the notification/s from time to time, to become vested in the State. Section 4 provides for consequences of vesting of an estate or tenure in the State. Section 4 has undergone amendments on few occasions. To the extent it is relevant, Section 4 of the 1950 Bihar Act reads as follows :

> "4. Consequences of the vesting of an estate or tenure in the State.- Notwithstanding anything contained in any other law for the time being in force or any contract and notwithstanding any non- compliance or irregular compliance of the provisions\ on the publication of the notification under sub-section (1), of section 3 or sub-section (1) or sub-section (2) of section 3A, the following consequences shall ensue and shall be deemed always to have ensued, namely;
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> "a) Such estate or tenure including the interests of the proprietor or tenure- holder in any building or part of a building comprised in such estate ortenure as also his interest in all sub soil including any rights in mines and minerals whether discovered or undiscovered or whether been worked or not, inclusive of such rights of a lessee of mines and minerals, comprised in such estate are tenure (other than the interests of raiyats or under-raiyats) shall, with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or other than the interests expressly saved by or under the provisions of this Act".

4. The brief facts relating to each of these appeals may be noticed now. Factual features Civil Appeal No. 3285 of 2009, Monnet Ispat and Energy Ltd.Vs.Union of India and Ors.

5. The appellant company, referred to as Monnet, is registered under the Companies Act, 1956. Monnet is engaged in the business of mining, production of steel, ferro-alloys and power. Monnet decided to set up an integrated steel plant in Hazaribagh District with a proposed investment of Rs. 1400 crores. A Memorandum of Understanding (MOU) was entered into between Monnet and the State Government on February 5, 2003. The main raw material for the integrated steel plant is iron ore. On January 29, 2004, Monnet made an application to State of Jharkhand, referred to as State Government, for mining lease of iron

ore over an area of 3566.54 hectares in Mauza Ghatkuri for the purpose of the proposed steel plant.

5.1. It is the case of Monnet that after consideration of the application and following the necessary procedure contemplated under the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the 1957 Act') and the 1960 Rules, the State Government in August, 2004 recommended Monnet's application to the Government of India for grant of mining lease of iron ore over an area of 705 hectares in Mauza Ghatkuri under Section 5(1) and Section 11(5) of the 1957 Act. The recommendation was made after the State Government was satisfied that the said mining block was suitable for exploitation and met the requirement of Monnet. The recommendation was also made on priority basis as Monnet fulfilled the essential objectives of the industrial policy of the State with commitment for investment and growth of employment and social sector under its aegis.

5.2. The Ministry of Mines, Government of India, on receipt of the recommendation of the State Government, sought for certain clarifications from the State Government vide their communication dated September 6, 2004. The State Government is said to have responded to the said communication and clarified the position in their reply of November 17, 2004. The State Government reiterated the recommendation in favour of Monnet setting out the comparative merit of all such proposals.

5.3. On November 17, 2004, the District Mining Officer,Chaibasa informed the Secretary, Department of Mines and Geology, Government of Jharkhand that certain portions of Mauza Ghatkuri and the adjoining areas were reserved for public sector exploitation under the two Notifications issued by the Government of Bihar on December 21, 1962 and February 28, 1969. He further suggested that approval of the Central Government under Rule 59(2) of the 1960 Rules should be obtained by the State Government for grant of leases in this area to avoid complications.

5.4. The Central Government vide its letter dated June 15, 2005 informed that a joint meeting of officers of Ministry of Mines, Government of India and concerned officers of the State Government be held to clarify certain issues in connection with the Ghatkuri Reserve Forest.

5.5. On June 29, 2005, a joint meeting of the officials of the Central Government and State Government on the issues relating to proposals for grant of mining leases in Ghatkuri was held wherein the Secretary of the State Government is stated to have

requested the Central Government to hold on the processing of the pending applications.

5.6. On September 13, 2005, the State Government requested the Central Government to return the proposals of mining lease of nine out of ten applicants, including Monnet.

5.7. On September 14, 2005, a joint meeting of the officials of the State Government and the Central Government took place. In that meeting also the officials of the State Government informed the Central Government that it has decided to withdraw nine pending mining lease proposals, including that of Monnet.

5.8. Monnet has averred that compartment no. 5 which was recommended for allocation to it was not at all affected by reservation. Block No. D (500 acres) which is overlapping with compartment no. 5 (recommended in favour of Monnet) was earlier lease area of M/s. Rungta Sons Pvt. Ltd. (for short, 'Rungta'). The said lease was granted to Rungta for twenty years upto September 3, 1995. Monnet claims that application for renewal was not submitted by Rungta one year prior to expiry of their lease and their lease automatically expired on September 3, 1995. Moreover, only 102.25 hectares area has been overlapping with compartment no. 5 (out of the 705 hectares recommended by the State Government for Monnet). Monnet has thus, set up the case that the area recommended by the State Government for grant of mining lease to it was not under any previous reservation for any public sector undertaking.

5.9. On March 6, 2006, the Government of India passed an order accepting the request of the State Government dated September 13, 2005 for withdrawal of the mining proposals made in favour of applicants, including Monnet. Civil Appeal No. 3286 of 2009, Adhunik Alloys Power Ltd.Vs.Union of India and Ors.

6. The appellant M/s. Adhunik Alloys Power Limited, referred to as Adhunik, is a company registered under the provisions of the Companies Act, 1956. It carries on business of iron and steel. Adhunik intended to set up 2.2 MTPA integrated steel plant at Kandra in the State of Jharkhand. The first phase of this integrated steel plant is said to have been completed and commissioned in June, 2005. The work for completion of phase-II has been going on. On September 1, 2003, Adhunik made an application to the State Government for grant of mining lease over an area of 8809.37 acres (3566.54 hectares) in Mauza Ghatkuri for iron ore for captive consumption of its proposed integrated steel plant at Kandra, Jharkhand.

"6.1. On September 16, 2003, the Deputy Commissioner, Chaibasa forwarded Adhunik's application along with few others to the Director of Mines, Jharkhand.

6.2. As the applications were overlapping, the Director of Mines called Adhunik and other applicants for a meeting on December 26, 2003. The Director of Mines gave hearing to the applicants, including Adhunik.

6.3. On February 26, 2004, an MOU was entered into between the State Government and Adhunik in connection with an integrated steel plant at Village Kandra in the District of Seraikela-Kharswan setting out the details of the project; capacity per annum, project cost and implementation period.

6.4. On August 4, 2004, the State Government recommended Adhunik's case to the Central Government for grant of mining lease for iron ore for captive consumption over an area of 426.875 hectares. In its letter dated August 4, 2004 seeking prior approval of the Central Government for grant of mining lease for iron ore in favour of Adhunik, the State Government gave various reasons justifying grant of mining lease to Adhunik.

6.5. Adhunik claims that substantial progress has been made in construction of its Rs. 790 crores integrated steel plant and the plant has been seriously affected due to shortage of iron ore. Civil Appeal No. 3287 of 2009, Abhijeet Infrastructure Ltd. Vs. Union of India and Ors."

7. The appellant M/s. Abhijeet Infrastructure Limited, referred to as Abhijeet, was earlier known as Abhijeet Infrastructure Pvt. Limited. Abhijeet has been in the business of iron and steel for last many years. On November 21, 2003, Abhijeet submitted the application to the State Government for mining lease over an area of 1633.03 hectares in Mauza Ghatkuri for iron ore and manganese for captive consumption of its proposed Sponge Iron Plant and Ferro-Alloys Plant in Village Rewali, Block Katkamsandi, District Hazaribagh. On February 26, 2004, an MOU was entered into between Abhijeet and the State Government for setting up a Sponge Iron Plant and Ferro-Alloys Plant at suitable location in the State of Jharkhand.

"7.1. On August 5, 2004, the State Government took a decision to grant a mining lease to Abhijeet for iron ore for captive consumption over an area of 429 hectares not overlapping with the area of any other applicant in Mauza Ghatkuri. The State Government sought prior approvals of the Central Government vide its letter dated August 5, 2004 for grant of mining lease to Abhijeet.

7.2. Abhijeet has averred that based on firm and definite commitment of the State Government in the form of MOU dated February 26, 2004 it has taken all required steps including the steps for getting acquisition of land in village Kud, Rewali and

> Damodih. Civil Appeal No. 3288 of 2009, Ispat Industries Limited Vs. Union of India and Ors.

8. The appellant, Ispat Industries Limited, referred to as Ispat, is a company registered under the Companies Act, 1956. According to Ispat, it is one of the largest steel producers in the private sector and has got vast resources and technical experience. Ispat intended to set up an integrated steel plant in the State of Jharkhand and accordingly made an application to the State Government for grant of mining lease over an area of 725.32 hectares in Village Rajabeda in West Singhbhum District for iron ore.

> "8.1. The State Government took a decision on August 5, 2004 to grant a mining lease over an area of 470.06 hectares for captive consumption of iron ore in respect of the area not overlapping with the area of any other major mineral. The State Government on August 5, 2004 also wrote to the Central Government seeking their prior approval in the matter. Civil Appeal No. 3289 of 2009, Jharkhand Ispat Private Limited Vs. Union of India and Ors."

9. Jharkhand Ispat Private Limited, to be referred as Jharkhand Ispat, is a registered company having their registered office in Ramgarh, District Hazaribagh, State of Jharkhand. Jharkhand Ispat runs a Sponge Iron and Steel Plant in Ramgarh.

> "9.1. Jharkhand Ispat applied to the State Government for grant of iron ore mining lease over an area of 950.50 hectares at Mauza Ghatkuri. It also entered into an MOU dated February 26, 2004 with the State Government for establishment of sponge iron and steel plant in the Hazaribagh District. As per para 4 of the MOU, State Government would assist Jharkhand Ispat in selecting the area for iron and other minerals as per requirement depending upon quality and quantity. The State Government agreed to grant mineral concession as per existing law.
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> 9.2. On August 4, 2004, the State Government prepared a report containing its decision and proposal in favour of Jharkhand Ispat for grant of mining lease over an area of 346.647 hectares at Mauza Ghatkuri and forwarded the same to the Ministry of Mines, Government of India. Civil Appeal No. 3290 of 2009, Prakash Ispat Limited Vs. Union of India and Ors."

10. The appellant Prakash Ispat Limited, referred to as Prakash, is a company registered under the Companies Act, 1956. Prakash carries on business in steel and claims to have annual turnover of Rs.2200 crores. Prakash applied to the State Government for mining lease of iron ore over an area of 1000 hectares in Mauza Ghatkuri on January 20, 2004 for captive consumption of the proposed Steel Plant at Amadia Gaon in West Singhbhum District.

11. On March 26, 2004, the State Government entered into an MOU with Prakash for setting up Mini Blast Furnace etc., at the proposed investment of Rs. 71.40 crores. On August 4, 2004, the State Government took a decision to grant mining lease for iron ore to Prakash for captive consumption over an area of 294.06 hectares and recommended to the Central Government for their prior approval.

12. It may be mentioned here that the facts concerning various meetings between the officials of the State Government and Central Government; the communications exchanged between the two, including the communication of the State Government dated September 13, 2005; the communication of the District Mining Officer, Chaibasa dated November 17, 2004 to the Department of Mines and Geology, State of Jharkhand and the rejection of the proposal have not been repeated while narrating the facts of the appellants -Adhunik, Abhijeet, Ispat, Jharkhand Ispat and Prakash as these facts have already been noted while narrating the facts in the matter of Monnet. The main issue

13. The foremost point that arises for consideration is whether the Notifications dated December 21, 1962 (to be referred as 1962 Notification) and February 28, 1969 (to be referred as 1969 Notification) issued by the State of Bihar and the Notification dated October 27, 2006 (referred to as 2006 Notification) issued by the State of Jharkhand are legal and valid. It is a little complex point, because it involves threading one's way through statutory provisions contained in 1957 Act and 1960 Rules. I shall set them out to the extent these are relevant after noticing the arguments advanced on behalf of the parties.

14. Mr. Ranjit Kumar, learned senior counsel for Monnet , did initially raise the plea that 1962 and 1969 Notifications were never published in the official gazette but on production of gazette copies of these Notifications by learned senior counsel for the State of Jharkhand, the plea with regard to the non-publication of these Notifications was not carried further.

1962 Notification

15. The 1962 Notification issued by the erstwhile State of Bihar reads as under:

> "Notification The 21st December, 1962 No. A/MM-40510/62-6209/M - It is hereby notified for the information of public that the following iron ore bearing areas in this State are reserved for exploitation of the mineral in the public sector: - Name of the district – Shinghbhum Description of the areas reserved.
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> 1. Sasangda Main Block - Boundary South - The southern boundary is the same as the northern boundary. It starts from the Bihar, Orissa boundary opposite the gorge of the southern tributary of Megnahatu nala and runs west-north-west along the gorge till the foot of the hill. East -The boundary between the States of Bihar and Orissa. East

South - East Bihar-Orissa boundary from 2680 up to a point 2-3/4 miles north-east of it, meeting the southern boundary of Sasangda Main Block. North - The northern boundary is the same as the southern boundary of Sasangda Main Block and follows the gorge at just over one mile northwards of .2935.

5. Dirisumburu Block – Boundary South and South-West Starting from the Churu Ikir Nala at about 5 furlongs east - north-east of Kiriburu Kolaiburu village (220 11 '30": 85 14'), in east- south-east direction for one mile.

South-East - From the above end towards north-east for 2-1/2 miles to reach a point ½ miles north west of Bahada village (2211'30": 85 17'30"). North-East - From the above end north - westwards upto the gorge at coordinate location 20 13' : 85 18". North-West - From the above location south-westwards along the fact of the hill Dirishumburu and the foot of the adjoining Hakatlataburu to meet the starting point of the Churu Ikir Nala east-north-east of Kolaiburu village.

6. Banalata Block - Boundary South-East - A line running west-north-west-east-south- east passing through 2.20 feet contour at the south-western and of the Banlata ridge south-east - From 2 -1/2 furlongs east of 2187 north east wards up to ½ mile north-west of Pechahalu village (22 16' : 85 20') and from here north- north - east upto 3 furlongs east-south-east of 2567 Painsira Bum).North - From the above and in west-north-west direction across the hill for five furlongs to reach the north-west slope of the hill. West - From above end in general south-south-west directing along the flank of the hill to reach the south-west boundary at three furlongs north-west 2187.By order of the Governor of Bihar Sd/- (B.N. Sinha)Secretary to Government" 1969 Notification."

16. Then, on February 28, 1969 the following Notification was issued:

"Government Of Bihar Department Of Mines Geology Notification Patna, the 28th February, 1969 Phalgun, 1890 – S No.B/M6-1019/68-1564/M It is hereby notified for information of public that Iron Ore bearing areas of 416 acres (168.349 Hectares) situated in Ghatkuri Reserved Forest Block No. 10 in the district of Singhbhum are reserved for exploitation of mineral in the public sector. For full details in this regard District Mining Officer, Chaibasa should be contacted. By order of the Governor of Bihar Sd/- (C.P. Singh) Dy. Secretary to Government" 2006 Notification."

17. The State of Jharkhand issued a Notification on October 27, 2006 which reads as follows:

"Department Of Mines Geology, Ranchi Notification:

> The 27th October, 2006 No. 3277 - It is hereby notified for the information of the general public that optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon, it has been decided by the State Govt. that the iron ore deposits at Ghatkuri would not be thrown open for grant of prospective licence, mining lease or otherwise for the private parties. The deposit was at all material times kept reserved vide gazette notification No. A/MM-40510/62- 6209/M dated the 21st December, 1962 and No. B/M-6-1019/68-1564/M dated the 28th February, 1969 of the State of Bihar. The mineral reserved in the said area has now been decided to be utilized for exploitation by Public Sector undertaking or Joint Venture project of the State Govt. which will usher in maximum benefits to the State and which generate substantial amount of employment in the State. The aforesaid notification is being issued in public interest and in the larger interest of the State. The defining co-ordinates of the reserved area enclosed here with for reference. By order of the Governor. S.K. Satapathy Secretary to Government. Description of the area reserved in Ghatkuri is given below:- District: Singhbhum Main Block: Ghatukuri. Limiting co-ordinate points of the reserved area of Ghatkuri as per the notification dated 21st December 1962 and 28th February 1969 published in the Bihar Gazette are given below:
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> "xxx xxx xxx Sd/- Vijoy Kumar. Director I/c Geology Directorate. Contentions."

18. Learned senior counsel for the appellants highlighted different aspects while setting up challenge to the 1962, 1969 and 2006 Notifications. Mr. Ranjit Kumar, learned senior counsel for Monnet focussed more on factual aspects peculiar to Monnet. I shall refer to the factual aspects highlighted by Mr. Ranjit Kumar in the later part of the judgment. While assailing validity of 1962, 1969 and 2006 Notifications, he referred to the provisions of 1957 Act and submitted that reservation was part of a regulatory regime. According to him, 'regulation of mines' means regulatory regime which has been taken over by the Central Government and that would include 'reservation'. He would submit that a proprietary right should not be mixed up with inherent right insofar as mining is concerned.

19. Mr. C.A. Sundaram, learned senior counsel for Ispat argued that the 2006 Notification was bad in law for (1) 1962 and 1969 Notifications were not valid and as such could not be relied upon to give sanctity to the 2006 Notification; (2) 2006 Notification attempted to reserve the area for exploitation by public sector undertaking or joint ventures when Section 17A of the 1957 Act only allows the State Government to reserve area for public sector undertakings and non-joint ventures; Section 17A does not envisage a private participation and (3) under Section 17A of the 1957 Act, the prior approval of the Central Government

was needed before the State could reserve any area for public sector undertakings and no such prior approval was taken.

20. Mr. C.A. Sundaram would submit that 1962 and 1969 Notifications were invalid since Section 18 of the 1957 Act vests power of conservation and systematic development of minerals with Central Government; there was statutory prohibition on the State Government to make law with regard to conservation and development of minerals in India. Rule 59 as it stood in 1962 and 1969 envisaged a situation where reservation could be made only for a temporary purpose or for an emergency and it did not empower the State to reserve the area for public sector undertaking. Learned senior counsel submitted that power of reservation by the State Government for public sector undertakings was introduced for the first time by way of amendment to Rule 58 of the 1960 Rules in 1980 and as such no power existed prior to 1980 for the State Government to reserve areas for public sector undertakings. Alternatively, he submitted that even if 1962 and 1969 Notifications were held to be validly issued with proper authority of law at that point of time, the fact that Rule 58 was omitted in 1988 without any saving clause necessarily meant that 1962 and 1969 Notifications were no longer valid and could not be relied upon. He argued that current power of reservation contained in Section 17A of the 1957 Act is consistent with the erstwhile Rules 58/59 since Section 17A expressly requires the prior approval of the Central Government before State Government issues any notification for reservation of mining area for public sector undertakings.

21. The decisions of this Court in Hingir-Rampur Coal Co. Ltd. Ors. v. State of Orissa Ors.[1]; State of Orissa Anr. v. M/s M.A. Tulloch Co.[2]; Baijnath Kadio v. State of Bihar and Others[3]; Amritlal Nathubhai Shah and Ors. v. Union Government of India and Another[4]; India Cement Ltd. Ors. v. State of Tamil Nadu and Others[5]; Orissa Cement Ltd. v. State of Orissa Others[6] and Maya Mathew v. State of Kerala and Ors.[7] were cited. Mr. C.A. Sundaram sought to distinguish Amritlal Nathubhai Shahd and submitted that in any case Amritlal Nathubhai Shahd was not a good law.

22. Mr. L.Nageswara Rao and Dr. Abhishek Manu Singhvi, learned senior counsel, appeared for Adhunik and argued that 1962 and 1969 Notifications were issued in contravention of law without the statutory prior approval of the Central Government under the 1957 Act. The 2006 Notification was only a reiteration of what was contained in the 1962 and 1969 Notifications. 2006 Notification is bad in law and ultra virus of Section 17A of the 1957 Act. It was submitted that the State Government never adopted the 1962 and 1969 Notifications and, therefore, these Notifications had lapsed even if passed with due authority of law. In this regard, the judgment in Pratik Sarkar, M.B. Suresh and Jitendra Laxman Thorve v. State of Jharkhand[8] was relied upon.

23. Mr. G.C. Bharuka, learned senior counsel appeared for Abhijeet and submitted that till July 1963, the State Government had no power to reserve any mineral bearing land for grant of prospecting licence or mining lease to any given class of persons, including the public sector undertakings. It was submitted that on declaration under Section 2 of the 1957 Act, the State Legislature was completely denuded of its power to legislate in respect of mines and minerals and consequently, the State Government had ceased to have any Executive power in respect of mines and minerals though it remained to be owner of the land and the minerals. In this regard, learned senior counsel referred to decisions of this Court in M.A. Tulloch Co.b; Baijnath Kadioc and Bharat Coking Coal Ltd. v. State of Bihar Ors.[9]. Mr. Bharuka also distinguished the decision of this Court in Amritlal Nathubhai Shahd and submitted that though there was no specific statutory provision of vesting power with the State Government for reservation, but in that case the Court inferred such power from Rule 59 of the 1960 Rules. Rule 59, as originally framed in 1960, permitted reservation only for "any purpose other than prospecting or mining for minerals". Vide Notification dated July 9, 1963, the words "other than prospecting or mining for minerals" were deleted and, therefore, on December 21, 1962 when the Notification was issued by the State of Bihar reserving the lands in dispute for exploitation by public sector, it had no power to do so. Learned senior counsel submitted that Amritlal Nathubhai Shahd dealt with situation post 1963 amendment in Rule 59 and not pre- amendment.

24. Learned senior counsel submitted that the "reservation of mineral bearing areas for exploitation by public sector" is covered under the declaration made by Parliament under Section 2 of the 1957 Act in view of List I, Entry 54 of Seventh Schedule to the Constitution of India. The topic relating to "reservation" is covered within the field of "regulating the grant of mining lease" and that would include the power to grant or not to grant mining lease to a particular person. The "reservation" would come within the scope of "regulating the grant of mining lease" for which the Central Government is given the power to make rules. The Central Government, as a delegate of the Parliament, can frame rules with respect to "regulating the grant of mining lease". By placing reliance upon Baijnath Kadioc and Bharat Coking Coali, it was submitted that whether the rules are made or not, the topic is covered by Parliamentary Legislation and to that extent the power of State Legislature ceased to exist. With reference to Rule 58, it was submitted that by amendment brought in 1960 Rules in 1980, the State Governments became competent to reserve areas for exploitation by Government or a Corporation established by any Central, State or Provincial Act or a government company within the meaning of Section 617 of the Companies Act. The Central Government could frame the above rule under its rule-making power in Section 13 of 1957 Act only because the topic of reservation was covered within the declaration under Section 2 of the 1957 Act and was well within the scope of "to the extent hereinafter provided".

SpotLaw

25. In respect of validity of Notification dated October 27, 2006 issued by the State Government, it was submitted that 2006 Notification seeks to reserve the area for "joint venture" but that is not permissible under Section 17A of the 1957 Act. Section 17A(2) mandates that the area should be reserved "with the approval of the Central Government" and there was no approval granted to the 2006 Notification. Moreover, 2006 Notification by its own words, is nothing but merely an informatory Notification having no legal significance or consequence.

26. Dr. Rajiv Dhavan, learned senior counsel made his submissions on behalf of Jharkhand Ispat. He vehemently contended that the 1962 Notification was wholly illegal and invalid as it was totally contrary to Rule 59 of 1960 Rules as it then stood which specifically allowed reservation for any purpose other than prospecting or mining for minerals. In this connection, he relied upon a decision of this Court in Janak Lal v. State of Maharashtra and Others [10].

27. Learned senior counsel referred to changes that occurred in 1957 Act and 1960 Rules with effect from February 10, 1987. He submitted that by virtue of Section17A(3) which was brought in 1987 the State Governments acquired power of reservation for specific areas with the approval of the Central Government. From April 13, 1988 under Rule 59(2) of the 1960 Rules, the Central Government could relax the provisions of sub- rule (1) in any special case. According to learned senior counsel, reservation under 1969 Notification was technically permissible because Rule 59 was amended in 1963 by removing 'no mining restriction' but reservations after 1980 and especially 1988 could be made only under a new statutory regime.

28. Dr. Rajeev Dhavan also based his argument on the doctrine of federalism and submitted that the State of Bihar had no legal power to reserve the area de hors the 1957 Act. He submitted that 1957 Act was wholly occupied field on the subject of mines and minerals and that ousts the state legislative and congruent executive power wholly and squarely. In support of his submissions, he referred to the decisions of this Court in Hingir-Rampur Coal Co.a , Baijnath Kadioc , State of Assam and others v. Om Prakash Mehta and others[11], State of W.B. v. Kesoram Industries Ltd. and others[12] and Sandur Manganese and Iron Ores Limited v. State of Karnataka and Others[13].

29. Dr. Rajeev Dhavan submitted that merely because State happens to be the owner of the land including mines, it does not give it power to mine or reserve outside the regime of 1957 Act and 1960 Rules. He submitted that Amritlal Nathubhai Shah's cased must be confined to its own facts. The decision in Amritlal Nathubhai Shahd was founded on the specific finding that the State's action was consistent with Rule 59; it does not test the proposition of a conflict between the State's power over land and the Union's take over of the field of mines

and minerals. Moreover, learned senior counsel would submit that Amritlal Nathubhai Shahd failed to take note of earlier Constitution Bench decisions of this Court. Learned senior counsel also submitted that the decision of this Court in Kesoraml has no application as the said decision deals with the State's power to tax.

30. Mr. Dhruv Mehta, learned senior counsel for Prakash submitted that prior to November 16, 1980, there was no power with the State Governments to reserve any area for exploitation by the Government or a Corporation established by Central or State Act or a government company. It was only by way of amendment to Rule 58 on November 16, 1980 that for the first time the State Governments were conferred power to reserve any area for exploitation by the Government or a Corporation established by the Central, State or Provincial Act or a government company. According to him, the question for consideration in the present context should be whether prior to 1980, the State had power either to 'prohibit mining' or to 'reserve mining for public sector undertaking'. In this regard, he referred to decisions of this Court in Baijnath Kadioc, D.K. Trivedi and Sons and Others v. State of Gujarat and Others[14], State of Tamil Nadu v. M/s. Hind Stone and Others[15] and Indian Metals and Ferro Alloys Ltd. v. Union of India Ors[16]. He submitted that in view of the above, 1962 Notification reserving iron ore area in the State of Bihar for exploitation of mineral in public sector was clearly beyond the power of the State. He submitted that the State did not have any inherent power to reserve any area for mining in view of the declaration made by Parliament under Section 2 of the 1957 Act and in any case Rule 59 of the 1960 Rules, as it originally stood, specifically excluded reservation with regard to prospecting or mining of mineral prior to June 9, 1963.

31. As regards 2006 Notification, Mr. Mehta submitted that the said Notification firstly, was not a fresh exercise of reservation as it refers to reservation already made by 1962 and 1969 Notifications. Secondly, even if it is assumed that 2006 Notification is a fresh order for reservation in exercise of the power under Section 17A(2) of the 1957 Act, yet the said Notification suffers from diverse infirmities, namely, (a) there is no approval by the Central Government and (b) being an exercise of subordinate legislation, it cannot be given retrospective effect. Reliance was placed by the learned senior counsel on Hukam Chand etc. v. Union of India Ors[17]. Central Government's Stand

32. Mr. Ashok Bhan, learned senior counsel for the Union of India referred to Entry 54 of the Union List, Entry 23 of the State List, Article 246 of the Constitution, various Sections of 1957 Act and Rules of 1960 Rules and submitted that Central Government having taken power on to itself by enacting 1957 Act, the legislative field relating to 'minerals — regulation and development' is occupied and the Central Government was the sole regulator. Mr. Ashok Bhan submitted that under the scheme of law, the State Government was denuded

of its power other than what flows from the 1957 Act. In matters of regulation of mines and development of minerals, according to Mr. Ashok Bhan, public interest is paramount. Reply on behalf of the State Government

33. Mr. Ajit Kumar Sinha, learned senior counsel for the State of Jharkhand, in reply, strongly contested the contentions of learned senior counsel appearing for the appellants. He vehemently contended that the State Government had the inherent power to reserve any area for exploitation as the owner of the land and minerals vested in it. He submitted that the Bihar Legislature enacted 1950 Bihar Act which received the assent of the President and came into force on September 25, 1950. Section 4(a) thereof vested all pre-existing estates or tenures including rights in mines and minerals absolutely in the State free from all encumbrances. 1950 Bihar Act has been held to be constitutionally valid by a decision of this Court in The State of Bihar v. Maharajadhiraja Sir Kameshwar Singh of Darbhanga and Ors.[18]. In any event, Mr. Ajit Kumar Sinha, learned senior counsel submitted that 1950 Bihar Act has been put in the Ninth Schedule of the Constitution and was, therefore, beyond the pale of challenge. Moreover, the sovereign executive power of the State Government under Article 298 of the Constitution to carry on any trade or business and to acquire, hold and dispose of property for any purpose comprehends and includes the power to reserve land for exploitation of its minerals in the public sector. He heavily relied upon the decisions of this Court in Amritlal Nathubhai Shahd, Indian Metals and Ferro Alloys Ltd.p and Bhupatrai Maganlal Joshi and Others v. Union of India and another[19] .

34. Mr. Ajit Kumar Sinha, leaned senior counsel submitted that the source of power for issuance of 1962, 1969 and 2006 Notifications is clearly traceable to the relevant statutory provisions. Learned senior counsel would submit that source of 1962 and 1969 Notifications issued by the then State of Bihar was traceable to Rule 59 of 1960 Rules as it then stood followed by amendment in that rule on July 9, 1963, while 2006 Notification is traceable to Section 17A(2) of 1957 Act read with Rule 59(1)(e) as inserted with effect from April 13, 1988.

35. Mr. Ajit Kumar Sinha, learned senior counsel submitted that even otherwise there was no conflict or encroachment by the State of any occupied field. The State has neither been divested nor barred nor prohibited by 1957 Act or 1960 Rules. Instead, the unfettered power of reservation vested with the State alone under Rule 59 of 1960 Rules from 1962 to 1987 and thereafter under Section 17A(2). According to him, after 1987 there is a concurrent power of reservation both with State Governments as well as Central Government as provided in Section 17A of the 1957 Act and Rule 59(1)(e) of the 1960 Rules. He relied upon decisions of this Court in Lord Krishna Textile Mills v. Its Workmen[20], Life Insurance Corporation of India v. Escorts Limited and others[21], Municipal Corporation for City of

Pune Ors. v. Bharat Forge Co. Ltd. Ors.[22] and High Court of Judicature for Rajasthan v. P.P. Singh and Another[23].

36. Mr. Ajit Kumar Sinha, learned senior counsel referred to the provisions of the 1957 Act, particularly Sections 2, 4(3), 4A, 10(1), 13(2)(e), 16(1)(b), 17(1), 17A(1)(A), 18A(6), 21(5), 28 and 30 to show that Parliament itself contemplated state legislation for vesting of lands containing mineral deposits in the State Government and Parliament did not intend to trench upon powers of State legislatures under Entry 18 of List II. He relied upon the decisions of this Court in State of Haryana and Another v. Chanan Mal and Others[24], Ishwari Khetan Sugar Mills (P) Limited Ors. v. State of Uttar Pradesh and Others[25] and Kesoraml. He heavily relied upon the expression employed in Entry 54, 'to the extent to which such regulation and development under the control of Union is declared by Parliament by law' and the expression 'to the extent hereinafter provided' in Section 2 of 1957 Act and submitted that what follows from this is that only when there is a bar or a prohibition in the law declared by the Parliament in the 1957 Act and/or the Rules made hereunder and if the State encroaches on the field covered/occupied then to that extent, the act or action of the State would be ultra virus. Thus, Mr. Ajit Kumar Sinha would submit that the power or competence of the state legislatures to enact laws or of the State Government to issue notification remains unaffected if the field is neither occupied nor disclosed nor prohibited. In this regard, he referred to few decisions of this Court, namely, Hingir-Rampur Coal Co.a, M.A. Tulloch Cob., Baijnath Kadioc, India Cement Limitede, Bharat Coking Coali, Orissa Cement Limitedf and Kesoraml .

37. Learned senior counsel would submit that the Central Government also upon examination of the applications made by the appellants rejected the proposals on the ground of reservation made by the then State of Bihar under 1962 and 1969 Notifications and, thus, it can be inferred that these Notifications received post facto approval from the Central Government. In this regard, learned senior counsel relied upon M/s Motilal Padampat Sugar Mills Co. Ltd. V. State of U.P. Ors.[26], Amrit Banaspati Ltd. and Another v. State of Punjab and Another[27] , State of Punjab v. Nestle India Ltd. and Another[28], M.P. Mathur and Others v. DTC and Others[29] and Sandur Manganese and Iron Ores Limitedm .

38. Mr. Ajit Kumar Sinha, learned senior counsel submitted that 1962 and 1969 Notifications issued by the then State of Bihar have been reiterated by the State Government on its formation by 2006 Notification. He referred to Section 85 of the Bihar Reorganization Act, 2000 that provides that the appropriate government may, before the expiration of two years adapt and/or modify the law and every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature. He, thus, submitted that by virtue of Section 85 of Bihar Reorganization Act, 2000 read with

Sections 84 and 86 thereof, it is clear that the existing law shall have effect till it is altered, repealed and/or amended. Interveners' view

39. Mr. Vikas Singh, Mr. Krishnan Venugopal and Mr. P.S. Narasimha, learned senior counsel, appeared for interveners. While adopting the arguments advanced on behalf of State of Jharkhand, Mr. Vikas Singh submitted that reservation of minerals is inherent right vested in the State. Mr. Krishnan Venugopal, learned senior counsel heavily relied upon the decision of this Court in Amritlal Nathubhai Shahd and submitted that the said decision was binding and not per incuriam as contended on behalf of the appellants. He submitted that many provisions in 1957 Act and 1960 Rules acknowledge that all minerals vest in the State and that power to reservation is contemplated by Rule 59 of 1960 Rules.

40. After this group of appeals was fully argued before us and the appeals were reserved for judgment, a Special Leave Petition, Geo-Minerals and Marketing (P) Ltd. v. State of Orissa Ors., arising out of the judgment of Orissa High Court in W.A. No. 6288/2006 came up for final disposal wherein one of the issues concerning reservation of mining area by the Government of Orissa for exploitation in public sector was found to be involved. We thought fit that learned senior counsel and counsel appearing in that matter were also heard so that we can have benefit of their view- point as well. Accordingly, we heard M/s. Harish Salve, K.K. Venugopal and R.K. Dwivedi, learned senior counsel, on the common legal aspect.

41. I would have preferred not to burden this judgment with the text of Entry 54 of List I, Entry 23 of List II and the relevant provisions contained in 1957 Act and 1960 Rules but reproduction of some of the provisions is necessary for having the point under consideration in proper perspective. Relevant Entries

42. Entry 54, List I, is as follows:

> "54. Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

43. Entry 23, List II, is as under:

> "23.Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union." Mines and Minerals (Regulation and Development) Act, 1948."

44. The Mines and Minerals (Regulation and Development) Act, 1948 (for short, '1948 Act') was enacted to provide for the regulation of mines and oilfields and for the development of the minerals under Entry 36 of the Government of India Act, 1935. It received the assent of

the Governor General on September 8, 1948 and came into effect from that date. Under 1948 Act, the Central Government framed Mineral Concession Rules, 1949.

45. 1948 Act was repealed by 1957 Act. The introduction of 1957 Act reads as follows:

> "In the Seventh Schedule of the Constitution in Union List entry 54 provides for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. On account of this provision it became imperative to have a separate legislation. In order to provide for the regulation of mines and the development of minerals, the Mines and Minerals (Regulation and Development) Bill was introduced in the Parliament. Mines and Minerals (Regulation and Development) Act, 1957 and the Amendments

46. 1957 Act came into effect on June 1, 1958. It has been amended from time to time.

47. Section 2 of the 1957 Act reads as follows: "S. 2. Declaration as to the expediency of Union control.-- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided."

48. Section 3(a),(c),(d),(e),(f), (g) and (h) defines 'minerals', 'mining lease', 'mining operations', 'minor minerals', 'prescribed' 'prospecting licence' and 'prospecting operations' in the 1957 Act as under:

> "3(a) "minerals" includes all minerals except mineral oils;
>
> (c)Mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;
>
> (d)mining operations" means any operations undertaken for the purpose of winning any mineral;
>
> (e)minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;
>
> (f) Prescribed" means prescribed by rules made under this Act;

(g) Prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;

(h) prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;"

49. The original Section 4 in 1957 Act read as follows: "S.4.

(1) No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made there under:

"Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement.

(2) No prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made there under."

50. In 1986, 1987 and 1999, Section 4 of the 1957 Act came to be amended. After these amendments, Section 4 reads as under: "S.4.- Prospecting or mining operations to be under licence or lease.—(1) [30][No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made there under]:

"Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

[31][Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, [32][the Atomic Minerals Directorate for Exploration and Research] of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of section 617 of the Companies Act, 1956:]

[33][Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.]

[34][(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.]

(2)[35][No reconnaissance permit, prospecting licence or mining lease] shall be grated otherwise than in accordance with the provisions of this Act and the rules made thereunder.

[36][(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under section 18, [37][undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease]."

51. Section 5 of the 1957 Act, as originally enacted, provided that no prospecting licence or mining lease should be granted by a State Government to any person unless the conditions prescribed therein were satisfied. It mandated previous approval of the Central Government before grant of prospecting licence or mining lease by the State Government.

52. The original Section 5 came to be amended in 1986, 1994 and 1999. After these amendments, Section 5 now provides that a State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless he satisfies the requisite conditions. The provision mandates 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.

53. Section 6 of 1957 Act provides for maximum area for which a prospecting licence or mining lease may be granted. Section 7 makes provision for the periods for which prospecting licence may be granted or renewed and Section 8 provides for periods for which mining lease may be granted or renewed.

54.Section 10 of the 1957 Act provides that application for reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned. Inter alia, it empowers the

concerned State Government to grant or refuse to grant the permit, licence or lease having regard to the provisions of 1957 Act or 1960 Rules.

55. The original Section 11 of the 1957 Act read as follows:

> "S.11.(1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person:
>
> Provided that the State Government is satisfied that the licensee has not committed any breach of the terms and conditions of the prospecting licence and is otherwise a fit person for being granted the mining lease.
>
> (2)Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later:
>
> Provided that where any such applications are received on the same day, the State Government, after taking into consideration the mattes specified in sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.
>
> (3) The matters referred to in sub-section (2) are the following :-
>
> (a) any special knowledge of, or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant;
>
> (b) The financial resources of the applicant;
>
> (c) The nature and quality of the technical staff employed or to be employed by the applicant;
>
> (d) Such other matters as may be prescribed.
>
> (4) 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 and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

56. The above provision was substituted by Act 38 of 1999 with effect from December 18, 1999. After substitution, Section 11 now reads as under:

> "S.11. Preferential right of certain persons.—(1) 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:
>
> Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,—
>
> (a)Has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;
>
> (b) Has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;
>
> (c) Has not become ineligible under the provisions of this Act; and
>
> (d)Has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.
>
> (2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:
>
> Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3)The matters referred to in sub-section (2) are the following:--

(a)any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant.

(b) The financial resources of the applicant;

(c) The nature and quality of the technical staff employed or to be employed by the applicant;

(d) The investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) Such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the Sate Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting license or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(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 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."

57. Section 13 of the 1957 Act empowers Central Government to make rules in respect of minerals. By virtue of the power conferred upon the Central Government under Section

13(2)(e), 1960 Rules have been framed for regulating the grant of, inter alia, mining leases in respect of minerals and for purposes connected therewith.

58. Section 14 states that the provisions of Sections 5 to 13 (both inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Section 15 empowers State Governments to make rules in respect of minor minerals.

59. Section 16 provides for power to modify mining leases granted before 25th October, 1949. The original sub-section (1) of Section 16 mandated that all mining leases granted before October 25, 1949 shall be brought into conformity with the provisions of 1957 Act and the Rules made under Sections 13 and 18 after the commencement of 1957 Act. Then it provided that if the Central Government was of the opinion that in the interest of mineral development it was expedient so to do, it might permit any person to hold one or more such mining leases covering in any one State a total area in excess of that specified in clause (b) of Section 6 or for a period exceeding that specified in sub-section (1) of Section 8. Sub- section (1) of Section 16 has been amended in 1972 and 1994.

60. By virtue of Section 17, the Central Government has been given special powers to undertake prospecting or mining operations in certain cases. Section 17(1) was amended in 1972. After amendment, Section 17(1) reads as under :

> "S. 17.- Special powers of Central Government to undertake prospecting or mining operations in certain lands.—(1) The provisions of this section shall apply in respect of land in which the minerals vest in the Government of a State or any other person."

61. Section 17A was inserted in the 1957 Act by Act 37 of 1987. Thereafter, subsection (1A) was added in Section 17A by Act 25 of 1994. Section 17A, after its amendment in 1994, reads as follows : —S. 17A. Reservation of area for purposes of conservation.—(1) The Central Government, with a view to conserving any mineral and after consultation with the State Government, may reserve any area not already held under any prospecting licence or mining lease and, where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

> "(1A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

(2)The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved.

(3)Where in exercise of the powers conferred by sub- section (1A) or sub¬section (2) the Central Government or the State Government, as the case may be, undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable, to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence or mining lease."

62. Section 18 states that it shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may make rules. Sub¬section (2) of Section 18 empowers the Central Government to make rules and provide for the matters stated in clause (a) to clause (q).

63. Section 18A was inserted in 1957 Act to enable the Central Government to authorize Geological Survey of India to carry out necessary investigation for the purpose of obtaining information with regard to availability of any mineral in or under any land in relation to which any prospecting licence or mining lease has been granted by a State Government or by any other person. Proviso that follows sub-section (1) of Section 18A provides that in cases of prospecting licences or mining leases granted by a State Government, no such authorization shall be made except after consultation with the State Government. To the extent Section 18A is relevant, it is reproduced as under :

"S. 18A. Power to authorize Geological Survey of India, etc., to make investigation.—(1) Where the Central Government is of opinion that for the conservation and development of minerals in India, it is necessary to collect as precise information as possible with regard to any mineral available in or under any land in relation to which any prospecting licence or mining lease has been granted, whether by the State Government or by any other person, the Central Government may authorize the Geological Survey of India, or such other authority or agency as it may

specify in this behalf, to carry out such detailed investigation for the purpose of obtaining such information as may be necessary:

"Provided that in the cases of prospecting licences or mining leases granted by a State Government, no such authorization shall be made except after consultation with the State Government. xxx xxx xxx xxx xxx

(6)The costs of the investigation made under this section shall be borne by the Central Government. Provided that where the State Government or other person in whom the minerals are vested or the holder of any prospecting licence or mining lease applies to the Central Government to furnish to it or him a copy of the report submitted under sub- section (5), that State Government or other person or the holder of a prospecting licence or mining lease, as the case may be, shall bear such reasonable part of the costs of investigation as the Central Government may specify in this behalf and shall, on payment of such part of the costs of investigation, be entitled to receive from the Central Government a true copy of the report submitted to it under sub-section (5)."

64. Section 19 provides that any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of 1957 Act or any rules or orders made thereunder shall be void and of no effect. Section 19 underwent amendments in 1994 and 1999 but these amendments are not of much relevance for the purposes of these matters.

65. By virtue of Section 29, the rules made or purporting to have been made under the 1948 Act insofar as consistent with the matters provided in 1957 Act were made to continue until superseded by the rules made under the 1957 Act. Thus, the rules framed under 1948 Act continued to operate until 1960 Rules were framed. Mineral Concession Rules, 1960 and the Amendments

66. 1960 Rules were framed by the Central Government in exercise of the powers conferred by Section 13 of the 1957 Act. These Rules were published on November 11, 1960. As noticed above, until these Rules came into effect, the Rules framed under 1948 Act remained operative.

67. By virtue of Rule 8, the provisions of Chapters II, III and IV have been made applicable to the grant of reconnaissance permits as well as grant and renewal of prospecting licences and mining leases in respect of the land in which the minerals vest in the State Government.

68. Rule 9 provides that an application for a prospecting licence and its renewal in respect of land in which the minerals vest in Government shall be made to the State Government in

Form B and Form D respectively. The State Government is empowered to relax the provisions of clause (d) of sub-rule (2) of Rule 9.

69. Chapter-IV deals with grant of mining leases in respect of land in which the minerals vest in the Government. Sub-rule (1) of Rule 22 provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I. Sub-rule (4)of Rule 22 provides that on receipt of the application for the grant of a mining lease, the State Government shall take decision to grant precise area and communicate such decision to the applicant. The applicant, on receipt of communication from the State Government of the precise areas to be granted, is required to submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. The applicant is required to submit the mining plan, duly approved by the Central Government or by an officer duly authorized by the Central Government, to the State Government to grant mining lease over that area. Sub¬rule (4A) of Rule 22 is a non-obstante clause and empowers the State Government to approve mining plan of open cast mines (mines other than the underground mines) in respect of non-metallic or industrial minerals set out in clauses (i) to (xxix) in their respective territorial jurisdiction. Such power of approval of mining plan has to be exercised by the State Government through officer or officers having qualification, experience and post and pay-scale as set out therein. Under sub-rule (4B) of Rule 22, the Central Government or the State Government has to dispose of the application for approval of mining plan within a period of ninety days from the date of receiving such application.

70. Rule 22D substituted by Notification dated January 17, 2000 makes provision for a minimum size of the mining lease.

71. Rule 26 that was substituted by Notification dated July 18, 1963 was amended in 1979, 1988, 1991 and 2002. Rule 26 now reads as under:

> “26. Refusal of application for grant and renewal of mining lease.—
>
> (1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.
>
> (2) An application for the grant or renewal of a mining lease made under rule 22 or rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (d),(e),(f),(g) and (h) of clause (i) of sub-rule 22.(3) Where it appears that the

application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant."

72. Rule 31 provides for the time period within which lease is to be executed. It also provides for the date of commencement of the period.

73. Rule 58, as it originally stood, read as under:

"58. Availability of areas for regrant to be notified. (1) No area which was previously held or which is being held under a prospecting licence or a mining lease as the case may be, or in respect of which the order granting licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31, shall be available for grant unless- (a) an entry to the effect made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be in ink; and (b) the date from which the area shall be available for grant is notified in the Official Gazette at least thirty days in advance. (2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case."

Rule 58 was amended on November 16, 1980 and the amended Rule 58 read as under:

"58. Reservation of area for exploitation in the public sector etc.- The State Government may, by notification in the Official Gazette, reserve any area for the exploitation by the Government, a Corporation established by the Central, State or Provincial Act or a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956). Later on, Rule 58 has been omitted."

74. Rule 59, as originally framed in 1960 Rules, read as under:

"59. Availability of certain areas for grant to be notified.- In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, other than prospecting or mining for minerals, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in rule 58. The original Rule 59 was amended vide Notification dated July 9, 1963. After the said amendment, the Rule read as under:

“59.-Availability of certain areas for grant to be notified. - In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in rule 58. Rule 59 was again amended in 1980. After amendment, the said rule read as under:

“59. Availability of area for regrant to be notified-(1) No area-

(a) which was previously held or which is being held under a prospecting licence or a mining lease; or (b) in respect of which an order had been made for the grant of a prospecting licence or mining lease, but the applicant has died before the grant of the licence or the execution of lease, as the case may be; or (c) in respect of which the order granting a licence or lease has been revoked under sub-rule (1) of rule 15 or sub-rule (1) of rule 31; or (d) in respect of which a notification has been issued under sub-section (2) or sub-section (4) of section 17; or (e) which has been reserved by Government under rule 58, shall be available for grant unless- (1) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as the case may be, in ink; and(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

“Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under rule 58 is proposed to be granted to a Government Company, no notification under clause (ii) shall be required to be issued. (2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case. Rule 59 was further amended on April 13, 1988. The amended Rule 59 reads as under:

“Availability of area for regrant to be notified: -

“(1) No area- (a) which was previously held or which is being held under a prospecting licence or a mining lease; or (b) in respect of which an order had been made for the grant of a prospecting licence or mining lease, but the applicant has died

before the grant of the licence or the execution of the lease, as the case may be; or (c) in respect of which the order granting a licence or lease has been revoked, under sub-rule (1) of rule 15 or sub-rule (1) of rule 31; or (d) in respect of which a notification has been issued under sub section (2) or sub-section (4) of section 17; or (e) which has been reserved by State Government under Rule 58, or under section 17-A of the Act shall be available for grant unless-

(1) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as - the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication, of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under Rule 58 or under section 17-A of the Act to be granted to a Government Company, no notification under clause (ii) shall be required to be issued;

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of sub-rule (1) in any special case.

75. Rule 60 of the 1960 Rules has been amended twice, first vide Notification dated January 16, 1980 and thereafter by the Notification dated January 17, 2000. After amendment, Rule 60 reads as under :

"60.Premature applications.—Applications for the grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under rule 59 shall, if— (a) no notification has been issued, under that rule; or (b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall not be entertained."

76. Rule 63 of the 1960 Rules provides that where previous approval of the Central Government is required under the 1957 Act or the 1960 Rules, the application for such approval shall be made to the Central Government through the State Government.

77. The above provisions give us complete view of the statutory framework and legal regime with regard to regulation of mines and mineral development and the role and powers of the State Governments in that regard. Decisions Hingir-Rampur Coal Co. Ltd.

78. A Constitution Bench of this Court in Hingir-Rampur Coal Co. Ltd.a was concerned with the question of the validity of Orissa Mining Areas Development Fund Act, 1952. Inter-alia, the contention raised on behalf of the petitioners was that even if the cess imposed thereunder was a 'fee' relatable to Entries 23 and/or 66 of List II, the same would be ultra vires Entry 54 of List I in light of declaration made in Section 2 of the 1948 Act which read, 'it is hereby declared that it is expedient in the public interest that the Central Government should take under its control the regulation of mines and oilfields and the development of minerals to the extent hereinafter provided' and other provisions.

79. The majority view considered the above contention as follows:

> "23. The next question which arises is, even if the cess is a fee and as such may be relatable to Entries 23 and 66 in List II its validity is still open to challenge because the legislative competence of the State Legislature under Entry 23 is subject to the provisions of List I with respect to regulation and development under the control of the Union; and that takes us to Entry 54 in List I. This Entry reads thus: —Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest". The effect of reading the two Entries together is clear. The jurisdiction of the State Legislature under Entry 23 is subject to the limitation imposed by the latter part of the said Entry. If Parliament by its law has declared that regulation and development of mines should in public interest be under the control of the Union, to the extent of such declaration the jurisdiction of the State Legislature is excluded. In other words, if a Central Act has been passed which contains a declaration by Parliament as required by Entry 54, and if the said declaration covers the field occupied by the impugned Act the impugned Act would be ultra vires, not because of any repugnance between the two statutes but because the State Legislature had no jurisdiction to pass the law. The limitation imposed by the latter part of Entry 23 is a limitation on the legislative competence of the State Legislature itself. This position is not in dispute. If it is held that this Act contains the declaration referred to in

Entry 23 there would be no difficulty in holding that the declaration covers the field of conservation and development of minerals, and the said field is indistinguishable from the field covered by the impugned Act. What Entry 23 provides is that the legislative competence

of the State Legislature is subject to the provisions of List I with respect to regulation and development under the control of the Union, and Entry 54 in List I requires a declaration by Parliament by law that regulation and development of mines should be under the control of the Union in public interest. Therefore, if a Central Act has been passed for the purpose of providing for the conservation and development of minerals, and if it contains the requisite declaration, then it would not be competent to the State Legislature to pass an Act in respect of the subject- matter covered by the said declaration. In order that the declaration should be effective it is not necessary that rules should be made or enforced; all that this required is a declaration by Parliament that it is expedient in the public interest to take the regulation and development of mines under the control of the Union. In such a case the test must be whether the legislative declaration covers the field or not. Judged by this test there can be no doubt that the field covered by the impugned Act is covered by the Central Act LIII of 1948. It still remains to consider whether S. 2 of the said Act amounts in law to a declaration by Parliament as required by Article 54. When the said Act was passed in 1948 the legislative powers of the Central and the Provincial Legislatures were governed by the relevant Entries in the Seventh Schedule to the Constitution Act of 1935. Entry 36 in List I corresponds to the present Entry 54 in List I. It reads thus: "Regulation of Mines and Oil Fields and mineral development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expedient in public interest". It would be noticed that the declaration required by Entry 36 is a declaration by Dominion law. Reverting then to S. 2 of the said Act it is clear that the declaration contained in the said section is put in the passive voice; but in the context there would be no difficulty in holding that the said declaration by necessary implication has been made by Dominion law. It is a declaration contained in a section passed by the Dominion Legislature and so it is obvious that it is a declaration by a Dominion law, but the question is: Can this declaration by a Dominion law be regarded constitutionally as declaration by Parliament which is required by Entry 54 in List I. The majority view found that the declaration by Parliament required under Entry 54, List I was absent as the declaration under Section 2 of the 1948 Act by the Dominion Legislature was not held equivalent to declaration by the Parliament under Section 2 of the 1957 Act. M.A. Tulloch Co."

> 80. In M.A. Tulloch Co.b , a Constitution Bench of this Court was concerned with legality of certain demands of fee under the Orissa Mining Areas Development Fund Act, 1952 (Orissa Act). The Constitution Bench considered the question, 'whether the extent of control and regulation provided by the 1957 Act takes within its fold the area or the subject covered by Act 27 of 1952 Act'. The High Court had held that fee imposed by the Orissa Act was rendered ineffective in view of the 1957 Act. The

State of Orissa was in appeal from that judgment. The Court in para 5 and para 6 of the Report noted as follows:

“5. Before proceeding further it is necessary to specify briefly the legislative power on the relevant topic, for it is on the precise wording of the entries in the 7th Schedule to the Constitution and the scope, purpose and effect of the State and the Central legislations which we have referred to earlier that the decision of the point turns. Article 246(1) reads:

“Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List)” and we are concerned in the present case with the State power in the State field. The relevant clause in that context is clause (3) of the Article which runs:

“Subject to clauses (1) and (2), the legislature of any State ... has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the seventh Schedule (in this Constitution referred to as the ‘State List').” Coming now to the Seventh Schedule, Entry 23 of the State List vests in the State legislature power to enact laws on the subject of ‘regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union'. It would be seen that “subject” to the provisions of List I the power of the State to enact Legislation, on the topic of “mines and mineral development” is plenary. The relevant provision in List I is, as already noticed, Entry 54 of the Union List. It may be mentioned that this scheme of the distribution of legislative power between the Centre and the States is not new but is merely a continuation of the State of affairs which prevailed under the Government of India Act, 1935 which included a provision on the lines of Entry 54 of the Union List which then bore the number Item 36 of the Federal List and an entry corresponding to Entry 23 in the State List which bore the same number in the Provincial Legislative List. There is no controversy that the Central Act has been enacted by Parliament in exercise of the legislative power contained in Entry 54 or as regards the Central Act containing a declaration in terms of what is required by Entry 54 for it enacts by Section 2:

“It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.” It does not need much argument to realise that to the extent to which the Union Government had taken under “its control” “the regulation

and development of minerals" so much was withdrawn from the ambit of the power of the State legislature under Entry 23 and legislation of the State which had rested on the existence of power under that entry would to the extent of that —control" be superseded or be rendered ineffective, for here we have a case not of mere repugnancy between the provisions of the two enactments but of a denudation or deprivation of State legislative power by the declaration which Parliament is empowered to make and has made.It would, however, be apparent that the States would lose legislative competence only to the —extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the public interest". The crucial enquiry has therefore to be directed to ascertain this —extent" for beyond it the legislative power of the State remains unimpaired. As the legislation by the State is in the case before us the earlier one in point of time, it would be logical first to examine and analyse the State Act and determine its purpose, width and scope and the area of its operation and then consider to what —extent" the Central Act cuts into it or trenches on it. In para 9, the question under consideration was whether 'the extent of control and regulation' provided by 1957 Act took within its fold the area or the subject covered by the Orissa Act. This Court in para 11 observed that the matter was concluded by earlier decision in Hingir-Rampur Coal Co. Ltd.a. While following Hingir-Rampur Coal Co. Ltd.a, it was observed in para 12 of the Report that sub-sections (1) and (2) of Section 18 of 1957 Act were wider in scope and amplitude and conferred larger powers on the Central Government than the corresponding provisions of the 1948 Act. Baijnath Kadio

81. In Baijnath Kadioc , the validity of proviso (2) to Section 10(2) added by Bihar Land Reforms (Amendment) Act, 1964 (Bihar Act 4 of 1965) and the operation of Rule 20(2) added on December 10, 1964 by a Notification of Governor in the Bihar Minor Mineral Concession Rules, 1964 were in issue. The Court referred to the Government of India Act, 1935, 1948 Act and 1957 Act in light of Entry 54 of List I and Entry 23 of List II and the earlier decisions in Hingir-Rampur Coal Co. Ltd.a and M.A. Tulloch Co.b and observed as under :

"13 Entry54 of the Union List speaks both of Regulation of mines and minerals development and Entry 23 is subject to Entry 54. It is open to Parliament to declare that it is expedient in the public interest that the control should rest in Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest. Once this declaration is made and the extent laid down, the subject of legislation to the extent laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration and trenching upon the field disclosed in the declaration must necessarily

be unconstitutional because that field is abstracted from the legislative competence of the State Legislature. This proposition is also self-evident that no attempt was rightly made to contradict it. There are also two decisions of this Court reported in the Hingir Rampur Coal Co. Ltd. Ors. v. State of Orissa Ors. and State of Orissa v. M.A. Tulloch and Co. in which the matter is discussed. The only dispute, therefore, can be to what extent the declaration by Parliament leaves any scope for legislation by the State Legislature. If the impugned legislation falls within the ambit of such scope it will be valid; if outside it, then it must be declared invalid. 14. The declaration is contained in Section 2 of Act 67 of 1957 and speaks of the taking under the control of the Central Government the regulation of mines and development of minerals to the extent provided in the Act itself. We have thus not to look outside Act 67 of 1957 to determine what is left within the competence of the State Legislature but have to work it out from the terms of that Act. In this connection we may notice what was decided in the two cases of this Court. In the Hingir Rampur case a question had arisen whether the Act of 1948 so completely covered the field of conservation and development of minerals as to leave no room for State legislation. It. was held that the declaration was effective even if the rules contemplated under the Act of 1948 had not been made. However, considering further whether a declaration made by a Dominion Law could be regarded as a declaration made by Parliament for the purpose of Entry 54, it was held that it could not and there was thus a lacuna which the Adaptation of Laws Order, 1950 could not remove. Therefore, it was held that there was room for legislation by the State Legislature. 15. In the M.A. Tulloch case the firm was working a mining lease granted under the Act of 1948. The State Legislature of Orissa then passed the Orissa Mining Areas Development Fund Act, 1952 and levied a fee for the development of mining areas within the State. After the provisions came into force a demand was made for payment of fees due from July 1957 to March 1958 and the demand was challenged. The High Court held that after the coming into force of Act 67 of 1957 the Orissa Act must be held to be non existent. It was held on appeal that since Act 67 of 1957 contained the requisite declaration by Parliament under Entry 54 and that Act covered the same field as the Act of 1948 in regard to mines and mineral development, the ruling in Hingir Rampur's case applied and as Sections 18(1) and (2) of the Act 67 of 1957 were very wide they ruled out legislation by the State Legislature. Where a superior legislature evinced an intention to cover the whole field, the enactments of the other legislature whether passed before or after must be held to be overborne. It was laid down that inconsistency could be proved not by a detailed comparison of the provisions of the conflicting Acts but by the mere existence of two pieces of legislation. As Section 18(1) covered the entire field, there was no scope for the argument that till rules were framed under that Section, room

was available.”

82. Amritlal Nathubhai Shah In Amritlal Nathubhai Shahd, a three-Judge Bench of this Court was concerned with an issue similar to the controversy presented before us. That was a case relating to grant of mining leases for bauxite in the reserved areas in the State of Gujarat. On December 31, 1963, the Government of Gujarat issued a Notification intimating that lands in all talukas of Kutch district and in Kalyanpur taluka of Jamnagar district had been reserved for exploitation of bauxite in the public sector. By another Notification of February 26, 1964 in respect of all areas of Jamnagar and Junagarh districts, the exploitation of bauxite was reserved in the public sector. The appellants therein made applications to the Government of Gujarat for grant of mining leases for bauxite in the reserved areas. Though there were no other applications, the State Government rejected the applications of the appellants on the ground that areas had already been notified as reserved for the public sector. The appellants, aggrieved by the order of the State Government moved the Central Government invoking its revisional jurisdiction. The Central Government rejected the revision applications. The appellants then moved the High Court but they were unsuccessful there and from the common judgment of the High Court and the certificate granted by it, the matter reached this Court. The Court considered Entry 54 of List I, declaration made by Parliament in Section 2 of 1957 Act and State Legislature’s power under Entry 23 of List II, and observed that in pursuance of its exclusive power to make laws with respect to the matters enumerated in Entry 54 of List I, Parliament specifically declared in Section 2 of the 1957 Act 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 provided in the Act. The State Legislature’s power under Entry 23 of List II was, thus, taken away and the regulation of mines and development of minerals had to be in accordance with 1957 Act and 1960 Rules. While saying so, this Court held as follows:

> “The mines and the minerals in question (bauxite) were, however, in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the —owner of minerals” within its territory, and the minerals “vest” in it. There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the —inherent right to reserve any particular area for exploitation in the public sector”. It is therefore quite clear that, in the absence of any law or contract etc. to the contrary, bauxite, as a mineral, and the mines thereof, vest in the State of Gujarat and no person has any right to exploit it otherwise then in accordance with the provisions of the Act and the Rules. Section 10 of the Act and Chapters II, III and IV of the Rules, deal with the grant of prospecting licences and mining leases in the land in

which the minerals vest in the Government of a State. That was why the appellants made their applications to the State Government."

83. In Amritlal Nathubhai Shahd, this Court referred to Section 4 of the 1957 Act and held that there was nothing in 1957 Act or 1960 Rules to require that the restrictions imposed by Chapters II,III and IV of the 1960 Rules would be applicable even if State Government itself wanted to exploit a mineral for, it was its own property. The Court held:

> "4There is therefore no reason why the State Government could not, if it so desired, —reserve" any land for itself, for any purpose, and such reserved land would then not be available for the grant of a prospecting licence or a mining lease to any person."

84. The Court then considered Section 10 of 1957 Act and held as follows:

> "5 The section is therefore indicative of the power of the State Government to take a decision, one way or the other, in such matters, and it does not require much argument to hold that that power included the power to refuse the grant of a licence or a lease on the ground that the land in question was not available for suchgrant by reason of its having been reserved by the State Government for any purpose."

85. With reference to Section 17, particularly, sub-sections (2) and (4) thereof, the Court held that the said provisions did not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to anyone else and the State Government's authority to reserve any area for itself was not taken away. It was further held :

> "6As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it. But quite apart from that, we find that Rule 59 of the Rules, which have been made under Section 13 of the Act, clearly contemplates such reservation by an order of the State Government "

86. In Amritlal Nathubhai Shahd, the Court also considered Rules 58, 59 and 60 of the 1960 Rules and it was observed that it was not permissible for any person to apply for a licence or a lease in respect of a reserved area until after it becomes available for such grant. It was held on the facts of the case that the areas under consideration had been reserved by the State Government for the purpose stated in its notifications and as those lands did not become available for the grant of prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature and the Central Government was also justified in rejecting the revision applications which were filed against the orders of rejection passed by the State Government.

87. In Chanan Malx, a four-Judge Bench of this Court was concerned with constitutional validity of Haryana Minerals (Vesting of Rights) Act, 1973 (for short, 'Haryana Act;). One of the contentions in challenging the Haryana Act was that enactment was beyond the competence of the State Legislature inasmuch as the filed in which the Haryana Act operated was necessarily occupied by the provisions of 1957 Act under Entry 54 of the Union List (List I) of the Seventh Schedule to the Constitution. The Bench considered extensively the provisions contained in the 1957 Act and earlier decisions of this Court in Hingir-Rampur Coal Co Ltd.a, M.A. Tulloch Companyb and Baijnath Kadioc . The Court then referred to Section 16(1)(b) and Section 17 of the 1957 Act and held as under :

> "38. We are particularly impressed by the provisions of Sections 16 and 17 as they now stand. A glance at Section 16(1)(b) shows that the Central Act 67 of 1957 itself contemplates vesting of lands, which had belonged to any proprietor of an estate or tenure holder either on or after October 25, 1949, in a State Government under a State enactment providing for the acquisition of estates or tenures in land or for agrarian reforms. The provision lays down that mining leases granted in such land must be brought into conformity with the amended law introduced by Act 56 of 1972. It seems to us that this clearly means that Parliament itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government. It only required that rights to mining granted in such land should be regulated by the provisions of Act 67 of 1957 as amended. This feature could only be explained on the assumption that Parliament did not intend to trench upon powers of State legislatures under Entry 18 of List II, read with Entry 42 of List III. Again, Section 17 of the Central Act 67 of 1957 shows that there was no intention to interfere with vesting of lands in the States by the provisions of the Central Act."

Ishwari Khetan Sugar Mills

88. In Ishwari Khetan Sugar Millsy although question related to constitutional validity of U.P. Sugar Undertakings (Acquisition) Act, 1971 enacted by the State of U.P. and different entries in List I and List II were involved but with reference to the declaration made in Section 2 of the Industries (Development and Regulation) Act, 1951 (for short, 'IDR Act') vis--vis the State Act under challenge, the majority judgment relying upon the earlier decisions of this Court in Baijnath Kadioc and Chanan Malx, held that to the extent the Union acquired control by virtue of declaration in Section 2 of the IDR Act, as amended from time to time, the power of the State Legislature under Entry 24 of List II to enact any legislation in respect of declared industry so as to encroach upon the field of control occupied by IDR Act would be taken away. It was held that 1957 Act only required that rights to

mining granted in such land should be regulated by the provisions contained therein. M/s. Hind Stone.

89. In M/s. Hind Stoneo, the question under consideration was about the validity of Rule 8-C of the Tamil Nadu Minor Mineral Concession Rules, 1959 which provided for lease for quarries in respect of black granite to the government corporation or by the government itself and that from December 7, 1977 no lease for quarrying black granite should be granted to private persons. The matter arose out of the application for renewal of lease. The Court considered Entry 23 of List II and Entry 54 of List I of Seventh Schedule and the earlier decisions of this Court in Hingir-Rampur Coal Co.a, M.A. Tulloch Companyb and Baijnath Kadioc. The Court made the following general observations with regard to minerals and natural resources and the scheme of 1957 Act:

> "Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognized by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957. We have already referred to its salient provisions. Section 18, we have noticed, casts a special duty on the Central Government to take necessary steps for the conservation and development of minerals in India. Section 17 authorises the Central Government itself to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. Section 4-A empowers the State Government on the request of the Central Government, in the case of minerals other than minor minerals, to prematurely terminate existing mining leases and grant fresh leases in favour of a Government company or corporation owned or controlled by government, if it is expedient in the interest of regulation of mines and mineral development to do so. In the case of minor minerals, the State Government is similarly empowered, after consultation with the Central Government. The public interest which induced Parliament to make the declaration contained in Section 2 of the Mines and Minerals (Regulation and Development) Act, 1957, has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals. Parliament's policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of minerals, with a view to secure maximum benefit to the community. There are clear signposts to lead and guide the subordinate legislating authority in the matter of the making of rules.

> Viewed in the light shed by the other provisions of the Act, particularly Sections 4-A, 17 and 18, it cannot be said that the rule-making authority under Section 15 has exceeded its powers in banning leases for quarrying black granite in favour of private parties and in stipulating that the State Government themselves may engage in quarrying black granite or grant leases for quarrying black granite in favour of any corporation wholly owned by the State Government. To view such a rule made by the subordinate legislating body as a rule made to benefit itself merely because the State Government happens to be the subordinate legislating body, is, but, to take too narrow a view of the functions of that body "

90. The Court then considered Rule 8-C in light of the statement made in the counter affidavit filed by the State of Tamil Nadu and it was held that Rule 8-C was made in bona fide exercise of the rule making power of the State Government. In paragraph 10 of the Report, the Court stated thus:

> "One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was ultra vires Section 15. Well- known cases on the subject right from Municipal Corporation of the City of Toronto v. Virgo [1896 AC 88] and Attorney-General for Ontario v. Attorney-General for the Dominions [1896 AC 348] up to State of U.P. v. Hindustan Aluminium Corporation Ltd. [1979 (3) SCC 229] were brought to our attention. We do not think that "regulation" has that rigidity of meaning as never to take in "prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J. in G.K. Krishnan v. State of Tamil Nadu [1975 (1) SCC 375]: "The word 'regulation' has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied." In modern statutes concerned as they are with economic and social activities, "regulation" must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from the private sector. More so in a welfare State. It was pointed out by the Privy Council in Commonwealth of Australia v. Bank of New South Wales [1950 AC 235]— and we agree with what was stated therein — that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it

might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act. D.K. Trivedi and Sons."

91. In D.K. Trivedi and Sonsn, this Court was concerned with the constitutional validity of Section 15(1) of 1957 Act; the power of the State Governments to make rules under that Section to enable them to charge dead rent and royalty in respect of leases of minor minerals granted by them and enhance the rates of dead rent and royalty during the subsistence of such lease, the validity of Rule 21-B of the Gujarat Minor Mineral Rules, 1966 and certain notifications issued by the Government of Gujarat under Section 15 amending the said Rules so as to enhance the rates of royalty and dead rent in respect of leases of minor minerals. The Court traced the legislative history of the enactment; referred to Baijnath Kadioc and in paragraph 27 of the Report (Pgs. 46-47) observed as follows:

"The 1957 Act is made in exercise of the powers conferred by Entry 54 in the Union List. The said Entry 54 and Entry 23 in the State List fell to be interpreted by a Constitution Bench of this Court in Baijnath Kedia v. State of Bihar. In that case this Court held that Entry 54 in the Union List speaks both of regulation of mines and mineral development and Entry 23 in the State List is subject to Entry 54. Under Entry 54 it is open to Parliament to declare that it is expedient in the public interest that the control in these matters should vest in the Central Government. To what extent such a declaration can go is for Parliament to determine and this must be commensurate with public interest but once such declaration is made and the extent of such regulation and development laid down the subject of the legislation to the extent so laid down becomes an exclusive subject for legislation by Parliament. Any legislation by the State after such declaration which touches upon the field disclosed in the declaration would necessarily be unconstitutional because that field is extracted from the legislative competence of the State legislature. In that case the court further pointed out that the expression "under the control of the Union" occurring in Entry 54 in the Union List and Entry 23 in the State List did not mean "control of the Union Government" because the Union consists of three limbs, namely, Parliament, the

Union Government and the Union Judiciary, and the control of the Union which is to be exercised under the said two entries is the one to be exercised by Parliament, namely, the legislative organ of the Union, which is, therefore, the control by the Union. The court further held that the Union had taken all the power in respect of minor minerals to itself and had authorized the State Governments to make rules for the regulation of leases and thus by the declaration made in Section 2 and the enactment of Section 15 the whole of the field relating to minor minerals came within the jurisdiction of Parliament and there was no scope left to the State legislatures to make any enactment with respect thereto. The court also held that by giving the power to the State Governments to make rules, the control of the Union was not negatived but, on the contrary, it established that the Union was exercising the control. One of the contentions raised in that case was that Section 15 was unconstitutional as the delegation of legislative power made by it to the rule-making authority was excessive. This contention was, however, not decided by the court as the appeals in that case were allowed on other points. While dealing with the meaning of the word 'regulation', particularly the expression, 'the act of regulating, or the state of being regulated' and Entry 54 in the Union List, this Court stated in paragraph 31 of the Report (Pgs. 48-49) as follows:

" Entry 54 in the Union List uses the word —regulation". —Regulation" is defined in the Shorter Oxford English Dictionary, 3rd Edn., as meaning "the act of regulating, or the state of being regulated". Entry 54 reproduces the language of Entry 36 in the Federal Legislative List in the Government of India Act, 1935, with the omission of the words —and oilfields". When the Constitution came to be enacted, the framers of the Constitution knew that since early days mines and minerals were being regulated by rules made by Local Governments. They also knew that under the corresponding Entry 36 in the Federal Legislative List, the 1948 Act had been enacted and was on the statute book and that the 1948 Act conferred wide rule-making power upon the Central Government to regulate the grant of mining leases and for the conservation and development of minerals. It also knew that in the exercise of such rule-making power the Central Government had made the Mineral Concession Rules, 1949, and that by Rule 4 of the said Rules the extraction of minor minerals was left to be regulated by rules to be made by the Provincial Governments. Thus, the makers of the Constitution were not only aware of the legislative history of the topic of mines and minerals but were also aware how the Dominion legislature had interpreted Entry 36 in the Federal Legislative List in enacting the 1948 Act. When the 1957 Act came to be enacted, Parliament knew that different State Governments had, in pursuance of the provisions of Rule 4 of the Mineral Concession Rules, 1949, made rules for regulating

the grant of leases in respect of minor minerals and other matters connected therewith and for this reason it expressly provided in sub-section (2) of Section 15 of the 1957 Act that the rules in force immediately before the commencement of that Act would continue in force until superseded by rules made under sub- section (1) of Section 15. Regulating the grant of mining leases in respect of minor minerals and other connected matters was, therefore, not something which was done for the first time by the 1957 Act but followed a well recognized and accepted legislative practice. In fact, even so far as minerals other than minor minerals were concerned, what Parliament did, as pointed out earlier, was to transfer to the 1957 Act certain provisions which had until then been dealt with under the rule- making power of the Central Government in order to restrict the scope of subordinate legislation .Then in paragraph 33 of the Report (Pgs. 50-51), the Court with reference to sub-section (2) of Section 13 of the 1957 Act further held:

"33The opening clause of sub-section (2) of Section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2)of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Governments can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith". When Section 14 directs that "The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters contained in those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (e) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to

minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed “Rules for regulating the grant of prospecting licences and mining leases”. These three sections have to be read together. In providing that Section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The ambit of the power under Section 13 and under Section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under Section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 to 12 while framing their own rules under Section 15(1). Janak Lal

92. In Janak Lalj, this Court had an occasion to consider meaning and scope of Rule 59 of 1960 Rules. The Court considered Rule 59, as it stood prior to amendment in 1963, and the provision after amendment. In paragraph 6 of the Report (Pg. 123) the Court held as under :

“6. Earlier the expression “reserved for any purpose” was followed by the words “other than prospecting or mining for minerals”, which were omitted by an amendment in 1963. Mr. Dholakia, learned counsel for the respondents, appearing in support of the impugned judgment, has contended that as a result of this amendment the expression must now be confined to cases of prospecting or mining for minerals and all other cases where the earlier reservation was for agricultural, industrial or any other purpose must be excluded from the scope of the rule. We are not persuaded to accept the suggested interpretation. Earlier the only category which was excluded from the application of Rule 59 was prospecting or mining leases and the effect of the amendment is that by omitting this exception, prospecting and mining leases are also placed in the same position as the other cases. We do not see any reason as to why by including in the rule prospecting and mining leases, the other cases to which it applied earlier would get excluded. The result of the amendment is to extend the rule and not to curtail its area of operation. The words —any purpose” is of wide connotation and there is no reason to restrict its meaning. The Court clarified that intention of

amendment in 1963 was to extend the rule and not to curtail its area of operation. Bharat Coking Coal."

93. In the case of Bharat Coking Coal l, the Court said that the State Legislature was competent to enact law for the regulation of mines and mineral development under Entry 23 of State List but such power was subject to the declaration which may be made by Parliament by law as envisaged by Entry 54 of the Union List. It was held that the legislative competence of the State Legislature to make law on the topic of mines and mineral was subject to parliamentary legislation. While dealing with Section 18(1) prior to its amendment by amending Act 37 of 1986 and after amendment, the Court held in paragraph 16 of the Report (Pg. 572) as under:

> "The amended and unamended sections both lay down that it shall be the duty of the Central Government to take all such steps as may be necessary —for the conservation and development of minerals" in India and for that purpose it may make such rules as it thinks fit. The expression —for the conservation of minerals" occurring under Section 18(1) confers wide power on the Central Government to frame any rule which may be necessary for protecting the mineral from loss, and for its preservation. The expression 'conservation' means —the act of keeping or protecting from loss or injury". With reference to the natural resources, the expression in the context means preservation of mineral; the wide scope of the expression —conservation of minerals" comprehends any rule reasonably connected with the purpose of protecting the loss of coal through the waste of coal mine, such a rule may also regulate the discharge of slurry or collection of coal particles after the water content of slurry is soaked by soil. In addition to the general power to frame rules for the conservation of mineral, T h e Court further held in para 19 of the Report (Pgs. 575-576) as follows:
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> " No doubt under Entry 23 of List II, the State legislature has power to make law but that power is subject to Entry 54 of List I with respect to the regulation and development of mines and minerals. As discussed earlier the State legislature is denuded of power to make laws on the subject in view of Entry 54 of List I and the Parliamentary declaration made under Section 2 of the Act. Since State legislature's power to make law with respect to the matter enumerated in Entry 23 of List II has been taken away by the Parliamentary declaration, the State Government ceased to have any executive power in the matter relating to regulation of mines and mineral development. Moreover, the proviso to Article 162 itself contains limitation on the exercise of the executive power of the State. It lays down that in any matter with respect to which the legislature of a State and Parliament have power to make laws, the executive power of State shall be subject to limitation of the executive power

expressly conferred by the Constitution or by any law made by Parliament upon the Union or authority thereof. Orissa Cement Ltd."

94. A three-Judge Bench of this Court in Orissa Cement Limitedf was concerned with the validity of the levy of a cess based on the royalty derived from mining lands by States of Bihar, Orissa and Madhya Pradesh. The case of the petitioners therein was that similar levy had been struck down by a seven-Judge Bench of this Court in India Cement Limitede . The contention of the States, on the other hand, was that issue was different from the India Cement Limitede as the nature and character of the levies imposed by these States was different from Tamil Nadu levy. The Bench considered Entries 52 and 54 of the Union List and Entries 18, 23, 45, 49, 50 and 66 of the State List and also considered earlier decisions of this Court in HRS Murthy v. Collector of Chittoor[38], Hingir-Rampur Coal Co.a , M.A. Tulloch Co.b , Ishwari Khetan Sugar Mills (P) Ltd.y ,Baijnath Kadioc, M. Karunanidhi v. Union of India and Anr.[39], M/s. Hind Stoneo, I.T.C. Ors. v. State of Karnataka Ors.[40] and Western Coalfields Limited v. Special Area Development Authority Korba Anr.[41]. I shall cite paragraphs 49, 50, 51 and 53 (Pgs. 480-486) of the Report which read as follows: "49. It is clear from a perusal of the decisions referred to above that the answer to the question before us depends on a proper understanding of the scope of M.M.R.D. Act, 1957, and an assessment of the encroachment made by the impugned State legislation into the field covered by it. Each of the cases referred to above turned on such an appreciation of the respective spheres of the two legislations. As pointed out in Ishwari Khetan, the mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of the Union under Entry 52 or entry 54 does not denude the State legislatures of their legislative powers with respect to the fields covered by the several entries in List II or List III. Particularly, in the case of a declaration under Entry 54, this legislative power is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration. While the legislation in Hingir- Rampur and Tulloch was found to fall within the pale of the prohibition, those in Chanan Mal, Ishwari Khetan and Western Coalfields were general in nature and traceable to specific entries in the State List and did not encroach on the field of the Central enactment except by way of incidental impact. The Central Act, considered in Chanan Mal, seemed to envisage and indeed permit State legislation of the nature in question."

"50. To turn to the respective spheres of the two legislations we are here concerned with, the Central Act (M.M.R.D. Act, 1957) demarcates the sphere of Union control in the matter of mines and mineral development. While concerning itself generally with the requirements regarding grants of licences and leases for prospecting and

exploitation of minerals, it contains certain provisions which are of direct relevance to the issue before us. Section 9, which deals with the topic of royalties and specifies not only the quantum but also the limitations on the enhancement thereof, has already been noticed. Section 9A enacts a like provision in respect of dead rent ”

“51. If one looks at the above provisions and bears in mind that, in assessing the field covered by the Act of Parliament in question, one should be guided (as laid down in Hingir-Rampur and Tulloch) not merely by the actual provisions of the Central Act or the rules made thereunder but should also take into account matters and aspects which can legitimately be brought within the scope of the said statute, the conclusion seems irresistible, particularly in view of Hingir-Rampur and Tulloch, that the State Act has trespassed into the field covered by the Central Act. The nature of the incursion made into the fields of the Central Act in the other cases were different. The present legislation, traceable to the legislative power under Entry 23 or Entry 50 of the State List which stands impaired by the Parliamentary declaration under Entry 54, can hardly be equated to the law for land acquisition or municipal administration which were considered in the cases cited and which are traceable to different specific entries in List 11 or List III.

53.These observations establish on the one hand that the distinction sought to be made between mineral development and mineral area development is not a real one as the two types of development are inextricably and integrally interconnected and, on the other, that, fees of the nature we are concerned with squarely fall within the scope of the provisions of the Central Act. The object of Section 9 of the Central Act cannot be ignored. The terms of Section 13 of the Central Act extracted earlier empower the Union to frame rules in regard to matters concerning roads and environment. Section 18(1) empowers the Central Government to take all such steps as may be necessary for the conservation and development of minerals in India and for protection of environment. These, in the very nature of things, cannot mean such amenities only in the mines but take in also the areas leading to and all around the mines. The development of mineral areas is implicit in them. Section 25 implicitly authorises the levy of rent, royalty, taxes and fees under the Act and the rules. The scope of the powers thus conferred is very wide. Read as a whole, the purpose of the Union control envisaged by Entry 54 and the M.M.R.D. Act, 1957, is to provide for proper development of mines and mineral areas and also to bring about a uniformity all over the country in regard to the minerals specified in Schedule I in the matter of royalties and, consequently prices .Indian Metals and Ferro Alloys Ltd.”

95. In Indian Metals and Ferro Alloys Ltd.p , a two-Judge Bench of this Court was concerned with the principal question as to whether the petitioners therein were entitled to obtain leases for the mining of chrome. While dealing with the principal question and other incidental questions, the Court considered Entry 54 of List I, Entry 23 of List II, the 1957 Act, particularly, Sections 2, 4, 10, 11, 17A and 19 thereof and the 1960 Rules including Rules 58, 59 and 60 thereof. While dealing with the reservation policy of the State Government in having the area reserved for exploitation in the public sectors, the Court observed in paragraphs 39 and 40 (Pg. 133) as follows :

> "39. The principal obstacle in the way of ORIND as well as the other private parties getting any leases was put up by the S.G., OMC and IDCOL. They claimed that none of the private applications could at all be considered because the entire area in all the districts under consideration is reserved for exploitation in the public sector by the notification dated August 3, 1977 earlier referred to. All the private parties have therefore joined hands to fight the case of reservation claimed by the S.G., OMC and IDCOL. We have indicated earlier that the S.G. expressed its preparedness to accept the Rao report and to this extent waive the claim of reservation. Interestingly, the OMC and IDCOL have entered caveat here and claimed that as public sector corporations they could claim, independently of the S.G.'s stand, that the leases should be given only to them and that the Rao report recommending leases to IMFA, FACOR and AIKATH should not be accepted by us. The relevant provisions of the Act and the rules have been extracted by us earlier. Previously, Rule 58 did not enable the S.G. to reserve any area in the State for exploitation in the public sector. The existence and validity of such a power of reservation was upheld in A.Kotiah Naidu v. State of A.P. (AIR 1959 AP 485) and Amritlal Nathubhai Shah v. Union Government of India (AIR 1973 Guj. 117), the latter of which was approved by this Court in Amritlal Nathubhai Shah v. Union of India ([1977] 1 SCR 372). (As pointed out earlier, Rule 58 has been amended in 1980 to confer such a power on the S.G.). It is also not in dispute that a notification of reservation was made on August 3, 1977. The S.G., OMC and IDCOL are, therefore, right in contending that, ex facie, the areas in question are not available for grant to any person other than the S.G. or a public sector corporation [rule 59(1), proviso] unless the availability for grant is renotified in accordance with law [rule 59(1)(e)] or the C.G. decides to relax the provisions of Rule 59(1) [rule 59(2)]. None of those contingencies have occurred since except as is indicated later in this judgment. There is, therefore, no answer to the plea of reservation put forward by the S.G., OMC and IDCOL. Then in paragraph 45 (Pgs. 136-138), while considering Section 17A (1) that was inserted in 1957 Act by amendment in 1987, the Court held :

“Our conclusion that the areas in question before us were all duly reserved for public sector exploitation does not, however, mean that private parties cannot be granted any lease at all in respect of these areas for, as pointed out earlier, it is open to the C.G. to relax the reservation for recorded reasons. Nor does this mean, as contended for by OMC and IDCOL, that they should get the leases asked for by them. This is so for two reasons. In the first place, the reservation is of a general nature and does not directly confer any rights on OMC and IDCOL. This reservation is of two types. Under Section 17A (1), inserted in 1986, the C.G. may after consulting the S.G. just reserve any area- not covered by a PL or a ML-with a view to conserving any mineral. Apparently, the idea of such reservation is that the minerals in this area will not be exploited at all, neither by private parties nor in the public sector. It is not necessary to consider whether any area so reserved can be exploited in the public sector as we are not here concerned with the scope of such reservation, there having been no notification Under Section 17A(1) after 1986 and after consultation with the S.G. The second type of reservation was provided for in Rule 58 of the rules which have already been extracted earlier in this judgment. This reservation could have been made by the S.G. (without any necessity for approval by the C.G.) and was intended to reserve areas for exploitation, broadly speaking, in the public sector. The notification itself might specify the Government, Corporation or Company that was to exploit the areas or may be just general, on the lines of the rule itself. Under Rule 59(1), once a notification under Rule 58 is made, the area so reserved shall not be available for grant unless the two requirements of Sub-rule (e) are satisfied: viz. an entry in a register and a Gazette notification that the area is available for grant. It is not quite clear whether the notification of March 5, 1974 complied with these requirements but it is perhaps unnecessary to go into this question because the reservation of the areas was again notified in 1977. These notifications are general. They only say that the areas are reserved for exploitation in the public sector. Whether such areas are to be leased out to OMC or IDCOL or some other public sector corporation or a Government Company or are to be exploited by the Government itself is for the Government to determine de hors the statute and the rules. There is nothing in either of them which gives a right to OMC or IDCOL to insist that the leases should be given only to them and to no one else in the public sector. If, therefore the claim of reservation in 1977 in favour of the public sector is upheld absolutely, and if we do not agree with the findings of Rao that neither OMC nor IDCOL deserve any grant, all that we can do is to leave it to the S.G. to consider whether any portion of the land thus reserved should be given by it to these two corporations. Here, of course, there are no competitive applications from organisations in the public sector controlled either by the S.G. or the C.G., but even if

there were, it would be open to the S.G. to decide how far the lands or any portion of them should be exploited by each of such Corporations or by the C.G. or S.G. Both the Corporations are admittedly instrumentalities of the S.G. and the decision of the S.G. is binding on them. We are of the view that, if the S.G. decides not to grant a lease in respect of the reserved area to an instrumentality of the S.G., that instrumentality has no right to insist that a ML should be granted to it. It is open to the S.G. to exercise at any time, a choice of the State or any one of the instrumentalities specified in the rule. It is true that if, eventually, the S.G. decides to grant a lease to one or other of them in respect of such land, the instrumentality whose application is rejected may be aggrieved by the choice of another for the lease. In particular, where there is competition between an instrumentality of the C.G. and one of the S.G. or between instrumentalities of the C.G. inter se or between the instrumentalities of the S.G. inter se, a question may well arise how far an unsuccessful instrumentality can challenge the choice made by the S.G. But we need not enter into these controversies here. The question we are concerned with here is whether OMC or IDCOL can object to the grant to any of the private parties on the ground that a reservation has been made in favour of the public sector. We think the answer must be in the negative in view of the statutory provisions. For the S.G. could always denotify the reservation and make the area available for grant to private parties. Or, short of actually dereserving a notified area, persuade the C.G. to relax the restrictions of Rule 59(1) in any particular case. It is. therefore, open to the S.G. to grant private leases even in respect of areas covered by a notification of the S.G. and this cannot be challenged by any instrumentality in the public sector. The legal position post amendment in 1957 Act by Central Act 37 of 1987 was explained (para 46; Pgs. 138-139) in the following manner: —46. Before leaving this point, we may only refer to the position after 1986. Central Act 37 of 1986 inserted Sub-section (2) which empowers the State Government to reserve areas for exploitation in the public sector. This provision differs from that in Rule 58 in some important respects-

“(i)The reservation requires the approval of the C.G.;

(ii) The reservation can only be of areas not actually held under a PL or ML;

(iii) the reservation can only be for exploitation by a Government company or a public sector corporation (owned or controlled by the S.G. or C.G.) but not for exploitation by the Government as such. Obviously, Section 17A(2) and rule 58 could not stand together as Section 17A empowers the S.G, to reserve only with the approval of the C.G. while Rule 58 contained no such restriction. There was also a slight difference in their wording. Perhaps because of this Rule 58 has been omitted by an amendment of

1988 (G.S.R. 449E of 1988) made effective from April 13, 1988. Rule 59, however, contemplates a relaxation of the reservation only by the C.G. By an amendment of 1987 effective on February 10, 1987, (G.S.R. 86-E of 87) the words reserved by the State Government were substituted for the words reserved by the Government in Rule 59(1)(e). Later, Rule 59(1) has been amended by the insertion of the words or Under Section 17-A of the Act after the words under Rule 58 in Clause (e) as well as in the second proviso. The result appears to be this:

(i) After March 13, 1988, certainly, the S.G. cannot notify any reservations without the approval of the C.G., as Rule 58 has been deleted. Presumably, the position is the same even before this date and as soon as Act 37 of 1986 came into force.

(ii) However, it is open to the S.G. to denotify a reservation made by it under Rule 58 or Section 17A. Presumably, dereservation of an area reserved by the S.G. after the 1986 amendment can be done only with the approval of the C.G. for it would be anomalous to hold that a reservation by the S.G. needs the C.G.'s approval but not the dereservation. Anyhow, it is clear that relaxation in respect of reserved areas can be permitted only by the C.G.

(iii) It is only the C.G. that can make a reservation with a view to conserve minerals generally but this has to be done with the concurrence of the S.G. Dharambir Singh."

96. In Dharambir Singh vs. Union of India Ors.[42] , a three- Judge Bench of this Court while considering Section 10(3) and 11(2) of the 1957 Act, observed that in grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But, the State Government is required to exercise its discretion subject to the requirement of the law. Bhupatrai Maganlal Joshi."

97. In Bhupatrai Maganlal Joshis, a Constitution Bench of this Court was concerned with the correctness of the High Court's decision on the question whether the reservation of land for exploitation of mineral resources in the public sector was permissible under the 1957 Act read with 1960 Rules. The High Court had answered the question in the affirmative from which the matter reached this Court. In a very brief order this Court agreed with the reasoning and conclusion of the High Court. M.P. Ram Mohan Raja."

98. In the case of M.P. Ram Mohan Raja vs.State of T.N. Ors.[43] , this Court relied upon the decision of this Court in M/s. Hind Stoneo and reiterated that so far as grant of mining and

mineral lease is concerned no person has a vested right in it. Sandur Manganese and Iron Ores Limited.”

99. In a comparatively recent decision in Sandur Manganese and Iron Ores Limited.,m the diverse issues which were under consideration are noted in paragraph 6 of the Report. The Court considered statutory provisions contained in the 1957 Act, 1960 Rules and decisions of this Court in Hingir-Rampur Coal Co.a , M.A. Tulloch Co.b , Baijnath Kadioc , Bharat Coking Coali and few other decisions, and it was observed with reference to Section 2 of the 1957 Act that State Legislature was denuded of its legislative power to make any law with respect to the regulation of mines and minerals development to the extent provided in the 1957 Act. In paragraphs 61, 62 and 63 (Pgs. 30-31) of the Report, the Court held as follows:

> “61.- In addition to what we have stated, it is relevant to note that Section 11(5) again carves out an exception to the preference in favour of prior applicants in the main provision of Section 11(2). It permits the State Government, with the prior approval of the Central Government, to disregard the priority in point of time in the main provision of Section 11(2) and to make a grant in favour of a latter applicant as compared to an earlier applicant for special reasons to be recorded in writing. It also gives an indication that it can have no application to cases in which a notification is issued because, in such a case, both the first proviso to Section 11(2) and Section 11(4) make it clear that all applications will be considered together as having been received on the same date. In view of our interpretation, the proceedings of the Chief Minister and the recommendation dated 06.12.2004 are contrary to the Scheme of the MMDR Act as they were based on Section 11(5) which had no application at all to the applications made pursuant to the notification dated 15.03.2003. We have already extracted Rules 59 and 60 and analysis of those rules confirms the interpretation of Section 11 above and the conclusion that it is Section 11(4) which would apply to a Notification issued under Rule 59(1). Rule 59(1) provides that the categories of areas listed in it including, inter alia, areas that were previously held or being under a mining lease or which have been reserved for exploitation by the State Government or under Section 17A of the Act, shall not be available for grant unless (i) an entry is made in the register and (ii) its availability for grant is notified in the Official Gazette specifying a date not earlier than 30 days from the date of notification. Sub-rule (2) of Rule 59 empowers the Central Government to relax the conditions set out in Rule 59(1) in respect of an area whose availability is required to be notified under Rule 59 if no application is issued or where notification is issued, the 30-days black-out period specified in the notification pursuant to Rules 59(1)(i) and (ii) has not expired, shall be deemed to be premature and shall not be entertained. As discussed earlier, Section 11(4) is consistent with Rules 59 and 60 when it provides for consideration only of

applications made pursuant to a Notification. On the other hand, the consideration of applications made prior to the Notification, as required by the first proviso to Section 11(2), is clearly inconsistent with Rules 59 and 60. In such circumstances, a harmonious reading of Section 11 with Rules 59 and 60, therefore, mandates an interpretation under which Notifications would be issued under Section 11(4) in the case of categories of areas covered by Rule 59(1). In these circumstances, we are unable to accept the argument of the learned senior counsel for Jindal and Kalyani with reference to those provisions. Paragraph 7 of Amritlal Nathubhai Shahd was considered in paragraph 65 of the Report and then in paragraph 66 (Pg. 32), the Bench observed as follows:

"Even thereafter, this Court has consistently taken the position that applications made prior to a Notification cannot be entertained. In our view, the purpose of Rule 59(1), which is to ensure that mining lease areas are not given by the State Governments to favour persons of their choice without notice to the general public would be defeated. In fact, the learned single Judge correctly interpreted Section 11 read with Rules 59 and 60. The said conclusion also finds support in the decision of this Court in State of Tamil Nadu v. Hindstone, (1981) 2 SCC 205 at page 218, where it has been held in the context of the rules framed under the MMDR Act itself that a statutory rule, while subordinate to the parent statute, is otherwise to be treated as part of the statute and is effective. The same position has been reiterated in State of U.P. v. Babu Ram Upadhya (1961) 2 SCR 679 at 701 and Gujarat Pradesh Panchayat Parishad v. State of Gujarat (2007) 7 SCC 718."

As regards the legislative and executive power of the State under Entry 23 List II read with Article 162 of the Constitution, the Court in Sandur Manganese and Iron Ores Limitedm in paragraph 80 (Pg. 36) stated as under:

"It is clear that the State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of Section 11(3) of the Act, hence it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the MMDR Act in the grant of mining leases. Furthermore, Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. As a matter of fact, the respondents have not been able to point out any other provision in the MMDR Act or the MC Rules permitting grant of mining lease based on past commitments. As rightly pointed out, the State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event that the person makes investment in any project. Assuming that the State Government had

made any such commitment, it could not be possible for it to take an inconsistent position and proceed to notify a particular area. Further, having notified the area, the State Government certainly could not thereafter honour an alleged commitment by ousting other applicants even if they are more deserving on the merit criteria as provided in Section 11(3). Whether 1962 and 1969 Notifications are ultra vires."

100. Now, in light of the above, I have to consider whether 1962 and 1969 Notifications issued by the Government of erstwhile State of Bihar notifying for the information of public that iron ore in the subject area was reserved for exploitation in the public sector are ultra vires and de hors 1957 Act and 1960 Rules. Constitutional philosophy about law making in relation to mines and minerals

101. Entry 36 in List I (Federal List) and Entry 23 in List II (Provincial List) in the Seventh Schedule of Government of India Act, 1935 correspond to Entry 54 in List I (Union List) and Entry 23 in List II (State List) in our Constitution. It is interesting to note that in the course of debate in respect of the above entries in the Government of India Bill, the Solicitor General in the House of Commons stated that the rationale of including only the 'regulation of mines' and 'development of minerals' and that too only to the extent it was considered expedient in the public interest by a Federal law was to ensure that the Provinces were not completely cut¬out from the law relating to mines and minerals and if there was inaction at the Centre, then the Provinces could make their own laws. Thus, powers in relation to mines and minerals were accorded to both the Centre and States. The same philosophy is reflected in our Constitution. The management of the mineral resources has been left with both the Central Government and State Governments in terms of Entry 54 in List I and Entry 23 in List II. In the scheme of our Constitution, the State Legislatures enjoy power to enact legislation on the topics of 'mines and mineral development'. The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says 'subject to the provisions of List I with respect to regulation and development under the control of the Union'. In other words, State Legislature loses its jurisdiction to the extent to which Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from Entry 23, List II to that extent. It needs no elaboration that to the extent to which the Central Government had taken under 'its control' 'the regulation of mines and development of minerals' under 1957 Act, the States had lost their legislative competence. By the presence of expression 'to the extent hereinafter

provided' in Section 2, the Union has assumed control to the extent provided in 1957 Act. 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State Legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand. To find out what is left within the competence of the State Legislature on the declaration having been made in Section 2 of the 1957 Act, one does not have to look outside the provisions of 1957 Act but as observed in Baijnath Kadioc , 'have to work it out from the terms of that Act'. In order that the declaration made by the Parliament should be effective, the making of rules or enforcement of rules so made is not decisive.

102. The declaration made by Parliament in Section 2 of 1957 Act states that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act itself. Legal regime relating to regulation of mines and development of minerals is thus guided by the 1957 Act and 1960 Rules. Whether reservation made by 1962 and 1969 Notifications is in any manner contrary or inconsistent with 1957 Act? In my view not at all. Whether the impugned Notifications impinge upon the legislative power of the Central Government? My answer is in negative. Whether the Government of erstwhile State of Bihar did not have the power to make reservation which it did by 1962 and 1969 Notifications? I think there was no lack of power in the State in making such reservation. I indicate the reasons therefore. Management of minerals: general observations

103. First, few general observations. Minerals - like rivers and forests - are a valuable natural resource. Minerals constitute our national wealth and are vital raw-material for infrastructure, capital goods and basic industries. The conservation, preservation and intelligent utilization of minerals are not only need of the day but are also very important in the interest of mankind and succeeding generations. Management of minerals should be in a way that helps in country's economic development and which also leaves for future generations to conserve and develop the natural resources of the nation in the best possible way. For proper development of economy and industry, the exploitation of natural resources cannot be permitted indiscriminately; rather nation's natural wealth has to be used judiciously so that it may not be exhausted within a few years. No fundamental right in mining."

104. The appellants have applied for mining leases in a land belonging to Government of Jharkhand (erstwhile Bihar) and it is for iron- ore which is a mineral included in the First Schedule to the 1957 Act in respect of which no mining lease can be granted without the prior approval of the Central Government. It goes without saying that no person can claim any right in any land belonging to Government or in any mines in any land belonging to

Government except under 1957 Act and 1960 Rules. No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to the Government. It is apt to quote the following statement of O. Chinnappa Reddy, J. in M/s. Hind Stoneo , albeit in the context of minor mineral, ‘The public interest which induced Parliament to make the declaration contained in Section 2 has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals’. He went on to say, ‘The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. State Government’s ownership in mines and minerals within its territory and the power of reservation.

105. It is not in dispute that all rights and interests, including rights in mines and minerals in the subject area, had vested absolutely in the erstwhile State of Bihar free from all encumbrances. At the commencement of Constitution, the erstwhile State of Bihar was a Part-A State specified in the First Schedule of the Constitution and prior thereto the Province of Bihar. By virtue of Article 294, all properties and assets which were vested in His Majesty for the purposes of the Government of Province of Bihar stood vested in the corresponding State of Bihar. By 1950 Bihar Act, all other lands i.e., estates and tenures of whatever kind, including the mines and minerals therein, stood vested in the State of Bihar. Thus, all lands and minerals on or under land situate in the erstwhile State of Bihar came to vest in it. Thereafter with effect from November 15, 2000, the State of Jharkhand was carved out of the State of Bihar pursuant to the Bihar Re-Organisation Act, 2000. Accordingly, all lands, inter alia, belonging to the then State of Bihar and situated in the transferred territories of Singhbhum (East) and Singhbhum (West) Districts, passed to the newly created State of Jharkhand. The admitted position is that the State Government (erstwhile Bihar and now Jharkhand) is the owner of the subject area. Mines and minerals within its territory vest in it absolutely. As a matter of fact it is because of this position that the appellants made their application for grant of mining lease to the State Government. The question now is, the regulation of mines and development of minerals having been taken under its control by the Central Government, whether the provisions contained in 1957 Act or 1960 Rules come in the way of the State Government to reserve any particular area for exploitation in the public sector.

106. The legislation on the subject of mines and minerals as contained in 1957 Act and 1960 Rules has been extensively quoted in the earlier part of the judgment. Suffice it to say that

Section 4 is a pivotal provision around which the legal framework for the regulation of mines and development of minerals as laid down in 1957 Act revolves.

107. The character of the impugned Notifications making reservation of the area set out therein for exploitation of iron ore in public sector has to be judged in light of the provisions in 1957 Act and 1960 Rules. The object and effect of declaration made by Parliament in Section 2 and the provisions that follow Section 2 in 1957 Act, which have been extensively referred to above, even remotely do not suggest that the Government of the erstwhile State of Bihar lacked authority or competence to make reservation of subject mining areas within its territory relating to iron ore which vested in it for public sector undertaking by 1962 and 1969 Notifications. Whatever way it is seen, whether 'reservation' topic was covered by 1957 Act when 1962 and 1969 Notifications were issued and published by the State Government or whether the provisions of 1957 Act, as were then existing, enabled the State Government to reserve the subject area for its own use through the agency in public sector, I am of the opinion that since the State Government's paramount right over the iron ore being the owner of the mines did not get affected by 1957 Act, the power existed with the State Government to reserve subject areas of mining for exploitation in public sector undertaking. It was, however, argued that by 1957 Act the State's ownership rights insofar as 'development of minerals' was concerned stood frozen. 'Development' includes exploitation of mineral resources and to allow to exploit or not to allow to exploit is all covered by 1957 Act and by Section 4 the right of the State Government with regard to development of minerals was taken away and the State Government ceased to have any inherent right of reservation.

108. I do not agree. In the first place, the declaration made by Parliament in Section 2 and the provisions that follow Section 2 in 1957 Act have left untouched the State's ownership of mines and minerals within its territory although the regulation of mines and the development of minerals have been taken under the control of the Union. Section 4 deals with activities in relation to land and does not extend to extinguish the State's right of ownership in such land. Section 4 regulates the right to transfer but does not divest ownership of minerals in a State and does not preclude the State Government from exploiting its minerals. Section 4(1) can have no application where the State Government wants to undertake itself mining operations in the area owned by it. On consideration of Section 5, I am of the view that the same conclusion must follow. Section 5 or for that matter Sections 6, 9, 10, 11 and 13(2)(a) also do not take away the State's ownership rights in the mines and minerals within its territory. The power to legislate for regulation of mines and development of minerals under the control of the Union may definitely imply power to acquire mines and minerals in the larger public interest by appropriate legislation, but by 1957 Act that has not been done. There is nothing in 1957 Act to suggest even remotely - and there is no express provision at all - that the

mines and minerals that vested in the States have been acquired. Rather, the scheme and provisions of 1957 Act themselves show that Parliament itself contemplated State legislation for vesting of lands containing mineral deposits in the State Government and that Parliament did not intend to trench upon powers of State Legislatures under Entry 18, List II. As noted above, the declaration made by Parliament in Section 2 of 1957 Act states that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals to the extent provided in the Act itself. The declaration made in Section 2 is, thus, not all comprehensive.

109. The regulation of mines and development of minerals has been taken over under its control by the Central Government to the extent it is manifested in 1957 Act which does not contemplate acquisition of mines and minerals. By the presence of keynote expression 'to the extent hereinafter provided' in Section 2, the Union has assumed control to the extent specified in the provisions following Section 2. In my view, although the word 'regulation' must in the context receive wide interpretation, but the extent of control by Union as specified in 1957 Act has to be construed strictly. The decisions of this Court in M.A. Tulloch Co.b, Baijnath Kadioc, Bharat Coking Coali and few other decisions where this Court has held with reference to declaration made by Parliament in Section 2 of 1957 Act and the provisions of that Act that the whole of the legislative field was covered were in the context of specific State legislations under consideration. In the context of subject State legislation, the whole legislative field was found to be occupied by the Central law. The same is the position in the case of Hingir-Rampur Coal Co.a where whole of the legislative field relating to 'minerals' was found to be covered by the declaration made in Section 2 of the 1948 Act in the context of the State legislation under consideration. In Hingir-Rampur Coal Co.a while examining the constitutional validity of the Orissa Mining Areas Development Fund Act, 1952 this Court held that the State Act was covered by the 1948 Act. In M.A. Tulloch Companyb , this Court was concerned with the same Orissa Act which was under consideration in Hingir-Rampur Coal Co.a and in light of Section 18(1) of the 1957 Act which was under consideration it was held that the intention of Parliament was to cover the entire field. In Baijnath Kadioc, this Court was concerned with the constitutional validity of proviso (2) to Section 10(2) added by Bihar Land Reforms (Amendment) Act, 1964. While examining the constitutional validity of the above provision, the Constitution Bench of this Court analysed 1957 Act. In light of Entry 54 in List I and Entry 23 in List II the observation that whole of the legislative field was covered by the Parliamentary declaration read with 1957 Act was with reference to the State legislations under consideration and the whole of the legislative field was found to be occupied by 1957 Act. Similar observations in various other decisions by this Court were made in the context of the topic under consideration.

110. I am supported in my view by a three-Judge Bench decision of this Court in Orissa Cement Limitedf wherein it was emphatically asserted that in the case of a declaration under Entry 54, the legislative power of the State Legislatures is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The three- Judge Bench on careful consideration said, 'The measure of erosion turns upon the field of the enactment framed in pursuance of the declaration. While the legislation in Hingir-Rampur Coal Co.a and M.A.Tulloch Co.b was found to fall within the pale of the prohibition, those in Chanan Malx, Ishwari Khetan Sugar Millsy and Western Coalfields Limitedoo were general in nature and traceable to specific entries in the State List and did not encroach on the field of the Central enactment except by way of incidental impact'.

111. Secondly, after enactment of 1957 Act and 1960 Rules made thereunder, the Central Government has all throughout understood that the State Governments as owner of mines and minerals within their territory have inherent right to reserve any particular area for exploitation in the public sector. This position is reflected from the order of the Central Government that was passed by it and which was under challenge in Amritlal Nathubhai Shahd. In its order the Central Government had stated, '..The State Government had the inherent right to reserve any particular area for exploitation in the public sector. Mineral vest in them and theyare owners of minerals and Central Government are in agreement with the State Government in so far as the reservation of areas is concerned "

112. The above position held by the Central Government has been approved by this Court in Amritlal Nathubhai Shahd. I have already referred to the facts in the case of Amritlal Nathubhai Shahd and the issue involved therein - an issue similar to the controversy presented before us - in earlier part of this judgment. In Amritlal Nathubhai Shahd, the Court referred to Section 4 of 1957 Act and it was held that there was nothing in 1957 Act or 1960 Rules to conclude as to why the State Government could not , if it so desired, 'reserve' any land for itself, for any purpose, and such reserved land would then not be available for the grant of a prospecting licence or a mining lease to any person. The Court then pointed out, 'the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory'. It was also held that quite apart from that, Rule 59 of 1960 Rules clearly contemplated reservation by an order of the State Government. The above legal position has been reiterated by this Court in Indian Metals and Ferro Alloys Ltd.p. Whether Amritlal Nathubhai Shah is not a binding precedent."

113. Learned senior counsel for the appellants, however, vehemently contended that Amritlal Nathubhai Shahd is not a binding precedent being per incuriam inasmuch as earlier judgments of this Court have not been considered and applied. It was argued that decision in

Amritlal Nathubhai Shahd was limited to its own facts and that decision did not deal with reservation prior to amendment in Rule 59. In that case Notification was of December 31, 1963 where under lands in particular areas had been reserved for exploitation of bauxite in the public sector. At that time Rule 59 of 1960 Rules had been amended and, moreover, that was a case of exploitation of mineral by the State itself and in case of exploitation other than by State it could only be done in accord with the 1957 Act and 1960 Rules.

114. I am afraid that the distinguishing features highlighted by learned senior counsel for the appellants are not substantial and do not persuade me not to follow Amritlal Nathubhai Shahd. The judgment of this Court in Amritlal Nathubhai Shahd establishes the distinction between the power of reservation to exploit a mineral as its own property on the one hand and the regulation of mines and mineral development under the 1957 Act and the 1960 Rules on the other. The authority of the State Government to make reservation of a particular mining area within its territory for its own use is the offspring of ownership; and it is inseparable there from unless denied to it expressly by an appropriate law. By 1957 Act that has not been done by Parliament. Setting aside by a State of land owned by it for its exclusive use and under its dominance and control, in my view, is an incident of sovereignty and ownership. There is no incongruity or inconsistency in the decisions of this Court in Hingir-Rampur Coal Co.a, M.A. Tulloch Co.b, Baijnath Kadioc and Amritlal Nathubhai Shahd . The Bench in Amritlal Nathubhai Shahd was alive to the legal position highlighted by this Court in Hingir-Rampur Coal Co.a, M.A. Tulloch Co.b and Baijnath Kadioc although it did not expressly refer to these decisions. This is apparent from the observations made in para 3 wherein it has been stated that in pursuance of its exclusive power to make laws with respect to the matters enumerated in Entry 54 of List I in the Seventh Schedule, Parliament specifically declared in Section 2 of the 1957 Act that it was expedient in the public interest that the Union should take under its control, regulation of mines and the development of minerals to the extent provided therein. The Bench noticed that State Legislature's power under Entry 23 of List II was, thus, taken away and regulation of mines and mineral development had therefore to be in accordance with the 1957 Act and 1960 Rules. The legal position exposited in Amritlal Nathubhai Shahd is that even though the field of legislation with regard to regulation of mines and development of minerals has been covered by the declaration of the Parliament in Section 2 of the 1957 Act, but that can not justify the inference that the State Government has lost its right to the minerals which vest in it as a property within its territory and hence no person has a right to exploit the mines other than in accordance with the provisions of the 1957 Act and the 1960 Rules. The authority of the State Government to order reservation flows from the fact that it is the owner of the mines and the minerals within its territory. Such authority is also traceable to Rule 59 of 1960 Rules.

115. Yet another considerable point was made that 1962 and 1969 Notifications are not relatable to statutory provisions contained in 1957 Act and 1960 Rules. Reference was made to Sections 17 and 18 and Rules 58 and 59 of 1960 Rules and it was argued that these provisions are indicative of the position that reservation made by the State Government for exploitation of minerals in public sector was unsupportable and unsustainable in law. Section 17 - not all - comprehensive provision

116. I am of the opinion that Section 17 is not all - comprehensive on the subject of refusal to grant prospecting licence or mining lease. Section 17 has nothing to do with public or private sector. It does not deal directly or indirectly with the State Government's right for reservation of its own mines and minerals. Its application is not general but it is confined to a specific situation where the Central Government proposes to undertake prospecting or mining operations in any area not already held under any prospecting licence or mining lease. The above view with regard to Section 17 finds support from Amritlal Nathubhai Shahd. Insofar as Section 18 is concerned, it basically confers additional rule making power upon the Central Government for achieving the objectives, namely, conservation and systematic development of minerals articulated therein. If the State Government makes reservation in public interest with respect to minerals which vest in it for exploitation in public sector, I fail to see how such reservation can be seen as impairing the obligation cast upon the Central Government under Section 18. Rule 59 and Janak Lal."

117. It is true that Rule 58 as it existed originally did not enable the State Government to reserve any area in the State for exploitation of minerals in public sector. But Rule 59 did recognise the State Government's authority to make reservation for any purpose. It was, however, argued by Dr. Rajiv Dhavan that Rule 59, as it then stood, allowed reservation for any purpose other than prospecting or mining for minerals. He relied upon decision of this Court in Janak Lalj. In Janak Lalj, admittedly the disputed area was reserved for nistar purposes. When an application for grant of mining lease was earlier made by a third party it was rejected on the ground that it was so reserved. It was also an admitted position before this Court that the procedure under Rule 58 was not followed before grant was made in favour of respondent no. 4 therein and no opportunity was given to any other person before entertaining application of respondent no. 4. In the backdrop of the above admitted position, the Court considered the question whether Rule 59 was attracted or not. The High Court had accepted the argument of the respondents that the expression 'reserved for any purpose' in Rule 59 did not cover a case where the area was reserved for nistar purposes or for any purpose other than mining. This Court did not accept the High Court's view. While construing Rule 59 as it originally existed and the amendment brought in Rule 59 by deleting the words, 'other than prospecting or mining for minerals', the Court said that the result of

the amendment was to extend the rule and not to curtail its area of operation. It was held that words ‘any purpose’ was of wide connotation and there was no reason to restrict its meaning.

118. Janak Lal,j in my opinion, does not help the contention canvassed on behalf of the appellants. The expression, ‘other than prospecting or mining for minerals’ that formed part of original Rule 59, in my view, was not of much significance and did not impede the State Government’s authority to make reservation of any area for exploitation in public sector founded on its ownership over that area. It was because of this that this insignificant and inconsequential expression was later on deleted from Rule 59 in 1963. Rule 59, accordingly, continued to recognise the State Government’s right to reserve any area for mining within its territory for any purpose including exploitation in public sector. In Amritlal Nathubhai Shahd, this position has been expressly affirmed when it said, “but quite apart from that, we find that Rule 59 of the Rules which have been made under Section 13 of the Act, clearly contemplates such reservation by an order of the State Government. Repeal of Rule 58 and Section 17A.”

119. Rule 58 was amended in 1980 whereby it expressly provided that the State Government may by Notification in the official gazette reserve any area for exploitation by the Government, a corporation established by the Central, State or Provincial Act or a Government company within the meaning of Section 617 of the Companies Act. Rule 58 has been omitted from 1960 Rules as the provision for reservation has now been expressly made by insertion of Section 17A in 1957 Act. According to Section 17A(2), the State Government with the approval of the Central Government may reserve any area not already held under any prospecting licence or mining lease to undertake prospecting or mining operations through a Government company or a corporation owned or controlled by it. In terms of Section 17A(2), any reservation made by the State Government after coming into force of that Section must bear approval of the Central Government.

120. From the above, it becomes clear that what was implied by the provisions originally contained in 1957 Act and 1960 Rules insofar as authority of the State Government to reserve any area within its territory for mining in public sector has been made explicit first by amendment in Rule 58 in 1980 and later on by introduction of Section 17A in 1957 Act by virtue of amendment effective from 1987.

121. It was also argued by Mr. C.A. Sundaram, learned senior counsel for one of the appellants that even if 1962 and 1969 Notifications were held to be validly issued with proper authority of law at that point of time, the fact that Rule 58 was omitted in 1988 without any saving clause necessarily meant that these Notifications were no longer valid and could not be relied upon. He argued that current power of reservation contained in Section 17A of 1957

Act is consistent with erstwhile Rules 58/59 since Section 17A expressly requires the approval of the Central Government before any State Government issues any notification for reservation of mining area in public sector.

122. The impact of omission of Rule 58 in 1988 from 1960 Rules and the introduction of Section 17A in 1957 Act in the context of reservation of the mining area by the State Government for public sector exploitation came up for direct consideration by this Court in Indian Metals and Ferro Alloys Ltd.p. In the earlier part of the judgment I have already quoted the relevant portion of the decision of this Court in Indian Metals and Ferro Alloys Ltd.p. The Court referred to the relevant amendments in 1957 Act and 1960 Rules and categorically held that reservations made prior to insertion of Section 17A continue in force even after the introduction of Section 17A. The reservations made by the State Government in 1977 before omission of Rule 58 and amendment in Rule 59 and insertion of Section 17A in 1957 Act were, thus, held to be unaffected.

123. Having carefully considered Section 17A, I have no hesitation in holding that the said provision is prospective. There is no indication in Section 17A or in terms of the Amending Act that by insertion of Section 17A the Parliament intended to alter the pre-existing state of affairs. The Parliament does not seem to have intended by bringing in Section 17A to undo the reservation of any mining area made by the State Government earlier thereto for exploitation in public sector. The Parliament has no doubt plenary power of legislation within the field assigned to it to legislate prospectively as well as retrospectively. As early as in 1951 this Court in Keshavan Madhava Menon v. State of Bombay[44] had stated about a cardinal principle of construction that every statue is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only. In Principles of Statutory Interpretation (Seventh Edition, 1999) by Justice G.P. Singh, the statement of Lord Blanesburg in Colonial Sugar Refining Co. v. Irving[45] and the observations of Lopes, L.J. in Pulborough Parish School Board Election, Bourke v. Nutt[46] have been noted as follows :

> "In the words of Lord Blanesburg, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment." —Every statute, it has been said", observed Lopes, L.J., —which takes away or impairs vested rights acquired under existing laws, or creates a new obligation or imposes a new duty, or attaches a new disability in respect of transactions already past, must be presumed to be intended not to have a retrospective effect".

124. Where an issue arises before the Court whether a statute is prospective or retrospective, the Court has to keep in mind presumption of prospectivity articulated in legal maxim nova constitutio futuris formam imponere debet non praeteritis, i.e., ‘a new law ought to regulate what is to follow, not the past’. The presumption of prospectivity operates unless shown to the contrary by express provision in the statute or is otherwise discernible by necessary implication.

125. The aspects, namely, (i) 1993 mineral policy framed by the Central Government envisaged permission of captive consumption of minerals across the country; (ii) in 1994 Central Government asked all the state governments to de¬reserve 13 minerals including iron ore and directed them to take steps accordingly; (iii)confirmation by the Government of Bihar to the Central Government in 1994 that no mining areas were reserved for public sector undertaking in the then State of Bihar; (iv) confirmation by the State Government in 2001 to Central Government that there are no reserved areas in the State and (v) in 2004, the recommendation by the State Government in favour of the appellants to the Central Government for grant of prior approval and reminder in 2005, in my view, have no impact and effect on the validity of 1962 and 1969 Notifications. The above acts of the Government of Bihar and the Government of Jharkhand in ignorance of 1962 and 1969 Notifications cannot be used as a sufficient ground for invalidating these Notifications. If a state government has power to reserve mineral bearing area for exploitation in public sector - and I have already held that the then Government of Bihar had such power - the act of reservation vide 1962 and 1969 Notifications is not rendered illegal or invalid. I am clearly of the view that lack of knowledge on the part of the State Government about the reservation of areas for exploitation in public sector vide 1962 and 1969 Notifications does not affect in any manner the legality and validity of these Notifications once it has been found that these Notifications have been issued by the erstwhile State of Bihar in valid exercise of power which it had. Validity of 2006 Notification.

126. On October 27, 2006, the State Government issued a Notification declaring its decision that the iron ore deposits at Ghatkuri would not be thrown open for grant of prospecting licence, mining licence or otherwise for private parties. In the said Notification, it was noted that the deposits were at all material times kept reserved by 1962 and 1969 Notifications issued by the State of Bihar. It was further mentioned in the Notification that mineral reserved in Ghatkuri area has now been decided to be utilized for exploitation by public sector undertaking or joint venture project of the State Government as they would usher in maximum benefits to the State and would generate substantial amount of employment in the State. 2006 Notification states that it has been issued in the public interest and in the larger interest of the State for optimum utilization and exploitation of the mineral resources in the State and for establishment of mineral based industry with value addition thereon. It was

argued that 2006 Notification is bad for the same reasons for which 1962 and 1969 Notifications are bad in law and invalid. The argument is noted to be rejected. For 1962 and 1969 Notifications are not and have not been found by me to suffer from any legal infirmity. 2006 Notification mentions factum of reservation made by 1962 and 1969 Notifications. It is founded on the policy of the State Government that such reservation will usher in maximum benefits to the State and would also generate substantial amount of employment in the State. The public interest is, thus, paramount. The State Government had authority to do that under Section 17A(2) of 1957 Act read with Rule 59(1)(e) of 1960 Rules.

127. It was, however, argued on behalf of the appellants that 2006 Notification has attempted to reserve the area for exploitation by public sector undertaking or in joint venture project whereas Section 17A(2) of 1957 Act allows the State Government to reserve area for a government company or corporation owned or controlled by it and not in joint venture project. The submission was that 2006 Notification is an attempt to bring in indirectly private companies through joint venture project although, Section 17A clearly does not envisage private participation.

128. The mineral reserved in the said area by 2006 Notification has been decided to be utilized for exploitation by public sector undertaking or joint venture project of the State Government. 2006 Notification does mention reservation for joint venture project of the State Government but, in my opinion, the said expression must be understood to be confined to an instrumentality having the trappings and character of a government company or corporation owned or controlled by the State Government and not outside of such instrumentality.

129. The types of reservation under Section 17A and their scope have been considered by this Court in Indian Metals and Ferro Alloys Ltd.p in paragraphs 45 and 46 (pgs. 136-139) of the Report. I am in respectful agreement with that view. However, it was argued that Section 17A(2) requires prior approval of the Central Government before reservation of any area by the State Government for the public sector undertaking. The argument is founded on incorrect reading of Section 17A(2). This provision does not use the expression, 'prior approval' which has been used in Section 11. On the other hand, Section 17A(2) uses the words, 'with the approval of the Central Government'. These words in Section 17A(2) can not be equated with prior approval of the Central Government. According to me, the approval contemplated in Section 17A may be obtained by the State Government before the exercise of power of reservation or after exercise of such power. The approval by the Central Government contemplated in Section 17A(2) may be express or implied. In a case such as the present one where the Central Government has relied upon 2006 Notification while rejecting appellants' application for grant of mining lease, it necessarily implies that the Central Government has approved reservation made by State Government in 2006 Notification

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otherwise it would not have acted on the same. In any case, the Central Government has not disapproved reservation made by the State Government in 2006 Notification.

130. Two more contentions advanced on behalf of the appellants, one, with regard to 2006 Notification and the other with regard to 1962 and 1969 Notifications may be briefly noticed. As regards 2006 Notification it was contended that it was not legally valid as it has been made operative with retrospective effect. In respect of 1962 and 1969 Notifications, it was argued that the State Government had never adopted these Notifications and, accordingly, these Notifications lapsed. None of these two arguments has any merit. 2006 Notification has not been given retrospective operation as contended on behalf of the appellants. I have already held that 2006 Notification is prospective. Mere reference to 1962 and 1969 Notifications in 2006 Notification does not make 2006 Notification retrospective.

131. The other argument that 1962 and 1969 Notifications had lapsed as the State Government never adopted them is also without any merit and substance. The new State of Jharkhand was carved out of the erstwhile State of Bihar and it came into existence by virtue of the Bihar Reorganisation Act, 2000. Section 85 of that Act provides that the appropriate Government may before expiration of two years adapt and/or modify the law and every such law shall have effect subject to adaptation and modification so made until altered, repealed or amended by a competent Legislature. In light of Section 85 of the Bihar Reorganisation Act read with Sections 84 and 86 thereof, position that emerges is that the existing law shall have effect until it is altered, repealed and/or amended. Since the new State of Jharkhand had not altered, repealed and/or amended 1962 and 1969 Notifications issued by the erstwhile State of Bihar, it cannot be said that 1962 and 1969 Notifications had lapsed. Moreover, in 2006 Notification, 1962 and 1969 Notifications and their effect have been mentioned and that also shows that 1962 and 1969 Notifications continued to operate. The expression, 'the deposit was at all material times kept reserved vide Gazette Notification No. A/MM-40510/62-6209/M dated 21st December, 1962 and No. B/M-6-1019/68-1564/M dated 28th February, 1969 of the State of Bihar' leaves no manner of doubt that 1962 and 1969 Notifications continued to operate and did not lapse. Principles of promissory estoppels.

132. The doctrine of promissory estoppel is now firmly established and is well accepted in India. Its nature, scope and extent have come up for consideration before this Court time and again. One of the leading cases of this Court on the doctrine of promissory estoppel is the case of Motilal Padampat Sugar Millsz . In that case, the Court elaborately and extensively considered diverse facets and aspects of doctrine of promissory estoppel. That was a case where the appellant was primarily engaged in the business of manufacture and sale of sugar and it had also a cold storage plant and a steel foundry. On October 10, 1968 a news item was carried in the newspaper/s that the State of Uttar Pradesh had decided to give exemption from

sales tax for a period of three years under Section 4-A of the U.P. Sales Tax Act to all new industrial units in the State with a view to enabling them, "to come on firm footing in developing stage". Motilal Padampat Sugar Millsz on the basis of the above news, addressed a letter to the Director of the Industries stating that in view of the Sales Tax Holiday announced by the Government, it intended to set up a hydrogenation plant for manufacture of vanaspati and sought confirmation whether proposed industrial unit would be entitled to sales tax holiday for a period of three years from the date it commenced production. The Director of Industries replied that there would be no sales tax for three years on the finished product of the vanaspati from the date it got power connection for commencing production. Motilal Padampat Sugar Millsz then started taking steps for establishment of the factory. It entered into agreement for procuring plant and machinery and also took diverse steps and considerable progress in the setting up of the vanaspati factory took place. Later on, the State Government had a second thought on the question of exemption of sales tax and, ultimately, the government took a policy decision that new vanaspati units in the State which go into commercial production by September 30, 1970 would be given only partial concession in sales tax for a period of three years. Motilal Padampat Sugar Millsz took up the matter with the Government and in the meanwhile its production started on July 2, 1970 which was also intimated to the functionaries of the State. Having been denied total sales tax holiday although promised earlier by the Director of Industries, it filed a writ petition before the High Court. The principal argument advanced on behalf of Motilal Padampat Sugar Millsz was that on a categorical assurance of the State Government that it would be exempted from payment of sales tax for a period of three years from the date of commencement of production that it established a hydrogeneration plant for manufacture of vanaspati. The assurance was given by the State Government intending or knowing that it would be acted on by it and in fact by acting on it, it altered its position and, therefore, the State Government was bound on the principle of promissory estoppel to honour the assurance and exempt it from sales tax for a period of three years. In backdrop of these facts, when the matter reached this Court, the Court considered the nature, scope and extent of the doctrine of promissory estoppel. In paragraph 8 of the Report, the Court considered the view of Justice Denning, as he then was, in the Central London Property Trust Ltd. v. High Trees House Ltd.[47] wherein Denning, J. had considered Jorden v. Money[48]. This Court also referred to in paragraph 8, the opinions in Hughes v. Metropolitan Railway Company[49] , Birmingham and District Land Co., v. London and North Western Rail Co.[50] which were considered by Justice Denning in the High Treesuu case. The Court also considered the decisions in Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd.[51], Evenden v. Guildford City Association Football Club Ltd.[52] and Crabb v. Arun District Council[53] and culled out the legal position as follows :

> “8 The true principle of promissory estoppel, therefore, seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. Then in para 9, the Court stated that it was a doctrine evolved by equity in order to prevent injustice. The Court pointed out that where promise is made by a person knowing that it would be acted on by the person to whom it is made and in fact it is so acted on, it is inequitable to allow the party making the promise to go back upon it.”

133. In para 13, the development of doctrine of promissory estoppel in England was noticed by observing, “that even in England where the Judges, apprehending that if a cause of action is allowed to be founded on promissory estoppel it would considerably erode, if not completely overthrow, the doctrine of consideration, have been fearful to allow promissory estoppel to be used as a weapon of offence, it is interesting to find that promissory estoppel has not been confined to a purely defensive role”.

134. In Motilal Padampat Sugar Millsz, the Court also referred to American law on the subject. In para 14 after observing, ‘the doctrine of promissory estoppel has displayed remarkable vigour and vitality in the hands of American Judges and it is still rapidly developing and expanding in the United States”, the Court referred to Article 90 of American Law Institute’s —Restatement of the Law of Contracts” and the statement at page 657 of Volume 19 of American Jurisprudence.

135. The Court then considered the view of Justice Cardozo in Allengheny College v. National Chautauque County Bank[54] and Orennan v. Star Paving Company[55] and noted as follows :

> “There are also numerous cases where the doctrine of promissory estoppel has been applied against the Government where the interest of justice, morality and common fairness clearly dictated such a course. We shall refer to these cases when we discuss the applicability of the doctrine of equitable estoppel against the Government. Suffice it to state for the present that the doctrine of promissory estoppel has been taken much further in the United States than in English and Commonwealth jurisdictions and in some States at least, it has been used to reduce, if not to destroy, the prestige of

consideration as an essential of valid contract. Vide Spencer Bower and Turner's Estoppel by Representation (2d) p. 358.

136. The Court then considered to what extent the doctrine of promissory estoppel was applicable against the Government. After referring to few decisions of the English courts and the American courts, the decisions of this Court in Union of India v. Indo-Afghan Agencies[56], Collector of Bombay v. Municipal Corporation of the City of Bombay[57], Century Spinning and Manufacturing Co. Ltd. v. Ulhasnagar Municipal Council[58], M. Ramanatha Pillai v. State of Kerala[59], Assistant Custodian v. Brij Kishore Agarwala[60], State of Kerala v. Gwalior Rayon Silk Manufacturing Co. Ltd.[61], Excise Commissioner, U.P., Allahabad v. Ram Kumar[62], Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh[63] and Radhakrishna Agarwal v. State of Bihar[64] were considered.

137. After entering into detailed consideration as noted above, in Motilal Padampat Sugar Millsz , this Court exposited the legal position that the doctrine of promissory estoppel may be applied against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. The following position was culled out:

> “The promissory estoppel cannot be invoked to compel the Government or even a private party to do an act prohibited by law. To invoke the doctrine of promissory estoppel it is not necessary for the promisee to show that he suffered any detriment as a result of acting in reliance on the promise. The detriment is not some prejudice suffered by the promisee by acting on the promise but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. Whatever be the nature of function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied the Government can be compelled to carry out the promise made by it.”

138. In Union of India and Others v. Godfrey Philips India Limited[65] (para 9, page 383 of the Report), this Court stated as follows:

> “9. Now the doctrine of promissory estoppel is well established in the administrative law of India. It represents a principle evolved by equity to avoid injustice and, though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. The basis of this doctrine is the interposition of equity which has always, true to its form, stepped in to mitigate the rigour of strict law. This doctrine, though of ancient vintage, was rescued from obscurity by the decision of Mr. Justice Denning as he then was, in his celebrated judgment in Central London Property Trust Ltd. v. High Trees House Ltd. The true principle of promissory estoppel is that where

> one party has by his word or conduct made to the other a clear and unequivocal promise or representation which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise or representation is made and it is in fact so acted upon by the other party, the promise or representation would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings which have taken place between the parties. It has often been said in England that the doctrine of promissory estoppel cannot itself be the basis of an action: it can only be a shield and not a sword: but the law in India has gone far ahead of the narrow position adopted in England and as a result of the decision of this Court in Motilal Padampat Sugar Mills v. State of U.P. it is now well settled that the doctrine of promissory estoppel is not limited in its application only to defence but it can also found a cause of action. The decision of this Court in Motilal Sugar Mills case contains an exhaustive discussion of the doctrine of promissory estoppel and we find ourselves wholly in agreement with the various parameters of this doctrine outlined in that decision."

139. The doctrine of promissory estoppel also came up for consideration before this Court in Delhi Cloth and General Mills Limited v. Union of India[66]. In para 18 (page 95) of the Report the Court stated as follows:

> "18. Here the Railways Rates Tribunal apparently, appears to have gone off the track. The doctrine of promissory estoppel has not been correctly understood by the Tribunal. It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered "detriment" or "prejudice". It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him. Must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the premise that it is reliance based and nothing more."

140. A two-Judge Bench of this Court in Amrit Banaspati Company Limitedaa entered into consideration of the extent and applicability of doctrine of promissory estoppel and after

considering earlier decisions of this Court in Indo-Afghan Agenciesddd , Motilal Padampat Sugar Millsz , Godfrey Philips India Limitedmmm and Delhi Cloth and General Mills Limitednnn culled out the legal position that if a representation was made by an official on behalf of the Government then unless such representation is established to be beyond scope of authority it should be held binding on the Government. However, if such representation was contrary to law then such representation was unenforceable. Then the Court stated (para 10, page 424) as follows:

> "10. But promissory estoppel being an extension of principle of equity, the basic purpose of which is to promote justice founded on fairness and relieve a promisee of any injustice perpetrated due to promisor's going back on its promise, is incapable of being enforced in a court of law if the promise which furnishes the cause of action or the agreement, express or implied, giving rise to binding contract is statutorily prohibited or is against public policy "

141. In Kasinka Trading Anr. v. Union of India and Anr.[67] , the Court was principally concerned with the invocation of the doctrine of promissory estoppel in the facts and circumstances of the case obtaining therein. The Court considered the decision of this Court in Indo-Afghan Agenciesddd and the successive decisions. The Court held in (paras 11-12, pages 283-284) as under:

> "The doctrine of promissory estoppel or equitable estoppel is well established in the administrative law of the country. To put it simply, the doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance or the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority —to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel

clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. Then in paragraph 20 of the Report while distinguishing the facts under consideration which were not found to be analogous to the facts in Indo- Afghan Agenciesddd and Motilal Padampat Sugar Mills, the Court stated (Para 20-21, pages 287-288) as follows:

“The facts of the appeals before us are not analogous to the facts in Indo- Afghan Agencies or M.P. Sugar Mills. In the first case the petitioner therein had acted upon the unequivocal promises held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the present batch of cases neither the notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in public interest. So far as the second case (M.P. Sugar Mills case) is concerned the facts were totally different. In the correspondence exchanged between the State and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry. The power to grant exemption from payment of duty, additional duty etc. under the Act, as already noticed, flows from the provisions of Section 25(1) of the Act. The power to exempt includes the power to modify or withdraw the same. The liability to pay customs duty or additional duty under the Act arises when the taxable event occurs. They are then subject to the payment of duty as prevalent on the date of the entry of the goods. An exemption notification issued under Section 25 of the Act

> had the effect of suspending the collection of customs duty. It does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself as is obvious from the language of Section 25 of the Act. Under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. From the very nature of power of exemption granted to the Government under Section 25 of the Act, it follows that the same is with a view to enabling the Government to regulate, control and promote the industries and industrial production in the country. Notification No. 66 of 1979 in our opinion, was not designed or issued to induce the appellants to import PVC resin. Admittedly, the said notification was not even intended as an incentive for import. The notification on the plain language of it was conceived and issued on the Central Government "being satisfied that it is necessary in the public interest so to do". Strictly speaking, therefore, the notification cannot be said to have extended any 'representation' much less a 'promise' to a party getting the benefit of it to enable it to invoke the doctrine of promissory estoppel against the State. It would bear repetition that in order to invoke the doctrine of promissory estoppel, it is necessary that the promise which is sought to be enforced must be shown to be an unequivocal promise to the other party intended to create a legal relationship and that it was acted upon as such by the party to whom the same was made. A notification issued under Section 25 of the Act cannot be said to be holding out of any such unequivocal promise by the Government which was intended to create any legal relationship between the Government and the party drawing benefit flowing from of the said notification. It is, therefore, futile to contend that even if the public interest so demanded and the Central Government was satisfied that the exemption did not require to be extended any further, it could still not withdraw the exemption."

The Court went on to observe (paras 24 and 25, pages 289-290) as under: "24. It needs no emphasis that the power of exemption under Section 25(1) of the Act has been granted to the Government by the Legislature with a view to enabling it to regulate, control and promote the industries and industrial productions in the country. Where the Government on the basis of the material available before it, bona fide, is satisfied that the —public interest" would be served by either granting exemption or by withdrawing, modifying or rescinding an

exemption already granted, it should be allowed a free hand to do so. We are unable to agree with the learned counsel for the appellants that Notification No. 66 of 1979 could not be withdrawn before 31-3- 1981. First, because the exemption notification having been issued under Section 25(1) of the Act, it was implicit in it that it could be rescinded or modified at any time if the public interest so demands and secondly it is not permissible to postpone the compulsions of —public interest" till after 31¬3- 1981 if the Government is satisfied as to the change in the circumstances before that date. Since, the Government in the instant case was satisfied that the very public interest which had demanded a total exemption from payment of customs duty now demanded that the exemption should be withdrawn it was free to act in the manner it did. It would bear a notice that though Notification No. 66 of 1979 was initially valid only up to 31-3- 1979 but that date was extended in —public interest", we see no reason why it could not be curtailed in public interest. Individual interest must yield in favour of societal interest. In our considered opinion therefore the High Court was perfectly right in holding that the doctrine of promissory estoppel had no application to the impugned notification issued by the Central Government in exercise of its powers under Section 25(1) of the Act in view of the facts and circumstances, as established on the record."

142. In State of Orissa and Ors. v. Mangalam Timber Products Limited[68] , this Court held that to attract applicability of the principle of estoppel it was not necessary that there must be a contract in writing entered into between the parties. Having regard to the facts of the case under consideration, the Court held that it was not satisfied even prima facie that it was a case of an error committed by the State Government of which it was not aware. While observing that the State cannot take advantage of its own omission, the Court held that having persuaded the respondent therein to establish an industry and that party having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of the raw material fixed by the State Government, the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of that party.

143. In Nestle India Limitedbb, the applicability of doctrine of promissory estoppel again came up for consideration before this Court. Inter alia, the Court considered the earlier decisions of this Court in Indo-Afghan Agenciesddd, Motilal Padampat Sugar Millsz, Godfrey Philips India Limitedmmm, Mangalam Timber Products Limitedppp , Amrit Banaspati Company Limitedaa and Kasinka Tradingooo . The Court followed Godfrey Philips India Limitedmmm which was found to be close to the facts of that case. The Court did not accept the argument canvassed on behalf of the State of Punjab that the overriding public interest would make it inequitable to enforce the estoppel against the State Government.

144. In Bannari Amman Sugars Ltd. v. Commercial Tax Officer Ors.[69], the development of doctrine of promissory estoppel was noted (paras 5-7, pages 631¬633) and it was held as under:

> “Estoppel is a rule of equity which has gained new dimensions in recent years. A new class of estoppel has come to be recognised by the courts in this country as well as in England. The doctrine of “promissory estoppel” has assumed importance in recent years though it was dimly noticed in some of the earlier cases. The leading case on the subject is Central London Property Trust Ltd. v. High Trees House Ltd., (1947) 1 K.B. 130 The rule laid down in High Trees case again came up for consideration before the King's Bench in Combe v. Combe [(1951) 2 KB 215]. Therein the Court ruled that the principle stated in High Trees case is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration, but only by his word. But that principle does not create any cause of action, which did not exist before; so that, where a promise is made which is not supported by any consideration, the promise cannot bring an action on the basis of that promise. The principle enunciated in High Trees case was also recognised by the House of Lords in Tool Metal Mfg. Co. Ltd. v. Tungsten Electric Co. Ltd. [(1955) 2 All ER 657]. That principle was adopted by this Court in Union of India v. Anglo Afghan Agencies (AIR1968 SC 718) and Turner Morrison and Co. Ltd. v. Hungerford Investment Trust Ltd.[(1972) 1 SCC 857]. Doctrine of “promissory estoppel” has been evolved by the courts, on the principles of equity, to avoid injustice. “Promissory estoppel” is defined in Black's Law Dictionary as an estoppel. “which arises when there is a promise which promisor should reasonably expect to induce action or forbearance of a definite and substantial character on part of promisee, and which does induce such action or forbearance, and such promise is binding if injustice can be avoided only by enforcement of promise”. So far as this Court is concerned, it invoked the doctrine in Anglo Afghan Agencies case in which it was, inter alia, laid down that even though the case would not fall within the terms of Section 115 of the Indian Evidence Act, 1872 (in short “the Evidence Act”) which enacts the rule of estoppel, it would still be open to a party who had acted on a representation made by the Government to claim that the Government should be bound to carry out the promise made by it even though the promise was not

recorded in the form of a formal contract as required by Article 299 of the Constitution. [See Century Spg. Mfg. Co. Ltd. v. Ulhasnagar Municipal Council, [(1970) 1 SCC 582], Radhakrishna Agarwal v. State of Bihar, [(1977)3 SCC 457], Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P., [(1979) 2 SCC 409], Union of India v. Godfrey Philips India Ltd.[(1985) 4 SCC 369] and Ashok Kumar Maheshwari (Dr.) v. State of U.P. [(1998) 2 SCC 502]. In the backdrop, let us travel a little distance into the past to understand the evolution of the doctrine of "promissory estoppel". Dixon, J., an Australian jurist, in Grundt v. Great Boulder Gold Mines Pty. Ltd. [(1939) 59 CLR 641 (Aust HC) laid down as under:

"It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumptions were deserted that led to it."The principle, set out above, was reiterated by Lord Denning in High Trees case. This principle has been evolved by equity to avoid injustice. It is neither in the realm of contract nor in the realm of estoppel. Its object is to interpose equity shorn of its form to mitigate the rigour of strict law, as noted in Anglo Afghan Agencies case and Sharma Transport v. Govt. of A.P. [(2002) 2 SCC 188]No vested right as to tax-holding is acquired by a person who is granted concession. If any concession has been given it can be withdrawn at any time and no time-limit should be insisted upon before it was withdrawn. The rule of promissory estoppel can be invoked only if on the basis of representation made by the Government, the industry was established to avail benefit of exemption. In Kasinka Trading v. Union of India [(1995) 1 SCC 274] it was held that the doctrine of promissory estoppel represents a principle evolved by equity to avoid injustice."

145. In M.P. Mathurcc , the Court was concerned with the question whether on the facts of the case, the plaintiffs could compel transfer of tenements in their favour on the basis of promissory estoppel. The Court (para 14, page 716 of the Report) observed as follows:

"The term —equity" has four different meanings, according to the context in which it is used. Usually it means —an equitable interest in property". Sometimes, it means —a mere equity", which is a procedural right ancillary to some right of property, for example, an equitable right to have a conveyance rectified. Thirdly, it may mean —floating equity", a term which may be used to describe the interest of a beneficiary under a will. Fourthly, —the right to obtain an

injunction or other equitable remedy". In the present case, the plaintiffs have sought a remedy which is discretionary. They have instituted the suit under Section 34 of the 1963 Act. The discretion which the court has to exercise is a judicial discretion. That discretion has to be exercised on well-settled principles. Therefore, the court has to consider— the nature of obligation in respect of which performance is sought, circumstances under which the decision came to be made, the conduct of the parties and the effect of the court granting the decree. In such cases, the court has to look at the contract. The court has to ascertain whether there exists an element of mutuality in the contract. If there is absence of mutuality the court will not exercise discretion in favour of the plaintiffs. Even if, want of mutuality is regarded as discretionary and not as an absolute bar to specific performance, the court has to consider the entire conduct of the parties in relation to the subject-matter and in case of any disqualifying circumstances the court will not grant the relief prayed for (Snell's Equity, 31st Edn., p. 366) "

146. In my view, the following principles must guide a Court where an issue of applicability of promissory estoppel arises:

> "(i) Where one party has by his words or conduct made to the other clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is, in fact, so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.
>
> (ii) The doctrine of promissory estoppel may be applied against the Government where the interest of justice, morality and common fairness dictate such a course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. However, the Government or even a private party under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law. The nature and function which the Government discharges is not very relevant. The Government is subject to the rule of promissory estoppel and if the essential ingredients of this doctrine are satisfied, the Government can be compelled to carry out the promise made by it.

> (iii) The doctrine of promissory estoppel is not limited in its application only to defence but it can also furnish a cause of action. In other words, the doctrine of promissory estoppel can by itself be the basis of action.
>
> (iv) For invocation of the doctrine of promissory estoppel, it is necessary for the promisee to show that by acting on promise made by the other party, he altered his position. The alteration of position by the promisee is a sine qua non for the applicability of the doctrine. However, it is not necessary for him to prove any damage, detriment or prejudice because of alteration of such promise.
>
> (v) In no case, the doctrine of promissory estoppel can be pressed into aid to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make. No promise can be enforced which is statutorily prohibited or is against public policy.
>
> (vi) It is necessary for invocation of the doctrine of promissory estoppel that a clear, sound and positive foundation is laid in the petition. Bald assertions, averments or allegations without any supporting material are not sufficient to press into aid the doctrine of promissory estoppel.
>
> (vii) The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the Court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation. Principles of legitimate expectation."

147. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also noticed here only to appreciate the case of the appellants founded on the basis of doctrines of promissory estoppel and legitimate expectation.

148. In Union of India and Others v. Hindustan Development Corporation and Others[70], this Court had an occasion to consider nature, scope and applicability of the doctrine of legitimate expectation. The matter related to a government contract. This Court in paragraph 35 (Pgs. 548-549) observed as follows:

> "Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an exhaustive list in the

context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not guaranteed by way of a statutory right, in cases of contracts, distribution of largess by the Government and in somewhat similar situations. For instance discretionary grant of licences, permits or the like, carry with it a reasonable expectation, though not a legal right to renewal or non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action taken amounts to an abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the exercise of the power, the concept of legitimate expectation can have no role to play and the court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. For instance if an authority who has full discretion to grant a licence prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. It would thus appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case: [(1990) 64 Aust LJR 327]: —To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." If a denial of legitimate expectation in a given case amounts to denial of right

guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case the courts should restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caution. Otherwise a resourceful litigant having vested interests in contracts, licences etc. can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own interests. The caution, particularly in the changing scenario, becomes all the more important. While observing as above, the Court observed that legitimacy of an expectation could be inferred only if it was founded on the sanction of law or custom or an established procedure followed in regular and natural sequence. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in the conventional sense.

149. A three-Judge Bench of this Court in P.T.R. Exports (Madras) Pvt. Ltd. Ors. v. Union of India Ors.[71] while dealing with the doctrine of legitimate expectation in paras 3, 4 and 5 (Pages. 272-273) stated as follows :

"The doctrine of legitimate expectation plays no role when the appropriate authority is empowered to take a decision by an executive policy or under law. The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country. It is, therefore, by exercise of the power given to the executive or as the case may be,

the legislature is at liberty to evolve such policies. An applicant has no vested right to have export or import licences in terms of the policies in force at the date of his making application. For obvious reasons, granting of licences depends upon the policy prevailing on the date of the grant of the licence or permit. The authority concerned may be in a better position to have the overall picture of diverse factors to grant permit or refuse to grant permission to import or export goods. The decision, therefore, would be taken from diverse economic perspectives which the executive is in a better informed position unless, as we have stated earlier, the refusal is mala fide or is an abuse of the power in which event it is for the applicant to plead and prove to the satisfaction of the court that the refusal was vitiated by the above factors. It would, therefore, be clear that grant of licence depends upon the policy prevailing as on the date of the grant of the licence. The court, therefore, would not bind the Government with a policy which was existing on the date of application as per previous policy. A prior decision would not bind the Government for all times to come. When the Government is satisfied that change in the policy was necessary in the public interest, it would be entitled to revise the policy and lay down new policy. The court, therefore, would prefer to allow free play to the Government to evolve fiscal policy in the public interest and to act upon the same. Equally, the Government is left free to determine priorities in the matters of allocations or allotments or utilisation of its finances in the public interest. It is equally entitled, therefore, to issue or withdraw or modify the export or import policy in accordance with the scheme evolved. We, therefore, hold that the petitioners have no vested or accrued right for the issuance of permits on the MEE or NQE, nor is the Government bound by its previous policy. It would be open to the Government to evolve the new schemes and the petitioners would get their legitimate expectations accomplished in accordance with either of the two schemes subject to their satisfying the conditions required in the scheme. The High Court, therefore, was right in its conclusion that the Government is not barred by the promises or legitimate expectations from evolving new policy in the impugned notification."

150. In the case of M.P. Oil Extraction and Another v. State of M.P. and Ors.[72], this Court considered an earlier decision in Hindustan Development Corporationrrr and in paragraph 44 (pg. 612) of the Report held that the doctrine of legitimate expectation had been judicially recognized. It operates in the domain of public law and in an appropriate case, constitutes a substantive and enforceable right.

151. In J.P. Bansal v. State of Rajasthan and Anr.[73] , it was stated that both doctrines - promissory estoppel and legitimate expectation - require satisfaction of the same criteria and arise out of the principle of reasonableness.

152. A note of caution sounded in Bannari Amman Sugars Ltd.qqq is worth noticing. The Court observed that legitimate expectation was different from anticipation; granting relief on mere disappointment of expectation would be too nebulous a ground for setting aside a public exercise by law and it would be necessary that a ground recognized under Article 14 of the Constitution was made out by a litigant.

153. It is not necessary to multiply the decisions of this Court . Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

> "(i) The doctrine of legitimate expectation can be invoked as a substantive and enforceable right.
>
> (ii) The doctrine of legitimate expectation is founded on the principle of reasonableness and fairness. The doctrine arises out of principles of natural justice and there are parallels between the doctrine of legitimate expectation and promissory estoppel.
>
> (iii) Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.
>
> (iv) The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertible expectation. Such expectation should be justifiable, legitimate and protectable.
>
> (v) The protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit. Whether doctrines of promissory estoppel and legitimate expectation attracted."

154. I may now examine whether the doctrines of promissory estoppel and the legitimate expectation help the appellants in obtaining the reliefs claimed by them and whether the

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actions of the State Government and the Central Government are liable to be set aside by applying these doctrines.

155. Each of the appellants has raised the pleas of promissory estoppel and legitimate expectation based on its own facts. It is not necessary to narrate facts in each appeal with regard to these pleas as stipulations in the MOUs entered into between the respective appellants and the State Government are broadly similar. For the sake of convenience, the broad features in the matter of Adhunik may be considered. The MOU was made between the State Government and Adhunik on February 26, 2004. Adhunik is involved in diversified activities such as production of sponge iron and steel, generating power etc. The preamble to the MOU states that the Government of Jharkhand is desirous of utilization of its natural resources and rapid industrialization of the State and has been making efforts to facilitate setting up of new industries in different locations in the State. It is stated in paragraph 2 of the MOU, "in this context the Government of Jharkhand is willing to extend assistance to suitable promoters to set up new industries" (emphasis supplied). Adhunik expressed desire of setting up manufacturing/generating facilities in the State of Jharkhand. Proposed Phase-I comprised of setting up Sponge Iron Plant and Pelletaisation Plant while Phase-II comprised of Sponge Iron Plant, Power Plant, Coal Washery, Mini Blast Furnace, Steel Melting/LD/IF and Iron Ore Mining and Phase-III comprised of establishment of Power Plant. Para 4 of MOU states that Adhunik requires help and cooperation of the State Government in several areas to enable them to construct, commission and operate the project. The State Government's willingness to extend all possible help and cooperation is stated in the above MOU. Para 4.3 of MOU records that the State Government shall assist in selecting the area for Adhunik for iron ore and other minerals as per requirement of the company depending upon quality and quantity. The State Government also agreed to grant mineral concession as per existing Acts and Rules.

156. In pursuance of the above MOU, the State Government through its Deputy Secretary, Mining and Geology Department recommended to the Government of India through its Joint Director, Mining Ministry on August 4, 2004 to grant prior approval under Section 11(5) and Section 5(1) of the 1957 Act for grant of mining lease to Adhunik for a period of 30 years in the area of 426.875 hectares. The reasons for such recommendation were stated by the State Government in the above communication. In the above communication, it was stated that Adhunik had signed MOU with the State Government for making a capital investment of Rs. 790 crores in establishment of an industry based on iron ore mineral in the State. The steps taken by Adhunik were also highlighted.

157. Adhunik's case is that on the basis of definite commitment and firm promise made by the State Government for grant of captive mines as stipulated in the MOU and the State's

Industrial Policy, it acted immediately on the MOU and has invested more than Rs. 100 crores to construct and commission the plant and facilities in Phase-I of the MOU and it has employed about 3500 people directly and indirectly for construction and operation of plant in Phase-I. According to Adhunik, it has ordered equipments and machinery for Phase-II and Phase-III at a cost of Rs. 25 crores and has also made further financial commitments for more than Rs. 1000 crore to set up the expansion. Adhunik claims to have also borrowed a sum of Rs. 60 crores from banks and financial institutions and invested that sum in the proposed project.

158. According to Adhunik, no integrated steel plant can be viable in the State of Jharkhand without captive iron ore mines and without the definite promise of the State Government to grant the captive mines and it would not have acted on the MOU to make such a huge investment if the State Government were not to make available captive iron ore mines. Adhunik has also stated that in the absence of grant of captive iron ore mines, it has been suffering huge and irreparable losses due to (a) shortage in supply of iron ore due to poor availability, (b) it has to purchase from the market poor quality of iron ore and (c) extra cost due to abnormal market prices compared to the actual cost of captive iron ore.

159. What the State Government had expressed in MOU is its willingness to extend all possible help and cooperation in setting up the manufacturing/generating facilities by Adhunik. The clause in MOU states that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company depending upon quality and quantity. The State Government agreed to grant mineral concession as per existing Act and Rules. As a matter of fact, when the MOU was entered into, the State Government was not even aware about the reservation of the subject mining area for exploitation in the public sector. It was on November 17, 2004 that the District Mining Officer, Chaibasa informed the Secretary, Department of Mines and Geology, Government of Jharkhand that certain portions of Mauza Ghatkuri and the adjoining areas were reserved for public sector under 1962 and 1969 Notifications issued by the erstwhile State of Bihar. The District Mining Officer suggested to the State Government that approval of the Central Government should be obtained for grant of leases to the concerned applicants. In his communication, he stated that the fact of reservation of the subject area in public sector vide 1962 and 1969 Notifications was brought to the knowledge of the Director of Mines, Jharkhand but he did not take any timely or adequate action in the matter. In view of the fact that the subject mining area had been reserved for exploitation in pubic sector under 1962 and 1969 Notifications, in my opinion, the stipulation in the MOU that the State Government shall assist in selecting the area for iron ore and other minerals as per requirement of the company and the commitment to grant mineral concession cannot be enforced. For one, the stipulation in the MOU is not unconditional. The above commitment is dependent on

availability and as per existing law. Two, if the State Government is asked to do what it represented to do under the MOU then that would amount to asking the State Government to do something in breach of these two Notifications which continue to hold the field. The doctrine of promissory estoppel is not attracted in the present facts, particularly when promise was made - assuming that some of the clauses in the MOU amount to promise - in a mistaken belief and in ignorance of the position that the subject land was not available for iron ore mining in the private sector. I do not think that the State Government can be compelled to carry out what it cannot do in the existing state of affairs in view of 1962 and 1969 Notifications. In my opinion, the State Government cannot be held to be bound by its commitments or assurances or representations made in the MOU because by enforcement of such commitments or assurances or representations, the object sought to be achieved by reservation of the subject area is likely to be defeated and thereby affecting the public interest. The overriding public interest also persuades me in not invoking the doctrines of promissory estoppel and legitimate expectation. For the self-same reasons none of the appellants is entitled to any relief based on these doctrines; their case is no better.

160. As a matter of fact, on coming to know of 1962 and 1969 Notifications, the State Government withdrew the proposals which it made to the appellants and reiterated the reservation by its Notification dated October 27, 2006 expressly —in public interest and in the larger interest of the State".

161. The act of the State Government in withdrawing the recommendations made by it to the Central Government in the above factual and legal backdrop cannot be said to be bad in law on the touchstone of doctrine of promissory estoppel as well as legitimate expectation. The act of the State Government is neither unfair nor arbitrary nor it suffers from the principles of natural justice. The Government of India upon examination of the proposals rejected them on the ground that subject area was under reservation and not available for exploitation by private parties. In these circumstances, if the clauses in the MOU are allowed to be carried out, it would tantamount to enforcement of promise, assurance or representation which is against law, public interest and public policy which I am afraid cannot be permitted.

162. On behalf of the appellants, it was also argued that the 1962 and 1969 Notifications had remained in disuse for about 40 years and it is reasonable to infer that these two Notifications no longer operated. In this regard, the doctrine of quasi repeal by desuetude was sought to be invoked. Doctrine of desuetude.

163. The doctrine of desuetude and its applicability in Indian Jurisprudence have been considered by this Court on more than one occasion. In the case of State of Maharashtra v. Narayan Shamrao Puranik Ors.[74], the Court noted the decision of Scrutton, L.J. in R. v.

London County Council[75] and the view of renowned author Allen in "Law in the Making" and observed that the rule concerning desuetude has always met with general disfavour. It was also held that a statute can be abrogated only by express or implied repeal; it cannot fall into desuetude or become inoperative through obsolescence or by lapse of time.

164. In Bharat Forge Co. Ltd.v, inter alia, the argument was raised that the Notifications of June 17, 1918 have not been implemented till date and therefore these Notifications were dead letter and stood repealed "quasily". A three-Judge Bench of this Court entered into consideration of the doctrine of desuetude elaborately. After noticing the English law and Scots law in regard to the doctrine of desuetude, the Court noted the doctrine of desuetude explained in Francis Bennion's Statutory Interpretation; Craies Statute Law (7th Edn.) and Lord Mackay's view in Brown v. Magistrate of Edinburgh[76].

165. The Court also referred to "Repeal and Desuetude of Statutes", by Aubrey L. Diamond wherein a reference has been made to the view of Lord Denning, M.R. in Buckoke v. Greater London Council[77]. Having noticed as above, the Court in paragraph 34 (pages 446-447) of the Report stated:

> "Though in India the doctrine of desuetude does not appear to have been used so far to hold that any statute has stood repealed because of this process, we find no objection in principle to apply this doctrine to our statutes as well. This is for the reason that a citizen should know whether, despite a statute having been in disuse for long duration and instead a contrary practice being in use, he is still required to act as per the "dead letter". We would think it would advance the cause of justice to accept the application of doctrine of desuetude in our country also. Our soil is ready to accept this principle; indeed, there is need for its implantation, because persons residing in free India, who have assured fundamental rights including what has been stated in Article 21, must be protected from their being, say, prosecuted and punished for violation of a law which has become "dead letter". A new path is, therefore, required to be laid and trodden."

166. In Cantonment Board, MHOW and Anr. v. M.P. State Road Transport Coroporation[78], this Court had an occasion to consider the doctrine of desuetude while considering the submission that the provisions of Madhya Pradesh Motor Vehicles Taxation Act, 1947 stood repealed having been in disuse. The Court considered the earlier decision in Bharat Forge Co. Ltd.v and held that to apply principle of desuetude it was necessary to establish that the statute in question had been in disuse for long and the contrary practice of some duration has evolved. It was also held that neither of these two facts has been satisfied in the case and therefore the doctrine of desuetude had no application.

167. From the above, the essentials of doctrine of desuetude may be summarized as follows:

> "(i) The doctrine of desuetude denotes principle of quasi repeal but this doctrine is ordinarily seen with disfavor.
>
> (ii) Although doctrine of desuetude has been made applicable in India on few occasions but for its applicability, two factors, namely, (i) that the statute or legislation has not been in operation for very considerable period and (ii) the contrary practice has been followed over a period of time must be clearly satisfied. Both ingredients are essential and want of anyone of them would not attract the doctrine of desuetude. In other words, a mere neglect of a statute or legislation over a period of time is not sufficient but it must be firmly established that not only the statute or legislation was completely neglected but also the practice contrary to such statute or legislation has been followed for a considerable long period. Whether doctrine of desuetude attracted in respect of 1962 and 1969 Notifications."

168. Insofar as 1962 and 1969 Notifications are concerned, I am of the view that doctrine of desuetude is not attracted for more than one reason. In the first place, the Notifications are of 1962 and 1969 and non- implementation of such Notifications for 30-35 years is not that long a period which may satisfy the first requirement of the doctrine of desuetude, namely, that the statute or legislation has not been in operation for a very considerable period. Moreover, State of Jharkhand came into existence on November 15, 2000 and it can hardly be said that 1962 and 1969 Notifications remained neglected by the State Government for a very considerable period. As a matter of fact, in 2006, the State Government issued a Notification mentioning therein about the reservation made by 1962 and 1969 Notifications. Thus, the first ingredient necessary for invocation of doctrine of desuetude is not satisfied. Secondly, and more importantly, even if it is assumed in favour of the appellants that 1962 and 1969 Notifications remained in disuse for a considerable period having not been implemented for more than 30-35 years, the second necessary ingredient that a practice contrary to the above Notifications has been followed for a considerable long period and such contrary practice has been firmly established is totally absent. As a matter of fact, except stray grant of mining lease for a very small portion of the reserved area to one or two parties there is nothing to suggest much less establish the contrary usage or contrary practice that the reservation made in the two Notifications has been given a complete go by. Additional submissions on behalf of Monnet.

169. The main submissions raised on behalf of the appellants having been dealt with, I may now consider certain additional submissions made on behalf of Monnet. It was argued by Mr.

Ranjit Kumar, learned senior counsel for Monnet that the State Government in its letter to recall the recommendation made in favour of the appellant set up the ground of overlapping with the lease of Rungta but it mala fide suppressed the fact of expiry of lease of Rungta in 1995 and also that the said area had been notified for regrant in the Official Gazette on July 3, 1996. He would contend that Rule 24A of the 1960 Rules provides for an application for renewal of lease to be made one year prior to the expiry of lease but no application for renewal was made by Rungta within this time and, therefore, Rungta had no legal right over the overlapping area.

170. It was submitted by Mr. Ranjit Kumar that the appellant - Monnet had produced two maps before the High Court and this Court (one was prepared by the District Mining Officer in 2004) that depicted that the area recommended for grant to the appellant was not covered by 1962 or 1969 Notifications.

171. It was submitted on behalf of Monnet that the case of Monnet was identical to the case of M/s. Bihar Sponge Iron Ltd. and the State Government had discriminated against the appellant vis--vis the case of M/s. Bihar Sponge Iron Ltd.

172. Mr. Ranjit Kumar also submitted that there has been violation of the statutory right of hearing in terms of Rule 26 of the 1960 Rules. He submitted that order was not communicated to Monnet by the State Government and thereby its remedy under Rule 54 of 1960 Rules was taken away. The violation of principles of natural justice goes to the root of the matter and on that ground alone the decision of the State Government to recall the recommendation and the decision of the Central Government in summarily rejecting and returning application are bad in law. Reliance in this regard was placed on a decision of Privy Council in Nazir Ahmad v. King-Emperor[79] and also a decision of this Court in Nagarjuna Construction Company Ltd. v. Government of Andhra Pradesh Ors.[80].

173. Mr. Ranjit Kumar also argued that once recommendation was made by it to the Central Government, in view of proviso to Rule 63A of the 1960 Rules, the State Government had become functus officio and ceased to have any power to recall the recommendation already made on any ground whatsoever. In this regard he relied upon Jayalakshmi Coelho v. Oswald Joseph Coelho[81].

174. Relying upon the decision of this Court in Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi, Ors.,[82] it was submitted that the reasons originally given in an administrative order cannot be supplanted by other reasons in the affidavits or pleadings before the Court. He submitted that as regards Monnet, the initial reason by the

State Government was not founded on reservation but later on it tried to bring the ground of reservation in fore by supplanting reasons.

175. Mr. Ranjit Kumar vehemently contended that as per the State Government's own case initially, the land that was recommended for mining lease to Monnet was not under the reserved area and, therefore, Monnet's writ petition ought not to have been heard and decided with the group matters. He also referred to interim order passed by this Court on August 18, 2008, the meeting that took place between the Central Government and the State Government pursuant thereto and the subsequent interim order of this Court dated December 15, 2008.

176. I have carefully considered the submissions of Mr. Ranjit Kumar. Most of the above submissions were not argued on behalf of Monnet before the High Court. The submissions were confined to the issue of reservation, the legality and validity of 1962, 1969 and 2006 Notifications, consequent illegal action of the State Government in recalling the recommendation and of the Central Government in summarily rejecting the appellant's application.

177. In paragraph 17 of the impugned judgment, the arguments of the learned senior counsel for Monnet have been noticed. It transpires therefrom that many of the above arguments were not advanced including the issue of overlapping with the area of Rungta. In the list of dates/synopsis of the special leave petition, Monnet has not raised any grievance that arguments made on its behalf before the High Court were not correctly recorded or the High Court failed to consider any or some of its arguments. Criticism of the High Court judgment is thus not justified and I am not inclined to go into above submissions of Mr. Ranjit Kumar for the first time.

178. It is too late in the day for Monnet to contend that its case could not have been decided with group matters and in any case the matter should be remanded to the High Court for reconsideration on the issues, namely, (a) whether the area recommended for the appellant was overlapping with Rungta only to the extent of 102.25 hectares out of total 705 hectares recommended for appellant; (b) whether after expiry of lease Rungta's area was renotified for grant in 1996; (c) what was the reason for the State Government to withdraw the recommendation made in favour of the appellant when the alleged overlapping with Rungta was only to the extent of 102.25 hectares and (d) is withdrawal of appellant's recommendation arbitrary when reservation vide 1962 Notification did not apply to the area recommended in favour of the appellants. Monnet's writ petition was decided by the High Court with group matters as the arguments advanced on its behalf were identical to the arguments which were canvassed on behalf of other writ petitioners. The State Government recalled its recommendations by a common communication and the Central Government

returned the recommendations and rejected applications for mining lease made by the writ petitioners by a common order.

179. The State Government had full power to recall the recommendation made to the Central Government for some good reason. Once 1962 and 1969 Notifications issued by the erstwhile State of Bihar and 2006 Notification issued by the State of Jharkhand have been found by me to be valid and legal, the submissions of Mr. Ranjit Kumar noted above pale in insignificance and are not enough to invalidate the action of the State Government in recalling the recommendation made in favour of Monnet. The valid reservation of subject mining area for exploitation in public sector disentitles Monnet - as well as other appellants - to any relief.

180. It is well settled that no one has legal or vested right to the grant or renewal of a mining lease. Monnet cannot claim a legal or vested right for grant of the mining lease. It is true that by the MOU entered into between the State Government and Monnet certain commitments were made by the State Government but firstly, such MOU is not a contract as contemplated under Article 299(1) of the Constitution of India and secondly, in grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any mining lease. Obviously, the State Government is required to exercise its discretion, subject to the requirement of law. In view of the fact that area is reserved for exploitation of mineral in public sector, it cannot be said that the discretion exercised by the State Government suffers from any legal flaw.

181. The case of discrimination vis-a-vis M/s Bihar Sponge Iron Limited argued on behalf of Monnet was not pressed before High Court and is not at all established. The argument with regard to violation of principles of natural justice is also devoid of any substance. The recommendation in favour of Monnet to the Central Government was simply a proposal with certain pre-conditions. For withdrawal of such proposal by the State Government, in my view, no notice was legally required to be given. Moreover, no prejudice has been caused to it by not giving any notice before recalling the recommendation as it had no legal or vested right to the grant of mining lease. The area is not available for grant of mining lease in the private sector. For all these reasons, I do not find that the case of Monnet stands differently from the other appellants.

Conclusion

182. In view of the foregoing reasons, there is no merit in these appeals and they are dismissed. There shall be no order as to costs. Abhijeet Infrastructure Ltd. Chief Secretary, State of Jharkhand .I find from the proceedings that no notice has been issued in the contempt petition. The proceeding of January 28, 2009 reveals that the Court only ordered copy of the contempt petition to be supplied to learned counsel appearing for the State of Jharkhand to

enable it to file its response. In the order passed on January 28, 2009, the Court made it very clear that it was not inclined to issue any notice in the contempt petition. Now, since the appeal preferred by Abhijeet Infrastructure Ltd., has been dismissed, the contempt petition is also liable to be dismissed and is dismissed.