

THE HON'BLE THE ACTING CHIEF JUSTICE SRI DILIP B.BHOSALE  
AND  
THE HON'BLE SRI JUSTICE S.V.BHATT

**WRIT PETITION Nos.10364, 11582, 11970, 12236,  
12437, 12476, 12686, 12690, 12692, 12700,  
12712, 12944, 12975, 12976, 13115, 13129,  
13171, 13205, 13206, 13208, 13219, 13464,  
13643, 13654, 13779, 15132, 15135, 18276,  
21005, 21466, 25146, 25198, 27133, 27158  
and 27165 OF 2015**

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**COMMON JUDGEMENT:** (per Hon'ble The Acting Chief Justice Dilip B.Bhosale)

Heard learned counsel for the parties. Rule. By consent of learned counsel heard forthwith.

2. Principally, two prayers have been made in these petitions, *first*, to declare that Sections 8, 10, 11 and 13 of The Mines and Minerals (Development and Regulation) Amendment Act, 2015 (for short 'the Amendment Act') notified in the extraordinary gazette dated 27.03.2015 and brought into effect on 12.01.2015, are unreasonable, arbitrary and unconstitutional being violative of Articles 14, 19(1)(g), 39, 300(A) and 301 of the Constitution of India, and *second*, a direction to the respondents to complete processing of their applications for prospecting licences made in accordance with the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Principal Act') as available prior to the date of the Amendment Act came into effect.

3. The petitioners in these petitions had applied for prospecting licence-cum-mining lease under Section 10 for minerals like limestone, and while their applications were pending, the Amendment Act came into effect and as a result thereof their applications became ineligible, and hence they have prayed for striking down the aforesaid provisions of the Amendment Act and sought direction to process their applications under the Principal Act. Sub-section(1) of Section 10A of the Amendment Act states that all

applications received prior to the date of commencement of the Amendment Act (i.e. 12.01.2015) became ineligible.

4. Though the petitioners in these petitions are different the challenge raised is similar. In order to consider and appreciate the grounds of challenge, we deem it necessary to state few facts, to the extent they are necessary, of the Writ Petition No.11582 of 2015, which was argued by Sri C.V.Mohan Reddy, learned senior counsel for the petitioners. He made leading arguments in this batch of writ petitions.

4.1 The first petitioner-Company, in this petition, is 100% share holder (Holding Company) of the second petitioner-Company. The third petitioner is one of the promoter shareholders of the first petitioner-Company. The first petitioner-Company's applications for grant of mineral concessions (prospecting licence-cum-mining lease) were pending with the 2<sup>nd</sup> respondent-State of Andhra Pradesh on the date when the Amendment Act came into effect. Their applications, as claimed by them, have direct impact on the first and second petitioner-Companies and also the interest of the third petitioner as their promoter shareholder.

4.2 The first petitioner-Company is a Company incorporated under the Companies Act, 1956. Presently, it is having 5.2 million tons per annum manufacturing capacity of cement at its factory located at Mellacheruvu Village/Mandal, Nalgonda District, and at Mullakalapalli Village, Yelamanchili Mandal, Visakhapatnam District.

The Company also has two Ready-Mix Concrete Plants at Patancheruvu, Medak District and Nacharam, Ranga Reddy District.

The first petitioner-Company claims that it had achieved a turnover of 1659.88 crores in the financial year 2013-2014 by sale of 35.29 lakhs metric tones of cement manufactured and marketed under the brand of 'MAHA' cement.

4.3 The second petitioner-Company, which has been acquired by the first petitioner-Company, also has a cement plant with production capacity of about 3.2 million tons per annum at Yankandla Village, Banaganapalli Mandal, Kurnool District in the State of Andhra Pradesh.

4.4 Limestone is one of the most essential raw materials required for manufacturing of cement and the cost of procurement thereof, according to the petitioners, has a direct impact on the profitability of their Companies. Further, according to the petitioners, having regard to the cost factor, standard industry practice is that mineral concessions rights are acquired by such cement manufacturing Companies in close proximity of the factories' location and the mineral (limestone) so acquired is captively consumed by the cement industry for production of cement.

4.5 The first petitioner-Company had applied for six different prospecting licences in six different parcels of land situated in Banaganapalli Mandal of Kurnool District in order to feed the industrial unit of the second petitioner-Company situated at Srinagar, Yanakandla Village, Banaganapalli Mandal, Kurnool District. The applications were made on different dates and they were pending at various stages when the Amendment Act was introduced and came into effect.

5. The 1<sup>st</sup> respondent-Union of India issued a Mines and Minerals (Development & Regulation) Amendment Ordinance, 2015, dated 12.01.2015 (for short 'the Ordinance') and the same was subsequently placed before the Parliament and thereby promulgated into the Amendment Act. Though it was notified, as aforementioned, on 27.03.2015, the amendment was brought into effect from 12.01.2015. The Amendment Act made several drastic amendments

to the Principal Act. One of the most significant amendments is insertion of Section 10A, in particular sub-section (1) thereof, whereby all applications received prior to the date of commencement of the Act rendered ineligible.

6. In this backdrop, having regard to the grounds of challenge, we may have to consider the following questions of law: (i) whether Sections 8, 10, 11 and 13 of the Amendment Act are liable to be declared arbitrary, unreasonable and unconstitutional being violative of Articles 14, 19 (1) (g), 39, 300 (A) and 301 of the Constitution of India and those being in conflict with the law laid down by the Supreme Court in ***Natural Resources Allocation, in Re, Special Reference No.1 of 2012***<sup>[1]</sup> and ***Manohar Lal Sharma v. Principal Secretary and Others***<sup>[2]</sup>, in particular; and (ii) whether the petitioners have vested right in obtaining prospecting licence-cum-mining lease under Section 11 of the Principal Act, even after its substitution by Section 11 of the Amendment Act?

7. We have heard the learned counsel for the parties at considerable length and gone through the relevant provisions of the Principal Act, the Amendment Act and so also the relevant Rules and judgments relied upon by them in support of their contentions. Leading arguments, as stated earlier, in this batch of writ petitions were advanced by Sri C.V.Mohan Reddy, learned Senior Counsel, in W.P.No.11582 of 2015, and Sri Sivaraju Srinivas, learned counsel in W.P.Nos.13115, 12944, 13171, 13129, 21466 and 11970 of 2015.

Other learned counsel appearing for the petitioners adopted the arguments advanced by Sri C.V.Mohan Reddy and Sri Sivaraju Srinivas and in addition thereto, some of them made further submissions. We would make reference to the submissions of Sri C.V.Mohan Reddy and of other counsel appearing for the petitioners at an appropriate stage/s.

8. Sri C.V.Mohan Reddy, learned Senior Counsel, at the outset, invited our attention to Section 11 of the Principal Act, i.e. Section 11 as it stood prior to the Amendment Act, and submitted that under this provision a person who made an application for grant of a mineral concession at an earlier date had vested right/accrued right for being considered preferentially over the persons who made applications at a latter date. He submitted the petitioners being the first applicants have vested right in grant of prospecting licences under Section 11 of the Principal Act over others who made applications subsequently and such vested right/accrued right cannot be taken away by the Amendment Act.

Sub-section (1) of Section 10A of the Amendment Act, he submitted, he submitted, has the effect of bringing the enactment into force with retrospective effect, since it renders all applications made prior to the commencement of the Amendment Act ineligible, and thereby takes away the rights of the petitioners that have accrued in their favour on account of the provisions of Sections 10 and 11 of the Principal Act.

8.2 He then invited our attention to Section 10B (2) of the Amendment Act and submitted that it provides for notification by the State for conducting auction for grant of prospecting licence-cum-mining lease. From the language of the provision, he submitted, such a notification and auction would be vague since there is no empiric data that would be available regarding the available quantity and, therefore, auction would be speculative and based on chance. Such vagueness is not permissible in legislation and is in violation of Article 14 of the Constitution of India. He then submitted that there is no consideration or provision made for mineral based industries in order to safeguard availability of raw materials to them and, therefore, the Amendment Act is arbitrary, discriminatory and in violation of Article 14.

8.3 Sri C.V.Mohan Reddy, lastly contended that prescribing an auction as a solitary mechanism for dispensation of mineral concession by Amendment Act would increase centralization and restrict the grants into the hands of few, as oppose to the provisions of Article 39 of the Constitution of India. While introducing the provision, providing for an auction, the Legislature did not take into consideration the possibility of mineral based industries being affected adversely for want of raw-material if they do not get preference in grant in surrounding areas. In view thereof, he submitted that the provision is arbitrary and discriminatory.

9. Mr.Sivaraju Srinivas, the learned counsel appearing for the petitioners in some of the writ petitions, adopted the submissions advanced by Sri C.V.Mohan Reddy, the learned Senior Counsel, and in addition thereto he invited our attention to the Statement of Objects and Reasons and submitted that it is clear and evident that the amendment brought, based on the judgment of the Supreme Court, is arbitrary and violative of Article 14 of the Constitution of India. The Parliament has misapplied the judgments of the Supreme Court in ***Centre For Public Interest Litigation and Others v. Union of India and Others***<sup>[3]</sup>, which is known as ***2G Case***, in ***Manohar Lal Sharma*** and ***Natural Resources Allocation*** (supra) in introducing auction, as a method for alienating natural resources. He submitted, as a matter of fact, the Supreme Court in these cases held that auction cannot be elevated to be a Constitutional Mandate.

9.1 He then submitted that though auction has not been mandated, as held by the Supreme Court, the method introduced by the Amendment Act takes away the protection that the mineral based industries had under the provisions of Principal Act. He submitted, the system of auction, contemplated by Section 10B and 11 of the Amendment Act, has the hazard of the industry being cornered by

larger Corporations and MNCs. Further, he submitted that the provisions of Section 8 of the Amendment Act do not provide for renewal, which is also contrary to the object of the Act.

9.2 According to Mr.Sivaraju Srinivas, as per the provisions of Section 8 of the Amendment Act, whereby Section 8A has been introduced after Section 8 of the Principal Act, the lease for a period of 50 years is provided without any provision for renewal thereof. Absence of renewal provision has the potential threat of the Culture of Conservation of Mineral Wealth being transformed to Profit Maximization on account of a Concession holder's intention to empty the mines from all the mineral within 50 years time. He submitted that the procedure of auctioning for Prospecting Licence-cum-Mining Lease would require the State to notify and conduct an auction for unknown quality and quantities of mineral which would render the very grant speculative. Auction could have been restricted to all cases where evidence of mineral is available, as even the previous statutory regime had a provision for the State to notify for grant. Therefore, there could have been a substitution of procedure wherever a notification is issued and not in cases where applications are made voluntarily by interested parties or industries. He submitted that these factors, viz., non-application of mind, classification of non-homogenous groups into one homogenous group, not having a nexus between the purpose sought to be achieved reflect arbitrariness and hence violative of Article 14. He submitted that not providing protection or a distinction for industries based on mineral raw materials and creating possibility of larger Corporations and Multinational Companies to corner the mineral would amount to placing an unreasonable restriction on the rights of the petitioners, which are small corporations, to carry out their business and hence Sections 10B and 11 of the Amendment Act are in violation of Article 19(1)(g) of the Constitution of India. While so, he also referred to

Article 39 and submitted that mandate cast upon the State under clauses (b) and (c) thereof to protect the mineral and natural resources and ensure equi-distribution of the same has been violated as the mode of auction has the direct effect of persons having money and resources to control the minerals.

10. Most of learned counsel appearing for the petitioners in different writ petitions adopted the submissions made by Sri C.V.Mohan Reddy and Sri Sivaraju Srinivas. In addition, it was submitted that Section 10(A)(1) of the Amendment Act is illegal on account of the provisions of Section 6 of the General Clauses Act, 1897, which protects all rights, privileges accrued to the petitioners under the Principal Act. It was submitted that although the expression used in Section 6 of the General Clauses Act, 1897 is 'repeal' and "enactment", the Section applies to the Amendment Act with full force on account of the fact that "enactment" is defined in Section 3(19) of the General Clauses Act itself as including a provision contained in any Act.

11. On the other hand, Mr.K.M.Nataraj, learned Additional Solicitor General appearing for the Union of India, at the outset, invited our attention to the counter affidavit filed on behalf of the Union of India and submitted that the petitioners do not get or acquire a vested right under the provisions of the Principal Act by mere making of an application. In other words, making an application under the Principal Act did not confer any right, whether vested or legal. Making an application under the Principal Act, before the Amendment Act came into effect, was only a procedural aspect for grant of mineral concession. Since the procedure is changed by virtue of the Amendment Act for grant of mineral concession, a person cannot be stated to have had any right for grant of mineral concession on the basis of the pending application. He submitted that Section 11 of the Principal Act, which came to be substituted by the Amendment Act,



assumed the characteristics of right is misconstrued.

Section 11 gave only inter-se preference among those who had applied for grant of mineral concession subject to statutory eligibility.

He submitted that when there is a change in law, insofar as procedure is concerned, the same has to be applied retrospectively. When no vested right is taken away, Article 226 cannot be invoked. He submitted that even if it is assumed that the petitioners had acquired a right merely on the basis of making of applications, the so-called right is only a creature of the Statute. The legislature which is competent to create a right also has the power to modify or withdraw such right under the statute. The legislature which has the power to amend a law also has the power to make a law retrospectively.

11.1 It was then submitted that the law made by the legislature can be struck down only on the ground of violation of constitutional provisions and that to if it clearly violates some provisions of the Constitution. He submitted that the Principal Act is enacted on the subject "regulation of mines and mineral development" mentioned in Entry 54

of List-I of the Seventh Schedule in the public interest.

Article 39(b) of the Constitution obliges the State to direct its policy towards securing the ownership and control of the material resources of the community are so distributed as best to sub serve the common good. In view thereof, he submitted that the Amendment Act has been enacted by giving declaration to that effect under Section 2 of the Act. He submitted that Article 31A saves certain laws from attack on grounds of inconsistency with Article 14 and 19. Clause (e) of Article 31A deals with saving of laws made for extinguishment of any rights accruing by virtue of any lease or licence or winning of mineral. Such extinguishment of any right etc., related to winning of mineral by any law cannot be challenged on the grounds of Articles 14 and 19. He submitted that

Article 31C of the Constitution also saves the law giving effect to the policy of the State towards securing all or any of the principles in Part-IV from being deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19. He then submitted that alienation/distribution of mineral is a matter of policy of the Government. The law made for dealing with material resources as a matter of legislative policy cannot be assailed on the grounds of Article 14 or Article 19. Such laws are protected under Article 31C. Lastly, he submitted that plea of unreasonableness, arbitrariness and proportionality always raises an element of subjectivity to which a Court cannot strike down a statute or statutory provision.

12. Apart from the grounds of objections, as reflected from the submissions of the learned counsel for the parties in the foregoing paragraphs, they did not make any other submissions. We may also observe that none of learned counsel for the parties made any submissions challenging the provisions contained in Section 10C and Section 13 of the Amendment Act. Bearing this in mind, we would now proceed to examine the challenge raised and the questions framed on the basis of the arguments advanced by learned counsel for the parties.

13. Learned counsel for the parties, in the course of hearing, placed reliance upon the judgments of the Supreme Court to which we propose to make reference at appropriate stages.

14. Before we proceed further, we would like to consider the judgments of the Supreme Court dealing with the question whether an auction as a method of disposal of natural resources is a constitutional mandate? These judgments have a bearing on the first question that falls for our consideration in these petitions. In this connection, it was argued on behalf of the petitioners that the

Amendment Act, providing for auction as a method of disposal of natural resources, is in direct conflict with the three judgments of the Supreme Court.

14.1 The first judgment is in **2G Case** (supra). In this case, the Supreme Court considered several questions amongst which we are concerned with only two, *first*, whether the exercise undertaken by Department of Telecommunications (DoT) from September, 2007 to March, 2008 for grant of Unified Access Services (UAS) licences to the private respondents in terms of the recommendations made by Telecom Regulatory Authority of India (TRAI) is vitiated due to arbitrariness and *mala fides* and is contrary to public interest?; and *second*, Whether the policy of first-come-first-served followed by DoT for grant of licences is *ultra vires* the provisions of Article 14 of the Constitution and whether the said policy was arbitrarily changed by the Minister of Communications and Information Technology, without consulting TRAI, with a view to favour some of the applicants?. These two questions were answered by the Supreme Court mainly in paragraphs 94 to 96, which read thus:-

“ 94. There is a fundamental flaw in the first-come-first-served policy inasmuch as it involves an element of pure chance or accident. **In matters involving award of contracts or grant of licence or permission to use public property, the invocation of first-come-first-served policy has inherently dangerous implications.** Any person who has access to the power corridor at the highest or the lowest level may be able to obtain information from the government files or the files of the agency/instrumentality of the State that a particular public property or asset is likely to be disposed of or a contract is likely to be awarded or a licence or permission is likely to be given, he would immediately make an application and would become entitled to stand first in the queue at the cost of all other who may have a better claim.

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

which would necessarily result in protection of national/public interest.

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

(emphasis supplied)

14.2           The next judgment is in ***Natural Resources Allocation Case*** (supra). The reference was made by the President of India on 12.04.2012 in exercise of the powers conferred under Article 143 (1) of the Constitution of India. The Supreme Court in this judgment considered and dealt with seven questions referred for consideration. For our purpose two questions are relevant; *one*, whether the only permissible method for disposal of all natural resources across all sectors and in all circumstances is by the conduct of auctions?, and *two*, whether a broad proposition of law that only the route of auctions can be resorted to for disposal of natural resources does not run contrary to several judgments of the Supreme Court including those of the larger Benches?. While dealing with these questions, the Supreme Court considered whether ‘auction’, as a method of disposal of natural resources, be declared as a constitutional mandate under Article 14 of the Constitution of India? and in paragraphs 108, 109 and 112 observed thus:-

“ 108. Such being the constitutional intent and effect of Article 14, **the question arises – Can auction as a method of disposal of natural resources be declared a constitutional mandate under Article 14 of the Constitution of India? We would unhesitatingly answer it in the negative since any other answer would be completely contrary to the scheme of Article 14.** Firstly, Article 14 may imply positive and negative rights for an individual, but with respect to the State, it is only couched in negative terms: like an admonition against the State which prohibits the State from taking up actions that may be arbitrary, unreasonable, capricious or discriminatory. Article 14, therefore, is an injunction to the State against taking certain type of actions rather than commanding it to take particular steps. **Reading the mandate of auction into its scheme would thus, be completely contrary to the intent of the article apparent from its plain language.**

109. Secondly, a constitutional mandate is an absolute principle that has to be applied in all situations; it cannot be applied in some and not tested in others. **The absolute principle is then applied on a case-by-case basis to see which actions fulfil the requirements of the constitutional principle and which do not.**

112. Equality, therefore, cannot be limited to mean only auction, without testing it in every scenario. In *State of W.B. v. Anwal Ali Sarkar* (AIR 1952 SC 75) this Court, quoting from *Kotch v. River Port Pilot Commissioners* (91 L Ed 1093) had held that:

“10 .... ‘The constitutional command for a State to afford equal protection of the laws sets a goal not attainable by the invention and application of a precise formula. This Court has never attempted that impossible task.’”

**One cannot test the validity of a law with reference to the essential elements of ideal democracy, actually incorporated in the Constitution.** (See *Indira-Nehru Gandhi v. Raj Narain* [1975 Supp SCC 1]). **The courts are not at liberty to declare a statute void, because in their opinion it is opposed to the spirit of the Constitution. The courts cannot declare a limitation or constitutional requirement under the notion of having discovered some ideal norm.** Further, a constitutional principle must not be limited to a precise formula but ought to be an abstract principle applied to precise situations. **The repercussion of holding auction as a constitutional mandate would be the voiding of every action that deviates from it, including social endeavours, welfare schemes and promotional policies, even though CIPL itself has argued against the same, and asked for making auction mandatory only in the alienation of scarce natural resources meant for private and commercial business ventures.** It would be odd to derive auction as a constitutional principle only for a limited set of situations from the wide and generic declaration of Article 14. The strength of constitutional adjudication lies in case to case adjudication and therefore auction cannot be elevated to a constitutional mandate.”

(emphasis supplied)

14.2.1 Then, the Supreme Court also considered the opinion expressed in **2G Case** (in paragraphs 94 to 96) and observed thus:-

“Our reading of these paragraphs suggests that the Court was not considering the case of auction in general, but specifically evaluating the validity of those methods adopted in the distribution of spectrum from September 2007 to March 2008. It is also pertinent to note that reference to auction is made in the subsequent para 96 with the rider “perhaps”. It has been observed that “a duly publicised auction conducted fairly and impartially is perhaps the best method for discharging this burden”. We are conscious that a judgment is not to be read as a statute, but at the same time, we cannot be oblivious to the fact that when it is argued with vehemence that the judgment lays down auction as a constitutional principle, the word “perhaps” gains significance. This suggests that the recommendation of auction for alienation of natural resources was never intended to be taken as an absolute or blanket statement applicable across all natural

resources, but simply a conclusion made at first blush over the

attractiveness of a method like auction in disposal of natural resources. The choice of the word “perhaps” suggests that the learned Judges considered situations requiring a method other than auction as conceivable and desirable.”

14.3 The last judgment is in ***Manohar Lal Sharma*** (supra). The Supreme Court in this case dealt with the validity of allocation of coal blocks by the Central Government from 1993 to 2011 through Screening Committee route and Government Dispensation route. The principal contention raised was that the allocation of coal blocks made during the above period was illegal and unconstitutional on several grounds. In this judgment, the Supreme Court considered three questions. *One*, whether the allocation of coal blocks ought to have been done only by public auction?, *two*, whether the allocation of coal blocks made on the basis of recommendations of the Screening Committee suffer from any constitutional vice and legal infirmity? and *three*, whether the allocation of coal blocks made by way of Government Dispensation Route (Ministry of Coal) is consistent with the constitutional principles and the fundamentals of the equality clause enshrined in the Constitution. In this case, the Supreme Court considered the judgments in ***2G Case*** and ***Natural Resources Allocation*** (supra) and also other judgments including the judgment in ***Kasturi Lal Lakshmi Reddy v. State of J&K***<sup>[4]</sup> and in paragraphs 104 and 110 observed thus:

“104. In light of the above legal positions, the argument that auction is the best way to select private parties as per Article 39 (b) does not merit acceptance. The emphasis on the word “best” in Article 39 (b) by the learned Senior Counsel for the intervener does not deserve further discussion in light of the legal position expounded by the Constitution Bench in *Natural Resources Allocation, In re, Special Reference No.1 of 2012*, [(2012) 10 SCC 1], with reference to Article 39 (b). We are fortified in our view by a recent decision of this Court (three-Judge Bench) in *Goa Foundation v. Union of India* (2014) 6 SCC 590 wherein following *Natural Resources Allocation, In re*, it was stated (*Goa Foundation case*, SCC p.634, para 81)

“81. .... it is for the State Government to decide as a matter of policy in what manner the leases of these mineral resources would be granted, but this decision has to be taken in accordance with the provisions of the MMDR Act and the Rules made thereunder and in consonance with the constitutional provisions....”

110. The above facts show that it took almost 8 years in putting in place allocation of captive coal blocks through competitive bidding. During this period, many local blocks were allocated giving rise to present controversy, which was avoidable because competitive bidding would have brought in transparency, objectivity and very importantly given a level playing field to all applicants of coal and lowered the difference between the market price of coal and the cost of coal for the allottee by way of premium which would have accrued to the Government. Be that as it may, once it is laid down by the Constitution Bench of this Court in Natural Resources Allocation Reference that **the Court cannot conduct a comparative study of various methods of distribution of natural resources and cannot mandate one method to be followed in all facts and circumstances, then if the grave situation of shortage of power prevailing at that time necessitated private participation and the Government felt that it would have been impractical and unrealistic to allocate coal blocks through auction and later on in 2004 or so there was serious opposition by many State Governments to bidding system, and the Government did not pursue competitive bidding/public auction route, then in our view, the administrative decision of the Government not to pursue competitive bidding cannot be said to be so arbitrary or unreasonable warranting judicial interference. It is not the domain of the Court to evaluate the advantages of competitive bidding vis-à-vis other methods of distribution / disposal of natural resources.** However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favoritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.

(emphasis supplied)

14.4 In ***Kasturi Lal Lakshmi Reddy (supra)*** the Supreme Court considered that “*where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging setting up of industries within the State, the State was not bound to advertise and tell the people that it wanted a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. It was also observed that if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose.*”

14.5 The Supreme Court in ***Sachidanand Pandey v. State of W.B.***<sup>[5]</sup> had observed that “*ordinary rule for disposal of State-owned*

*or public-owned property, was by way of public auction or by inviting tenders but there could be situations where departure from the said rule may be necessitated but then the reasons for the departure must be rational and should not be suggestive of discrimination and that nothing should be done which gives an appearance of bias, jobbery or nepotism”.*

14.6 In **Haji T.M. Hassan Rawther v. Kerala Financial Corporation**<sup>[6]</sup>, the Supreme Court stated that “the public property owned by the State or by an instrumentality of State should be generally sold by public auction or by inviting tenders. It was emphasized that this rule has been insisted upon not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities and to obviate the factors like bias, favoritism or nepotism. Clarifying that this is not an invariable rule, the Court reiterated that departure from the rule of auction could be made but then it must be justified”. The said principle was again reiterated by the Supreme Court **M.P. Oil Extraction v. State of M.P.**<sup>[7]</sup> observing that “distribution of largesse by inviting open tenders or by public auction is desirable but it cannot be held that in no case distribution of such largesse by negotiation is permissible”.

14.7 The Supreme Court in **Netai Bag Vs. State of W.B.**<sup>[8]</sup> had observed that “when any State land is intended to be transferred or the State largesse is decided to be conferred, resort should be had to public auction or transfer by way of inviting tenders from the people as that would be a sure method of guaranteeing compliance with mandate of Article 14 of Constitution but non-floating of tenders or not holding public auction would not in all cases be deemed to be the result of the exercise of the executive power in an arbitrary manner”.



14.8 In **Villianur Iyarkkai Padukappu Maiyam v. Union of India**<sup>[9]</sup>, the Supreme Court while dealing with selection of contractor for development of the port of Pondicherry without floating a tender or holding public auction held that “*where the State was allocating resources such as water, power, raw materials, etc., for the purpose of encouraging development of the port, the State was not bound to advertise and tell the people that it wanted development of the port in a particular manner and invite those interested to come up with proposals for the purpose*”.

14.9 In **5 M&T Consultants v. S.Y.Nawab**<sup>[10]</sup> it was observed that “*Courts have always leaned in favour of sufficient latitude being left with the authorities to adopt their own techniques of management of projects with concomitant economic expediencies depending upon the exigencies of a situation guided by appropriate financial policy in the best interests of the authority*”.

14.10 At this stage, we make it clear that we have referred to the above judgments, in sub-paras 14.4 to 14.9, also to pose a question whether, despite auction being the method provided for in sections 10B and 11 of the Amendment Act, is it possible for the State to allocate a prospecting licence-cum-mining lease, without conducting public auction, in exercise of its administrative powers, in public interest and as a policy for special reasons and without committing breach of any constitutional or legal obligation? However, we do not wish to examine this question in this batch of writ petitions, since such a question is either not raised or arise for our consideration. We keep it open to be considered as and when necessary or when the circumstances so demand.

15. Having regard to the judgments referred to above we would

like to once again have a look at the judgments of the Supreme Court in **2G Case**, **Natural Resources Allocation** and **Manohar Lal Sharma** (supra) in further detail. This is necessary to appreciate the contentions urged on behalf of the petitioners and the first question framed by us that providing for an auction as mechanism/method for dispensation of mineral concession is liable to be struck down in the light of these judgments.

15.1 In **2G Case**, the Supreme Court held that duly publicised auction conducted fairly and impartially was perhaps the best method for alienation of natural resources lest there was likelihood of misuse by unscrupulous people who were only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values. This view necessitated the reference by the President of India to the Supreme Court in **Natural Resources Allocation** (supra). We have already seen the questions those were considered and dealt with, insofar as this batch of writ petitions is concerned, by the Supreme Court in this judgment.

15.2 The Constitution Bench in **Natural Resources Allocation** (supra) clarified that the statement of law in **2G Case** (supra) that while transferring or alienating the natural resources, the State is duty bound to adopt the method of auction, was confined to the specific case of spectrum and not for dispensation of all natural resources. It was also made clear that the findings in **2G Case** (supra) were limited to the case of spectrum and not beyond that and that it did not deal with the modes of allocation for natural resources other than spectrum. The Constitution Bench in that case decided the consideration of this aspect under two heads, viz., "*Legitimate deviations from auction*" and "*Potential of abuse*". Insofar as the head "*Legitimate deviations from auction*", the Supreme Court after considering its earlier decisions in **Kasturi Lal Lakshmi Reddy**,

**Sachidanand Pandey, Haji T.M. Hassan Rawther, M.P. Oil Extraction, Netai Bag and Villianur Iyarkkai Padukappu Maiyam** (supra) held that there is no constitutional mandate in favour of auction under Article 14. It would be relevant to notice the observations made by the Supreme Court in Paragraphs 129, 130 and 131 in **Natural Resources Allocation** (supra), which read thus:-

" 129. Hence, **it is manifest that there is no constitutional mandate in favour of auction under Article 14.** The Government has repeatedly deviated from the course of auction and this Court has repeatedly upheld such actions. The judiciary tests such deviations on the limited scope of arbitrariness and fairness under Article 14 and its role is limited to that extent. Essentially whenever the object of policy is anything but revenue maximization, the Executive is seen to adopt methods other than auction.

130. **A fortiori, besides legal logic, mandatory auction may be contrary to economic logic as well. Different resources may require different treatment.** Very often, exploration and exploitation contracts are bundled together due to the requirement of heavy capital in the discovery of natural resources. A concern would risk undertaking such exploration and incur heavy costs only if it was assured utilization of the resource discovered; a prudent business venture, would not like to incur the high costs involved in exploration activities and then compete for that resource in an open auction. The logic is similar to that applied in patents. Firms are given incentives to invest in research and development with the promise of exclusive access to the market for the sale of that invention. Such an approach is economically and legally sound and sometimes necessary to spur research and development. **Similarly, bundling exploration and exploitation contracts may be necessary to spur growth in a specific industry.**

131. **Similar deviation from auction cannot be ruled out when the object of a State policy is to promote domestic development of an industry, like in Kasturi Lal's case, discussed above.** However, these examples are purely illustrative in order to demonstrate that auction cannot be the sole criteria for alienation of all natural resources."

(emphasis supplied)

15.3 Similarly, while dealing with the head "*Potential of abuse*", the Supreme Court in **Natural Resources Allocation** (supra)

observed that a potential of abuse cannot be the basis for striking down the method as *ultra vires* the Constitution. The Supreme Court noted its two decisions in ***R. K. Garg v. Union of India & Ors.***<sup>[11]</sup> and ***D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors.***<sup>[12]</sup>, and held that neither auction nor any other method of disposal can be held *ultra vires* the Constitution merely because of a *potential abuse*. In this connection, it would be relevant to notice the observations made by the Supreme Court in paragraph 135, which read thus:-

"135. Therefore, **a potential for abuse cannot be the basis for striking down a method as ultra vires the Constitution. It is the actual abuse itself that must be brought before the Court for being tested on the anvil of constitutional provisions.** In fact, it may be said that even auction has a potential of abuse, like any other method of allocation, but that cannot be the basis of declaring it as an unconstitutional methodology either. These drawbacks include cartelization, "winners curse" (the phenomenon by which a bidder bids a higher, unrealistic and unexecutable price just to surpass the competition; or where a bidder, in case of multiple auctions, bids for all the resources and ends up winning licences for exploitation of more resources than he can pragmatically execute), etc. **However, all the same, auction cannot be called ultra vires for the said reasons and continues to be an attractive and preferred means of disposal of natural resources especially when revenue maximization is a priority. Therefore, neither auction, nor any other method of disposal can be held ultra vires the Constitution, merely because of a potential abuse.**"

(emphasis supplied)

15.4 Further, in ***Natural Resources Allocation*** (referred supra) the Constitution Bench concluded that auction despite being a more preferable method of alienation/allotment of natural resources cannot be held to be constitutional requirement or limitation for alienation of all natural resources and, therefore, every method other than auction cannot be struck down as *ultra vires* the constitutional mandate. The Supreme Court also opined that auction as a mode cannot be conferred the status of a constitutional principle. While observing so, the Court held that alienation of natural resources is a policy decision

and the means adopted for the same are, thus, executive prerogatives. Then, it was observed that reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39(b). It would be relevant to notice the observations made by the Supreme Court in paragraphs 113, 115, 116, 119 and 120, which read thus:-

“ 113. Finally, reading auction as a constitutional mandate would be impermissible because such an approach may distort another constitutional principle embodied in Article 39 (b). The said Article enumerating certain principles of policy, to be followed by the State, reads as follows:

**“39. Certain principles of policy to be followed by the State.-** The State shall, in particular, direct its policy towards securing-

(a) \* \* \* \*

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;”

**The disposal of natural resources is a facet of the use and distribution of such resources. Article 39 (b) mandates that the ownership and control of natural resources should be so distributed so as to best subserve the common good. Article 37 provides that the provisions of Part IV shall not be enforceable by any court, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Therefore, this Article, in a sense, is a restriction on “distribution” built into the Constitution. But the restriction is imposed on the object and not the means.** The overarching and underlying principle governing “distribution” is furtherance of common good. But for the achievement of that objective, the Constitution uses the generic word “distribution”. Distribution has broad contours and cannot be limited to meaning only one method i.e. auction. It envisages all such methods available for distribution/allocation of natural resources which ultimately subserve the “common good”.

115. It can thus, be seen from the aforequoted paragraphs that the term "distribute" undoubtedly, has wide amplitude and encompasses all manners and methods of distribution, which would include classes, industries, regions, private and public sections, etc. **Having regard to the basic nature of Article 39(b), a narrower concept of equality under Article 14 than that discussed above, may frustrate the broader concept of distribution, as conceived in Article 39(b).** There cannot, therefore, be a cavil that "common good" and "larger public interests" have to be regarded as constitutional reality deserving actualisation.

116. The learned counsel for CPIL argued that revenue maximisation during the sale or alienation of a natural resource for commercial exploitation is the only way of achieving public good since the revenue collected can be

channelised to welfare policies and controlling the burgeoning deficit. According to the learned counsel, since the best way to maximise revenue is through the route of auction, it becomes a constitutional principle even under Article 39(b). However, we are not persuaded to hold so. **Auctions may be the best way of maximising revenue but revenue maximisation may not always be the best way to subserve public good. "Common good" is the sole guiding factor under Article 39(b) for distribution of natural resources. It is the touchstone of testing whether any policy subserves the "common good" and if it does, irrespective of the means adopted, it is clearly in accordance with the principle enshrined in Article 39(b).**

119. The norm of "common good" has to be understood and appreciated in a holistic manner. It is obvious that the manner in which the common good is best subserved is not a matter that can be measured by any constitutional yardstick it would depend on the economic and political philosophy of the Government. Revenue maximisation is not the only way in which the common good can be subserved. **Where revenue maximisation is the object of a policy, being considered qua that resource at that point of time to be the best way to subserve the common good, auction would be one of the preferable methods, though not the only method.** Where revenue maximisation is not the object of a policy of distribution, the question of [pic]auction would not arise. Revenue considerations may assume secondary consideration to developmental considerations.

120. Therefore, in conclusion, the submission that the mandate of Article 14 is that any disposal of a natural resource for commercial use must be for revenue maximisation, and thus by auction, is based neither on law nor on logic. There is no constitutional imperative in the matter of economic policies Article 14 does not predefine any economic policy as a constitutional mandate. **Even the mandate of Article 39(b) imposes no restrictions on the means adopted to subserve the public good and uses the broad term "distribution", suggesting that the methodology of distribution is not fixed. Economic logic establishes that alienation/allocation of natural resources to the highest bidder may not necessarily be the only way to subserve the common good, and at times, may run counter to public good. Hence, it needs little emphasis that disposal of all natural resources through auctions is clearly not a constitutional mandate."**

(emphasis supplied)

15.5 In ***Manohar Lal Sarma*** (supra) the Supreme Court considered ***Natural Resources Allocation*** (supra) in depth and in

paragraph 110 stated about the principle laid down in ***Natural Resources Allocation*** as follows:-

“the Court cannot conduct a comparative study of various methods of distribution of natural resources and cannot mandate one method to be followed in all facts and circumstances, then if the grave situation of shortage of power prevailing at that time necessitated private participation and the Government felt that it would have been impractical and unrealistic to allocate coal blocks through auction and later on in 2004 or so there was serious opposition by many State Governments to bidding system, and the Government did not pursue competitive bidding/public auction route, then in our view, the administrative decision of the Government not to pursue competitive bidding cannot be said to be so arbitrary or unreasonable warranting judicial interference. **It is not the domain of the Court to evaluate the advantages of competitive bidding vis- -vis other methods of distribution / disposal of natural resources. However, if the allocation of subject coal blocks is inconsistent with Article 14 of the Constitution and the procedure that has been followed in such allocation is found to be unfair, unreasonable, discriminatory, non-transparent, capricious or suffers from favoritism or nepotism and violative of the mandate of Article 14 of the Constitution, the consequences of such unconstitutional or illegal allocation must follow.**”

(emphasis supplied)

16. Thus, having regard to the judicial pronouncements, in particular, the judgments of the Supreme Court in ***Natural Resources Allocation*** and ***Manohar Lal Sharma*** (supra), it is clear that auction is not the only permissible method for disposal of all natural resources across all sections and in all circumstances and/or there is no constitutional mandate in form of auction under Article 14. The methodology pertaining to disposal of the natural resources is a matter of State Policy/an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot

mandate one method to be followed in all facts and circumstances or to evaluate the advantages of competitive bidding *vis-à-vis* other methods of distribution/disposal of natural resources. But the Legislature in its wisdom or the Government in its discretion can certainly provide for the method of allocation of natural resources. It is the prerogative of the Legislature/Government to decide, as a matter of policy, in what manner the leases of the mineral resources could be granted in consonance with the constitutional provisions. Thus, in our opinion, the provisions of Sections 8, 10 and 11 of the Amendment Act cannot be stated to be in conflict with the judgments of the Supreme Court. In any case, after the judgments, the Parliament has brought the amendment into effect and, therefore, it will have to be independently considered whether the provisions under challenge are unconstitutional. For instance, in case of minerals not specified in Part 'A' and Part 'B' of the first schedule, as contemplated by Section 10B and 11 of the Amendment Act, it cannot be stated that the Government cannot adopt the auction as the sole method it being transparent and fair, giving equal opportunity to all eligible persons. As long as the allocation of natural resources, having regard to the provisions of the principal Act as well as the Amendment Act is consistent with Article 14 of the Constitution and if the procedure that has to be followed is fair, reasonable, non-discriminatory, transparent and does not suffer from favouritism or nepotism, it cannot be held to be violative of the mandate of Article 14 of the Constitution.

17. It is, thus, clear that though there is no constitutional mandate in favour of auction under Article 14 and that other methods of distribution can also be adopted, does not mean that auction cannot be provided as a method for allocation of natural resources. Merely because auction is preferred by the Amendment Act, it cannot be described as arbitrary or unreasonable. In other words, it is true that there is no constitutional mandate in favour of auction under



Article 14, but the converse is also true that there is no prohibition in adopting auction as the method for allocation of natural resources being transparent and fair method so that all eligible persons get a fair opportunity of competition.

18. Before considering whether the provisions of Sections 8, 10, 11 and 13 of the Amendment Act, which are under challenge being unreasonable, arbitrary and unconstitutional, we would like to look into the law laid down by the Supreme Court on the question when the provisions can be struck down being unconstitutional.

18.1 In ***State of Andhra Pradesh v. McDowell & Co.***<sup>[13]</sup> the Supreme Court observed that a law made by the Parliament or the legislature can be struck down by Courts on two grounds and two grounds alone, viz., (1) lack of legislative competence; and (2) violation of any of the fundamental rights guaranteed in Part-III of the Constitution or of any other constitutional provision. There is no third ground. If an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is

violative of the equality clause/equal protection clause enshrined therein. Similarly, if an enactment is challenged as violative of any of the fundamental rights guaranteed by Clauses (a) to (g) of Article 19(1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on.

18.1 The very same principle was subsequently reiterated by the Supreme Court in ***Greater Bombay Cooperative Bank Limited v. United Yarn Tex (P) Limited and others***<sup>[14]</sup> and in addition thereto in paragraphs 84 and 85 observed thus:

“84. As observed by this Court in *CST v. Radhakrishnan* [(1979) 2 SCC 249], in considering the validity of a statute the presumption is always in favour of constitutionality and the burden is upon the

**person who attacks it to show that there has been transgression of constitutional principles.** For sustaining the constitutionality of an Act, a court may take into consideration matters of common knowledge, reports, preamble, history of the times, objection of the legislation and all other facts which are relevant. **It must always be presumed that the legislature understands and correctly appreciates the need of its own people and that discrimination, if any, is based on adequate grounds and considerations.** It is also well settled that the courts will be justified in giving a liberal interpretation in order to avoid constitutional invalidity. A provision conferring very wide and expansive powers on authority can be construed in conformity with legislative intent of exercise of power within constitutional limitations. Where a statute is silent or is inarticulate, the court would attempt to transmute the inarticulate and adopt a construction which would lean towards constitutionality albeit without departing from the material of which the law is woven. These principles have given rise to rule of “reading down” the provisions if it becomes necessary to uphold the validity of the law.

**85.** In *State of Bihar v. Bihar Distillery Ltd.* [(1997) 2 SCC 453] this Court indicated the approach which the court should adopt while examining the validity/constitutionality of a legislation. It would be useful to remind ourselves of the principles laid down, which read: (SCC p. 466, para 17)

“The approach of the court, while examining the challenge to the constitutionality of an enactment, is to start with the presumption of constitutionality. The court should try to sustain its validity to the extent possible. **It should strike down the enactment only when it is not possible to sustain it. The court should not approach the enactment with a view to pick holes or to search for defects of drafting, much less inexactitude of language employed.** Indeed, any such defects of drafting should be ignored out as part of the attempt to sustain the validity/constitutionality of the enactment. After all, **an Act made by the legislature represents the will of the people and that cannot be lightly interfered with. The unconstitutionality must be plainly and clearly established before an enactment is declared as void.** The same approach holds good while ascertaining the intent and purpose of an enactment or its scope and application.”

In the same para, this Court further observed as follows: (SCC p. 466)

“The court must recognise the fundamental nature and importance of legislative process and accord due regard and deference to it, just as the legislature and the executive are expected to show due regard and deference to the judiciary. It cannot also be forgotten that our Constitution recognises and gives effect to the concept of equality between the three wings of the State and the concept of ‘checks and balances’ inherent in such scheme.”

(emphasis supplied)

## 18.2 In *Government of Andhra Pradesh v. P. Laxmi*

*Devi*<sup>[15]</sup> the Supreme Court considered how and when should the power of the Court to declare the statute unconstitutional be exercised. After considering several judgments in paragraph-46 the Supreme Court observed thus:

**“46. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution**

**in so evident a manner as to leave no manner of doubt.** This violation can, of course, be in different ways e.g. if a State Legislature makes a law which only Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. **If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute,** even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto v. State of Kerala* 67 L Ed 1047: 262 US 404 (1923) SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.”

(emphasis supplied)

18.2.1 In the very same judgment, the Supreme Court in paragraph-51 observed that *“In our opinion the legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits”*. The Supreme Court in paragraph-68 further observed that *“the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the court declare a statute to be unconstitutional.”*

18.3 In ***K.T. Plantation Private Limited v. State of Karnataka***<sup>[16]</sup> while dealing with a question that in what circumstances a provision can be declared unconstitutional or *ultra vires* the Constitution the Supreme Court observed that plea of unreasonableness, arbitrariness, proportionality, etc., always raises an element of subjectivity on which a court cannot strike down a statute or a statutory provision, especially when the right to property is no more a fundamental right. Otherwise the Court will be substituting its wisdom to that of the legislature, which is impermissible in our constitutional democracy. The observations made in paragraphs 208, 209 and 210 are relevant, which read thus:

**“208.** We have already found, on facts as well as on law, that the impugned Act has got the assent of the President as required under the proviso to Article 31-A(1), hence, immune from challenge on the ground of arbitrariness, unreasonableness under Article 14 of the Constitution of India.

**209.** Statutes are many which though deprive a person of his property, have the protection of Article 30(1-A), Articles 31-A, 31-B, 31-C and hence are immune from challenge under Article 19 or Article 14. On deletion of Article 19(1)(f) the available grounds of challenge are Article 14, the basic structure and the rule of law, apart from the ground of legislative competence. In *I.R. Coelho case [(2007) 2 SCC 1]* the basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the Court held that statutes mentioned in Schedule IX are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered by Schedule IX.

**210.** The Acquisition Act, it may be noted, has not been included in Schedule IX but since the Act is protected by Article 31-A, it is immune from the challenge on the ground of violation of Article 14, but in a given case, if a statute violates the rule of law or the basic structure of the Constitution, is it the law that it is immune from challenge under Article 32 and Article 226 of the Constitution of India?”

(emphasis supplied)

18.4 In *Ashoka Kumar Thakur v. Union of India*<sup>[17]</sup> while examining the validity of the Central Educational Institutions (Reservation in Admission) Act, 2006, the Supreme Court in paragraph-219 observed thus:

**“219.** One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful. Let the message, therefore, be loud and clear, that the rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300-A.”

18.5 Thus, no enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the legislatures being the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The court cannot sit in judgment over their wisdom. The unconstitutionality must be plainly

and clearly established before an enactment is declared as void. It is one thing to say that a restriction imposed upon a fundamental right can be struck down if it is disproportionate, excessive or unreasonable and quite another thing to say that the Court can strike down enactment if it thinks it unreasonable, unnecessary or unwarranted.

19. In the light of the law laid down by the Supreme Court in the judgments quoted in paragraph 18, we would like to have a close look at Article 14 of the Constitution.

Article 14 states that *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”*. The underlying object of Article 14 is to secure to all persons, citizens or non-citizens, equality of status and opportunity referred to in the Preamble to our Constitution. In ***Natural Resources Allocation*** (supra) the Supreme Court stated that *“The language of Article 14 is couched in negative terms and is in form, an admonition addressed to the State. It does not directly purport to confer any right on any person as some of the other articles, e.g. Article 19, do. The right to equality before law is secured from all legislative and executive tyranny by way of discrimination, since the language of Article 14 uses the word “State” which as per Article 12, includes the executive organ. (See Basheshar Nath v. CIT AIR 1959 SC 149) Besides, Article 14 is expressed in absolute terms and its effect is not curtailed by restrictions like those imposed on Article 19(1) by Articles 19(2) to 19(6). However, notwithstanding the absence of such restrictions, certain tests have been devised through judicial decisions to test if Article 14 has been violated or not.”*

19.1 In ***Maneka Gandhi v. Union of India***<sup>[18]</sup> the Supreme Court after considering the opinion delivered in ***E.P.Royappa v. State***

of T.N.<sup>[19]</sup> in paragraph-7 observed thus:

“7. ... The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be ‘right and just and fair’ and not arbitrary, fanciful or oppressive;”

19.2 In *Ramana Dayaram Shetty v. International Airport*

*Authority of India*<sup>[20]</sup> the Supreme Court explained the limitations of Article 14 on the functioning of the Government as follows:

“12. ... It must, therefore, be taken to be the law that **where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant.** The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.”

(emphasis supplied)

19.3 In *Sharma Transport v. Government of A.P.*<sup>[21]</sup> while dealing with the expressions ‘arbitrariness’ and ‘unreasonableness’ the Supreme Court in paragraph-25 observed thus:

“25. ... In order to be described as arbitrary, it must be shown that it was not reasonable and manifestly arbitrary. The expression ‘arbitrarily’ means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone.”

20. Before examining the relevant provisions, we would also like to look into judgments of the Supreme Court dealing with ‘policy decisions’. This is necessary in view of the contention urged on behalf of the respondent that the policy decision of the Government,

as reflected in the impugned provisions, is not open for judicial review. It is not in dispute that alienation/distribution of natural resources is a policy matter. The Supreme Court in ***Natural Resources Allocation*** (supra) observed that the methodology pertaining to disposal of natural resources is clearly an economic policy. The Supreme Court time and again delivered opinions about the power of judicial review of policy decisions.

20.1 It would be relevant to notice the observations made by the Supreme Court in ***Premium Granites v. State of T.N.***<sup>[22]</sup> in paragraph 54, which read thus:

“54. It is not the domain of the court to embark upon uncharted ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any other statutory right. ... ..”

20.2 Similarly in ***Delhi Science Forum V. Union of India***<sup>[23]</sup> in paragraph 7 the Supreme Court observed thus:

“7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. ... ..”

20.3 In ***Balco Employees' Union v. Union of India***<sup>[24]</sup> in paragraph-38 Supreme Court observed thus:

“38. To the same effect are the observations of this Court in *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India* [(1992) 2 SCC 343] in which Kasliwal, J. observed at p. 375 as follows: (SCC para 31)

31. The function of the Court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with



**statutory powers must take care not to exceed or abuse its power.** It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. **Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies.** In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.”

(emphasis supplied)

20.4 In *State of M.P. v. Narmada Bachao Andolan*<sup>[25]</sup> the Supreme Court said that “*judiciary cannot engage in an exercise of comparative analysis over the fairness, logical or scientific basis, or wisdom of a policy. It held that “The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or more scientific or logical or wiser. The wisdom and advisability of the policies are ordinarily not amenable to judicial review unless the policies are contrary to statutory or constitutional provisions or arbitrary or irrational or an abuse of power.”*

20.5 The following observations made by the Supreme Court in *Natural Resources Allocation* (supra) are also relevant, which read thus:

“ To summarise in the context of the present Reference, it needs to be emphasised that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. **The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources.** The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. **Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down.**”



(emphasis supplied)

21. In the backdrop of the law laid down by the Supreme Court, we would now like to consider relevant provisions of the Principal Act which were either substituted or omitted therefrom by the Amendment Act. This is necessary in view of the prayers of the petitioners, in particular the prayer seeking direction to the respondents to complete processing of their applications for prospecting licences made by them in accordance with those provisions in the Principal Act. In short, they have prayed for issue of licences on the basis of their applications made prior to the Amendment Act and under the provisions contained in the Principal Act, as were available before the Amendment Act came into effect.

22. The Mines and Minerals (Development and Regulation) Act, 1948 (for short, 'the 1948 Act') was enacted to provide for regulation of mines and oil fields and for the development of minerals under Entry-36 of the Government of India Act, 1935. It came into effect on 8.9.1948. The 1948 Act was repealed by the Principal Act. Even the Principal Act has undergone amendments from time to time.

23. We would like to make reference to the provisions of the Principal Act that are relevant for our purpose.

Section 2 thereof declares 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, as provided in the Act. Original Section 10 of the Principal Act has not been either substituted or omitted by the Amendment Act. It provides that the 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 State Government concerned "to grant or refuse to grant" permit, licence or lease having regard to the provisions of

the Principal Act or the Mineral Concession Rules, 1960 (for short, 'the Rules').

23.1 Section 11 of the Principal Act is relevant for our purpose. It is relevant since the claim of the petitioners seeking preferential right over prospecting licences is based on their applications made under Section 10 of the Principal Act prior to the Amendment Act. Though this provision has been substituted by Section 11 of the Amendment Act, we would like to have a close look at it to appreciate the submissions made on behalf of the petitioners.

23.1.1 Section 11 provides for preferential right of certain persons. Sub-section (1) of Section 11 makes a provision that where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person. This is, however, subject to the State Government's satisfaction and certain conditions as provided therein.

23.1.2 Sub-section (2) of Section 11 says that where the State Government does not notify in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease 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 a preferential right to be considered for such grant over the applicant whose application was received later. This is, however, subject to provisions of sub-section (1). The first proviso appended thereto enacts that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, 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 or had not been disposed of, shall be deemed to have been received on the same day for the purpose of assigning priority under sub-section (2). The second proviso indicates that where 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 to one of the applicants as it may deem fit.

23.1.3 Sub-section (3) elaborates the matter referred to in sub-section (2), namely, (a) any special knowledge of, experience in reconnaissance operations, prospecting operations or mining operations, 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; and (e) such other matters as may be prescribed.

23.1.4 Sub-section (4) provides that subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence 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 matters 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.

23.1.5 Sub-section (5) states that notwithstanding anything

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

23.2 Section 11 was amended also in 2010 and Section 11A was inserted by Mines and Minerals (Development and Regulation) Amendment Act, 2010 vide G.O.I. Ext. Part II, Section 1, No.43, dated 9.9.2010 (No.34 of 2010). It would be relevant to reproduce Section 11A, that was inserted in 2010, which reads thus:

**“Granting of reconnaissance permit, prospecting licence or mining lease in respect of coal or lignite.**

[11A. The Central Government may, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of an area containing coal or lignite, select through auction by competitive bidding on such terms and conditions as may be prescribed, a company engaged in –

- (i) production of iron and steel;
- (ii) generation of power;
- (iii) washing of coal obtained from a mine; or
- (iv) such other end-use as the Central Government may, by notification in the Official Gazette, specify,

and the State Government shall grant such reconnaissance permit, prospecting licence or mining lease in respect of coal or lignite to such company as selected through auction by competitive bidding under this section:

Provided that the auction by competitive bidding shall not be applicable to an area containing coal or lignite –

- (a) where such area is considered for allocation to a Government company or corporation for mining or such other specified end-use;
- (b) where such area is considered for allocation to a company or corporation that has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects).

Explanation- For the purposes of this section, “company” means a company as defined in Section 3 of the Companies Act, 1956 and includes a foreign company within the meaning of Section 591 of that Act]

23.3 From the language employed in Section 11 of the Principal

Act, which has now been substituted by Amendment Act, it is clear that it is not mandatory for the State Government to grant a reconnaissance permit or prospecting licence or mining lease as of right to the person whose application was received first in point of time. Similarly, where the State Government notifies an area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification 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 matters specified in sub-section(3) 'may' grant such permit/licence/lease to one such applicants as it may deem fit. Sub-section (5) also gives power to the State Government to grant such permit/licence/lease to an applicant whose application was received later in preference to an applicant whose application received earlier. Even the language employed in the Rules, in particular Rules 22, 26, 31, 34 and 35, clearly shows that the State Government is also empowered to refuse to grant licence/lease.

24. The Rules were framed by the Central Government, in exercise of powers conferred under Section 13 of the Principal Act.

We are concerned with very few rules. Chapter-IV of the Rules deals with grant of mining leases in respect of the land in which the minerals vest in the Government. Rule 22 provides for the procedure for making an application for grant of mining leases in respect thereof. Rule 26 empowers the State Government to refuse to grant or renew mining lease over the whole or part of area applied for, after giving an opportunity of being heard and for reasons to be recorded in writing and communicate to the applicant.

Rule 31 provides for time within which the lease is to be executed where an order has to be made for grant of such lease on an application. Rule 34 provides for the manner of exercise of

preferential right for mining lease. Rule 35 provides for preferential right of certain persons.

25. Our attention was specifically invited to Rule 63-A in Chapter-VIII of the Rules. It would be advantageous to reproduce the said Rule, which reads thus:

**“63-A.** The State Government shall dispose of the application for grant of reconnaissance permit, prospecting license or mining lease in the following period:-

- (a) Reconnaissance Permit—within six months from the date of receipt of the application for reconnaissance permit under rule 4A.
- (b) Prospecting License—within nine months from the date of receipt of the application for prospecting license under rule 10.
- (c) Mining Lease—within twelve months from the date of receipt of the application for mining lease under rule 22:

Provided that the aforesaid periods shall be applicable only if the application for reconnaissance permit, prospecting license or mining lease, as the case may be, is complete in all respects:

Provided further that the disposal by the State Government in case of minerals listed in the First Schedule to the Act shall mean either recommendation to the Central Government for grant of the mineral concession, or refusal to grant the mineral concession by the State Government under rule 5 for reconnaissance permit, rule 12 for prospecting license and rule 26 for mining lease, and in all other cases, disposal shall mean either intimation regarding grant of precise area, or refusal to grant the mineral concession under rule 5 for reconnaissance permit, rule 12 for prospecting license and rule 26 for mining lease:

Provided also that in case the State Government is not able to dispose of the application for grant of reconnaissance permit, prospecting license or mining lease within the period as specified above, the reasons for the delay shall be given in writing. “

25.1 Rule 63-A undoubtedly prescribes the periods for disposing of the applications for grant of reconnaissance permit, prospecting licence or mining lease. It states that an application should be considered within the specified period provided it is complete in all respects. The second proviso gives two options to the State Government, either to recommend to the Central Government for grant of mineral concession or refusal to grant mineral concession under Rule 5 for reconnaissance permit, Rule 12 for prospecting licence and Rule 26 for mining lease. The third proviso is also

important which provides that if the State Government is not able to dispose of the application for grant of reconnaissance permit, prospecting licence, or mining lease as specified therein, the reasons for the delay shall be given in writing. A close look at this Rule would show that it does not contain deeming provision. In other words, if the application is not considered and decided within the specified period it does not provide deemed acceptance or rejection. Keeping this in view, we will have to deal with the petitioners' prayer for prospecting licences under the provisions of Section 10 and Section 11 of the Principal Act.

26. In the light of the provisions of the Principal Act and the Rules, we now proceed to consider whether the petitioners, who had applied for licence/lease under Section 10 of the Principal Act, can as of right state that under Section 11 thereof they are entitled for such lease/licence even after the Amendment Act came into effect. In other words, we may also have to consider whether the applicants had any right, muchless vested right, to seek a direction to the respondents to complete the processing of their applications for prospecting licences made by them under Section 10 read with Section 11 of the Principal Act after the Amendment Act came into effect.

27. In the backdrop of the relevant provisions of the Principal Act and the Rules and the questions that fall for our consideration, let us have a look at the relevant provisions of the Amendment Act. To consider and appreciate the challenge and the submissions advanced by learned counsel for the parties, it would be relevant to notice the intent of the Parliament in amending the provisions contained in Section 10 and substituting Section 11, in particular, by the Amendment Act.

28. It is well settled that the Statement of Objects and Reasons

play a very significant role in understanding the legislative intent. In ***State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat***<sup>[26]</sup> the Supreme Court while considering the significance and role of the Statement of Objects & Reasons, not only in understanding the intent of the Legislature but in interpreting the provisions of an enactment, in paragraph-69 observed thus:

“69. Reference to the Statement of Objects and Reasons is permissible for understanding the background, antecedent state of affairs in relation to the statute, and the evil which the statute has sought to remedy. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004, at p. 218). In *State of W.B. v. Subodh Gopal Bose* 1954 SCR 587 : AIR 1954 SC 92 the Constitution Bench was testing the constitutional validity of the legislation impugned therein. The Statement of Objects and Reasons was used by S.R. Das, J. for ascertaining the conditions prevalent at that time which led to the introduction of the Bill and the extent and urgency of the evil which was sought to be remedied, in addition to testing the reasonableness of the restrictions imposed by the impugned provision. In his opinion, it was indeed very unfortunate that the Statement of Objects and Reasons was not placed before the High Court which would have assisted the High Court in arriving at the right conclusion as to the reasonableness of the restriction imposed. *State of W.B. v. Union of India* (1964) 1 SCR 371 : AIR 1963 SC 1241, SCR at pp. 431-32 approved the use of Statement of Objects and Reasons for the purpose of understanding the background and the antecedent state of affairs leading up to the legislation.”

28.1 Thus, it is clear that the facts stated in the Statement of Objects & Reasons appended to any legislation are evidence of the legislative intent. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, as observed in ***Mirzapur Moti Kureshi Kassab Jamat*** (supra), constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the fundamental rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved.

28.2 It is relevant to reproduce the Statement of Objects &



Reasons appended to the Amendment Act, which reads thus:

**“STATEMENT OF OBJECTS AND REASONS**

The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) is the Central Act which governs the development and regulation of mines and minerals in terms of the powers vested in the Central Government. The provisions of the MMDR Act extend to the whole of India. State Governments have to regulate the mines and minerals in terms of the MMDR Act. The Act has been amended several times over the years, notably in 1972, 1986, 1994 and 1999.

2. To comprehensively amend the law governing the mineral sector with the Mines and Minerals (Development and Regulation) Bill, 2011 (MMDR Bill, 2011), was introduced in the Lok Sabha on 12.12.2011. **Extensive consultations preceded the finalization of the draft of the Bill. It was thereafter intensively scrutinized by the Standing Committee on Coal and Steel who gave their Report in May 2013.** However, the Bill could not be passed before the dissolution of the 15th Lok Sabha and consequently lapsed.

3. **The mining sector has been subjected to numerous litigations in the past few years. Important judgements related to the mining sector have been pronounced by the Supreme Court, besides judgements on the issue of allocation of natural resources which have direct relevance to the grant of mineral concessions.**

4. The present legal framework of MMDR Act, 1957, does not permit the auctioning of mineral concessions. **Auctioning of mineral concessions would improve transparency in allocation. Government would also get an increased share of the value of mineral resources. Some provisions of the law relating to renewals of mineral concessions have also been found to be wanting in enabling quick decisions. Consequently, there has been a slowdown in the grant of new concessions and the renewal of existing ones. As a result, the mining sector started registering a decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government has therefore felt it necessary to address the immediate requirements of the mining sector and also to remedy the basic structural defects that underlie the current impasse.**

5. In view of the urgent need to address these problems, the Mines and Minerals (Development and Regulation) Amendment Ordinance, 2015 was promulgated on 12th January, 2015. The present Bill is to replace this Ordinance. This bill is designed to put in place mechanism for:

- (i) Eliminating discretion;
- (ii) Improving transparency in the allocation of mineral resources;
- (iii) Simplifying procedures;
- (iv) Eliminating delay in administration, so as to enable expeditious and optimum development of the mineral resources of the country;
- (v) Obtaining for the government an enhanced share of the value of the mineral resources of the country; and
- (vi) Attracting private investment and the latest technology;

6. The salient features of MMDR Amendment Bill, 2015 are as follows:

- (i) Removal of discretion; auction to be sole method of allotment: The amendment seeks to bring in utmost transparency by introducing auction mechanism for the grant of mineral concessions. **The tenure of mineral leases has been increased from the existing 30 years to 50 years. There is no provision for renewal of leases.**

(ii) Impetus to the mining sector: **The mining industry has been aggrieved due to the second and subsequent renewals remaining pending. In fact, this has led to closure of a large number of mines.** The Bill addresses this issue also. The Bill provides that mining leases would be deemed to be extended from the date of their last renewal to 31st March, 2030 (in the case of captive mines) and till 31st March, 2020 (for the merchant miners) or till the completion of the renewal already granted, if any, or a period of fifty years from the date of grant of such leave, whichever is later.

(iii) Safeguarding interest of affected persons: There is provision to establish District Mineral Foundation in the districts affected by mining related activities.

(iv) Encouraging exploration and investment: The Bill proposes to set up a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration in the country. **Transfer of mineral concessions granted through auction will be permitted in order to encourage private investors.**

(v) Simplification of procedures and removal of delay: The amendment removes the need for "previous approval" from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process quicker and simpler. Similarly, the State Governments will devise a system for filling of a mining plan obviating the need for prior approval of the Mining Plans by the Central Government. The Central Government will have revision powers in case State Governments fail to decide issues within the prescribed time.

(vi) Stronger provisions for checking illegal mining: In order to address the serious problem of illegal mining, the penal provisions have been made further stringent by prescribing higher penalties up to 5 lakh rupees per hectare and imprisonment up to 5 years. State Governments will now be able to set up Special Courts for trial of offences under the Act. ”

(emphasis supplied)

29. Before we go to Sections 8 and 11 of the Amendment Act whereby Section 8A has been inserted after Section 8 of the Principal Act and Section 11 has been substituted, let us also consider the provisions contained in Section 10A, which was inserted after Section 10 of the Principal Act, in view of the basic challenge in these writ petitions to sub-section (1) of Section 10A. By this provision, all applications received prior to the date of commencement of the Amendment Act became ineligible.

29.1 Section 10A of the Amendment Act reads thus:

“10. After section 10 of the principal Act, the following sections shall be inserted, namely:--

**10A. (1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act,**

**2015, shall become ineligible.**

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

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

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

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

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

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

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

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

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

(emphasis supplied)

30. It was submitted by learned counsel for the petitioners, in particular Mr.C.V.Mohan Reddy, learned Senior Counsel, that a vested right created in favour of the applicants on their making applications under the provisions of Section 10 read with Section 11 of the Principal Act has been taken away by sub-section (1) of Section 10A of the Amendment Act. It was further submitted that sub-section (1) of Section 10A of the Amendment Act has the effect of bringing the Amendment Act into force with retrospective effect, since it renders all applications made prior to the commencement of the Amendment Act

ineligible, taking away the right of the petitioners that have accrued in their favour on account of the provisions of Sections 10 and 11 of the Principal Act.

31. The question, therefore, is whether mere making an application under the provisions of Section 10 of the Principal Act, created any right, much less a vested right, to seek direction to the respondents to consider their applications for preferential allocation under Section 11 of the Principal Act, even after the Amendment Act came into effect?

32. The Supreme Court had an occasion to consider what is vested right in *J.S. Yadav v. State of U.P.*<sup>[27]</sup>. In this case, after noticing a dictionary meaning of the word 'vested' the Supreme Court observed that a vested right can be taken away only if the law specifically or by necessary implication provides for such a cause. It would be relevant to notice what has been stated by the Supreme Court exactly in paras 20, 21 and 22 in the judgment, which read thus:

"20. "17. The word 'vested' is defined in Black's Law Dictionary (6<sup>th</sup> Edn.) at p.1563, as:

**'Vested; fixed; accrued; settled; absolute; complete.** Having the character or given the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent.'

Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International) Edn. At p.1397, 'vested' is defined as:

'[L]aw held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interests.' "

(See *Bibi Sayeeda v. State of Bihar* (1996) 9 SCC 516 at SCC p.527, para 17)

21. The word "vest" is normally used where an immediate fixed right in present or future enjoyment in respect of a property is created. With the long usage the said word **"vest" has also acquired a meaning as "an absolute or indefeasible right"**. It had a "legitimate" or "settled expectation" can be rendered impossible of fulfilment due to change in law by the legislature. Besides this, such a "settled expectation" or the so-called "vested right" cannot be countenanced against public interest and convenience which are sought to be served by amendment of the law.

(Vide *Howrah Municipal Corpn. V. Ganges Rope Co. Ltd.* (2004) 1 SCC 663)

22. Thus, “vested right” is a right independent of any contingency. Such a right can arise from a contract, statute or by operation of law. A vested right can be taken away only if the law specifically or by necessary implication provides for such a course.”

(emphasis supplied)

33. In this connection, we would like to refer to some more judgments of the Supreme Court where similar contentions were raised, considered and addressed.

33.1 In ***S.B. International Limited v. Assistant Director of***

***General of F.T.***<sup>[28]</sup> the Supreme Court had an occasion to consider a similar situation, as has arisen in this batch of writ appeals. The question was “*whether a vested right accrued to the appellant for issuance of advance licences as per the value addition norm in vogue on the date of filing of the said applications the moment it made those applications and whether any subsequent change in policy effected before issuance of licences, is not applicable to such licences?*” The question arose in the backdrop of the facts that the appellant in this case, who was engaged in export of mine products, had made five applications for advance licences in May, June and September, 1992. Advance licences were not issued by September 25, 1992. On that date, a change was effected in the value addition norm, enhancing the value addition norm to 1900% from 1000%. Licences were issued according to this enhanced value addition norm in February, 1993. The appellant thereafter protested against the application of revised/enhanced value addition norm on the ground that since it had applied for advance licences prior to

September 25, 1992, the change brought about on and with effect from the said date has no application and that its application ought to be governed by value addition norm in force prior to September 25, 1992. The Supreme Court, while dealing with the question, in paragraphs 8 and 8-A, observed thus:

“8. The first question in these appeals is whether a vested right accrued to the appellant for issuance of advance licences as per the value addition norm in vogue on the date of filing of the said applications the moment it made those applications and whether any subsequent change in policy effected before the issuance of licences, is not applicable to such licences. For answering this question, one has to look to the policy itself, the material clauses of which have already been set out. The said provisions make it clear that the object behind the Scheme is to enable the exporter to import raw materials, components etc. required for the purpose of producing goods for export. It is a facility provided by the Government — an incentive. **There is no right to advance licence apart from the policy. No citizen has a fundamental right to import, much less import free of duty.**

... Mere making of an application does not create any right in the applicant since he has no pre-existing right to such licence. His right is only that which is given by the policy. The situation could have been different if the policy had said that a person exporting goods of a particular value shall be entitled to an import licence of a particular value; in such a case, the export of goods can be said to create a right in the applicant to get an import licence of the specified value. Here is a case, where one has to ask for an import licence promising to export goods of a particular value within a particular time. It is difficult to appreciate how can it be said in such a situation that mere filing of an application creates a vested legal right to obtain a licence according to the value addition norm in vogue on the date of the application. It is the date of licence that is relevant and not the date of application therefor. It is obvious that the norm (value addition norm) in vogue on the date of grant of licence shall govern the licence. The mere fact that the authorities have a discretion to take into account the exports made after the date of application for advance licences makes no difference to this position; it is in the nature of yet another concession. What is relevant is that the licence granted under Chapter VII of the policy is an *advance licence*. It is granted in advance of export — rather to enable the export. **The theory of a vested right accruing to the applicant to get a licence as per the norms in force on the date of application is inconceivable in such a situation — unless, of course, the policy itself says so.**

**8-A. It should be noticed that grant of licence is neither a mechanical exercise nor a formality.** On receipt of the application, the authorities have to satisfy themselves about the correctness of the contents of the application. They also have to satisfy themselves that the application satisfies all the requirements of the scheme and the other applicable provisions of law, if any. In a country like ours, where abuse of such facilities is rampant, reasonable time has to be afforded to the authorities to process the application. (What is a reasonable time, of course, depends on the facts of each case. No hard and fast limit can be prescribed.) It is only after appropriate verification that the licence is granted.

(emphasis supplied)

33.2 In *M.P. Ram Mohan Raja v. State of Tamil Nadu and others*<sup>[29]</sup> and in *Dharambir Singh v. Union of India and others*<sup>[30]</sup> similar situation was under consideration before the Supreme Court.

33.2.1 In *Dharambir Singh* (supra) the petitioner had challenged the notification issued by the State Government, declining to grant

mining lease in his favour stating that the State Government had done so in its discretion and that the Central Government would not curtail the said discretion as it is its property. While dealing with the challenge, the Supreme Court considered the provisions contained in Section 11 of the Principal Act which came to be substituted by Section 11 of the Amendment Act. The Supreme Court in this case after considering the provisions contained in Section 11 of the Principal Act observed thus:

“ ... 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 requirements of the law. ...”

(emphasis supplied)

33.2.2 In ***M.P. Ram Mohan Raja*** (supra) the appellant had applied to the concerned department for grant of quarry lease for quarrying jelly and rough stone for a period of 20 years under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959. The appellant had filed writ petition before the High Court alleging that his application under Rule 39 was not disposed of and as such prayed for a direction to the State Government to dispose of his application. In view of the direction issued by the High Court, his application was considered and rejected. While dealing with the challenge, the Supreme Court considered the following observations in ***State of Tamil Nadu v. Hind***

***Stone***<sup>[31]</sup>);

“The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. **No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a**

long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist.”

(emphasis supplied)

33.3 In ***U.P. Avas Evam Vikas Parishad and others v. Om***

***Prakash Sharma***<sup>[32]</sup> the Supreme Court while dealing with the right of a person participated in the tender process observed that by merely giving bids, the bidder had not acquired any vested right. The Supreme Court further observed that in view of the fact that no legal right accrued in its favour in the absence of a concluded contract which was said to have existed by mere offering of highest bid in relation to the property in question to obtain the property on lease for a period of 90 years amounting to disposal of the property of the first defendant being an authority under Article 12 of the Constitution, no right was accrued upon the bidder in relation to the property in question.

33.4 In ***Municipal Corporation, Shimla v. Prem Lata Sood***

***and others***<sup>[33]</sup> the Supreme Court stated that it is well settled, where the statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are specified, no right can be said to have vested in the person concerned.

33.5 In ***Howrah Municipal Corporation v. Ganges Rope***

***Company Limited***<sup>[34]</sup> the Supreme Court dealt with almost similar situation and categorically held as under:

“The context in which the respondent Company claims a vested right for sanction and which has been accepted by the Division Bench of the High Court, is not a right in relation to ‘ownership or possession of any property’ for which the expression ‘vest’ is generally used. What we can understand from the claim of a ‘vested right’ set up by the respondent Company is that on the basis of the Building Rules, as applicable to their case on the date of making an application for sanction and the fixed period allotted by the Court for its consideration, it had a ‘legitimate’ or ‘settled expectation’ to obtain the sanction. In our considered opinion, such ‘settled expectation’, if any, did not



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

(emphasis supplied)

33.6 In *Hind Stone Case* (supra) the Supreme Court had an occasion to deal with similar situation and while dealing with the same in paragraph-13 of the judgment stated thus:

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GOMs No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. **It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 should be dealt with as if Rule 8-C had not come into force.** The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. **We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No.1312 should be dealt with as if Rule 8-C did not exist.**"

(emphasis supplied)

34. In view of the law laid down by Supreme Court, in our opinion, theory of 'vested right' accruing to the applicant to get the licence as per the provisions of the principal Act in force on the date of the application is inconceivable in view of sub-section (1) of

Section 10A of the Amendment Act. That apart, it is clear from the provisions of the Principal Act as well as the Rules, that in grant of mining lease, the State Government has discretion either to grant or refuse to grant prospecting licence or mining lease to any applicant. It cannot be stated that the applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. From bare perusal of the provisions contained in Section 11 of the Principal Act, which has been substituted by Section 11 of the Amendment Act, and the relevant Rules, it is clear that the petitioners cannot claim preferential right or a vested right to the grant of the lease or the licence. Mere making of an application does not create any right in the applicant since the applicant cannot claim that he had pre-existing right to such licence or the lease. His right is only to make an application, which was given by the policy, then existing, and if the policy is changed, may be by way of an amendment, one cannot be stated to have any right/vested right on the basis of the earlier policy, which now do not hold good or find place in the Statute. It is difficult to appreciate, how can it be said in such a situation that mere filing of an application created vested right to obtain a prospecting licence or mining lease on the basis of the provision which has been substituted by the Amendment Act. It is the date of mining lease that is relevant and not the date of the application. Merely because the applications were kept pending for long or were not considered by the concerned authority would not create any right or an applicant cannot be stated to have a vested right in seeking mining lease on the basis of the provision which has been substituted by the Amendment Act.

34.1 From perusal of Section 11 of the principal Act, it is clear that on receipt of an application, authorities have to satisfy themselves about correctness of the contents of the application. They have also to be satisfied that the application satisfies all the

requirements contemplated by the said provision and the Rules framed thereunder. By no stretch of imagination, it can be said that the moment application was made the applicants were, as of right, entitled for grant of mining lease in their favour. Sub-section (5) of Section 11 of the Principal Act on the contrary makes it further clear that the State Government may, for any special reason to be recorded, grant 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. This itself shows that no person, as of right, can claim grant of mining lease or prospecting licence as claimed by the petitioners. There are several formalities or condition precedents laid down or contemplated under Section 11 of the Principal Act and the Rules, to be complied by the applicants and non-compliance thereof also could be a ground for not recommending to the Central Government for issue of reconnaissance permit or prospecting licence or mining lease.

34.2           The right which the applicants claim on the basis of Sections 10 and 11 of the Principal Act stood nullified on substitution of Section 11 of the Principal Act by Section 11 of the Amendment Act. In the absence of any right as such, the petitioners' applications, made under the provisions of Sections 10 and 11 of the Principal Act, cannot be considered and disposed of after the Amendment Act came into effect, in particular sub-section (1) of Section 10A thereof.

35.           It was contended on behalf of the petitioners that sub-section (1) of Section 10A of the Amendment Act has the effect of bringing the enactment into force with retrospective effect and since it renders all applications made prior to the commencement of the Amendment Act ineligible taking away the right of the petitioners, it is violative of Article 14 of the Constitution. In support of this contention, our attention was also invited to Section 6 of the General

Clauses Act, 1897, to contend that when the repeal is followed by fresh legislation on the same subject, one should have to look into the provisions of the repeal Act if that has created any legal right in favour of a person who claims such right. It was further submitted that though the expression used in Section 6 of the General Clauses Act is “repeal” and “enactment”, the Section applies to the Amendment Act with full force on account of the fact that “enactment” is defined in Section 3 (19) of the said Act itself as including a provision contained in any Act. In our considered opinion, this argument deserves to be rejected outright for more than one reason.

The law is well settled insofar as the retrospective effect of a Statute is concerned. It is true that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective in operation. In other words, unless there are words in the Statute sufficient to show the intention of the Legislature to affect, existing rights deemed to be prospective.

35.1 In ***Zile Singh v. State of Haryana and others***<sup>[35]</sup> the Supreme Court considered the retrospective effect of a statute and in paragraphs, 13, 14 & 15 observed thus:

“13. It is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. 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 — “*nova constitutio futuris formam imponere debet non praeteritis*” — a new law ought to regulate what is to follow, not the past. (See *Principles of Statutory Interpretation* by Justice G.P. Singh, 9th Edn., 2004 at p. 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole (*ibid.*, p. 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes.... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is “to explain” an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended.... An amending Act may be purely declaratory to clear a meaning of a

provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (*ibid.*, pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (*Statute Law*, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)”

35.2 In ***Garikapati Veeraya v. N.Subbiah Choudhry***<sup>[36]</sup> the Supreme Court observed that the golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed.

35.3 In ***Seth Gulab Chand v. Seth Kudilal and another***<sup>[37]</sup> the Supreme Court stated that rule is clear that "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. The Supreme Court has, however, made it clear where the language of a statute plainly gives it a retrospective operation, the rule has no application, for, "of course, it is obviously competent for the Legislature, if it pleases, in its wisdom to make the provisions of an Act of Parliament retrospective”.

35.4 In ***Anil Kumar Goel v. Kishan Chand Kaura***<sup>[38]</sup> the Supreme Court in paragraph 9 stated thus:-

“ All laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested

rights and obligations, unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective operation is intended. Hence the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous, effect will have to be given to the provision is question in accordance with its tenor. If the language is not clear then the court has to decide whether, in the light of the surrounding circumstances, retrospective effect should be given to it or not. (See: Punjab Tin Supply Co., Chandigarh etc. etc. v. Central Government and Ors. [(1984) 1 SCC 206 paragraph 17]).

35.5                    In ***Himachal Pradesh State Electricity Regulatory Commission and Another v. Himachal Pradesh State Electricity Board***<sup>[39]</sup> the Supreme Court while considering the effect of retrospectivity in the light of Section 6 of the General Clauses Act, observed in paragraph 18 as under:-

“..... Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by a fresh legislation on the same subject, we would undoubtedly have to look to the provision of the new Act, but only for the purpose or determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6, General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section.”

35.6                    The Supreme Court while dealing with Section 6 of the General Clauses Act in ***Gammon India Limited v. Special Chief Secretary and Others***<sup>[40]</sup>, in paras 46 and 52, stated thus:-

“46. The principle which has been laid down in this case is that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purposes of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore, subscribe to the broad proposition that Section 6 of the General clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section.

52.                    In view of the interpretation what follows is absolutely clear that

unless a different intention appears in the repealing Act, any legal proceeding can be instituted and continued in respect of any matter pending under the repealed Act as if that Act was in force at the time of repeal. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General clauses Act will follow unless, as the section itself says, a different intention appears in the repealing statute.”

35.7 Similar were the observations in ***State of Punjab and Others v. Bhajan Kaur and others***<sup>[41]</sup>. In this case, the Supreme Court reiterated the principle that a statute is presumed to be prospective unless held to be retrospective, either expressly or by necessary implication. A substantive law is presumed to be prospective. It is one of the facets of the rule of law.

35.8 In ***Suhas H.Pophale v. Oriental Insurance Company Limited***<sup>[42]</sup> the Supreme Court while considering the retrospective effect of an enactment in paragraph 45 observed thus:-

“45. It has been laid down by this Court time and again that if there are rights created in favour of any person, whether they are property rights or rights arising from a transaction in the nature of a contract, and particularly if they are protected under a statute, and if they are to be taken away by any legislation, that legislation will have to say so specifically by giving it a retrospective effect. This is because prima facie every legislation is prospective (see para 7 of the Constitution Bench judgment in [Janardan Reddy Vs. The State](#), (1951 AIR(SC) 124)”

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35.9 It is true, in the present case, sub-section (1) of Section 10A of the Amendment Act has the effect of bringing the enactment into force with retrospective effect but that by itself cannot be a ground for declaring the said provision or any other provision under challenge as arbitrary, unreasonable and unconstitutional as stated by the Supreme Court in the aforementioned judgments. It is equally true that all laws affecting substantive rights generally operate prospectively and that there is a presumption against their retrospectivity if they affect vested rights and obligations. But, where the legislative intent is clear in giving retrospective effect to any provision, such provision cannot be stated to be unconstitutional. It is open for the legislature to indicate laws having retrospective

operation. Even the principle which has been laid down in ***Gammon India Limited*** (supra) that whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow is also of no avail to the petitioners since the provision contained in sub-section (1) of Section 10A shows a different intention. In other words, whenever there is a repeal of an enactment the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the Section itself says, a different intention appears in the repealing statute. In the present case, a different intention is clear whereby the legislature provided that all applications received prior to the date of commencement of the Amendment Act became ineligible. Thus, the submission that sub-section (1) of Section 10A of the Amendment Act has the effect of bringing the enactment into force with retrospective effect is, therefore, unreasonable and in violation of Article 14 of the Constitution also deserves to be rejected outright.

36. That takes us to consider sub-section (2) of Section 10A of the Amendment Act. It protects reconnaissance permits or prospecting licences issued before commencement of the Amendment Act granted in respect of any land for any mineral subject to satisfaction of the State Government in respect of Clauses (i) to (iv) in Clause (b) of sub-section 2 thereof. Similarly, Clause (c) also saved mining leases where the Central Government has communicated previous approval as required under sub-section (1) of Section 5 or if letter of intent has been issued by the State Government to grant a mining lease before the commencement of the Amendment Act. However, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or/of letter of intent within a period of two years from the date of commencement of the Amendment Act. Such grant is obviously subject to the previous approval of the Central Government. Learned counsel for the parties,



did not make any submission insofar as sub-section (2) of Section 10A is concerned.

37. The petitioners have challenged Section 8 of the Amendment Act whereby Section 8A has been inserted. Section 8 of the Principal Act still continues to be in operation. In other words, original Section 8 has not been either omitted or substituted. The challenge is only to Section 8 of the Amendment Act. Both the provisions read thus:-

**Section 8 of the Principal Act:**

**Periods for which mining leases may be granted or renewed.**

8. (1) **The maximum period for which a mining lease may be granted shall not exceed thirty years:**  
Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.
- (2) **A mining lease may be renewed for a period not exceeding twenty years.**
- [(3) Notwithstanding anything contained in sub-section (2), if the State Government is of opinion that in the interests of mineral development it is necessary so as to do, it may, for reasons to be recorded, authorize the renewal of a mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding twenty years in each case.
- (4) Notwithstanding, anything contained in sub-section (2) and sub-section (3), no mining lease granted in respect of mineral specified in Part A or Part B of the First Schedule shall be renewed except with the previous approval of the Central Government.]

**Section 8 of the Amendment Act:**

“ 8. After section 8 of the principal Act, the following section shall be inserted, namely:—

“8A. (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, **all mining leases shall be granted for the period of fifty years.**

(3) **All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.**

(4) **On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.**

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed

to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.

”

(emphasis supplied)

37.1 It is apparent from a bare look at Section 8 of the Amendment Act that all mining leases, in respect of minerals other than those specified in Part A and B of the first schedule, shall be granted for a period of 50 years and the mining leases granted before the Amendment Act came into effect shall be deemed to have been granted for a period of 50 years. In this batch of writ petitions, we are concerned with the minerals other than those specified in Part A and B of the first schedule appended to the Principal Act. Section 8A further provides that on expiry of a lease period, the lease shall be put up for an auction as per the procedure specified in the Amendment Act. This provision has been challenged contending that the lease for a period of 50 years is provided without any provision for renewal thereof. It was submitted that absence of renewal provision has the potential threat of the culture of conservation of mineral wealth being transformed to profit maximization on account of concession holder's potential intention to empty the mines from all the mineral within 50

years time. It was further submitted, the absence of renewal provision is contrary to the object set out in the Statement of Object and Reasons of the Amendment Act and that it puts unreasonable restriction on the lessees.

37.2 If we look at Section 8 of the Principal Act, we find that before the Amendment Act, the leases were granted or renewed for a period not exceeding 30 years with the provision for its renewal for another twenty years i.e. for total fifty years. Practically, the Legislature has not made any difference between Section 8 of the Principal Act and of the Amendment Act insofar as the period of licence/lease is concerned. By the Amendment Act, the Parliament has eliminated the hassle of renewal after thirty years.

37.3 The intent of the Parliament is apparent, which introduced the Amendment Act after extensive consultations preceded the finalization of the draft of the Mines and Minerals (Development and Regulation) Bill, 2011. It was thereafter extensively scrutinized by the Standing Committee. It has also come on record that some provisions of the Principal Act relating to renewals of mineral concessions had also been found to be wanting in enabling quick decisions. Consequently, there had been a slowdown in the grant of new concessions and the renewal of existing licences/leases. As a result, the mining sector had started registering a decline in production affecting the manufacturing sector which largely depends on the raw material provided by mining sector. The Government, therefore, felt it necessary to address the immediate requirements of the mining sector and also to remedy the basic structural defects that underline the impasse then prevalent.

37.4 In this backdrop, the tenure of mineral leases has been increased, by introducing Section 8A of the Amendment Act, from the

period of 30 plus 20 years to 50 years by deleting the provision for renewal of leases. The Legislature, keeping in view the issue of renewal, as aforementioned, in its wisdom, and in order to avoid the delay and hassles of renewal procedure, extended the period of mining lease to

50 years and thereby addressed the immediate requirements of the mining sector and cured the basic structural defects. Even the mining leases executed prior to this date were also given the benefit by introducing the deeming provision under sub-section (3) of Section 8A of the Amendment Act. In this view of the matter, we do not find any merit in the grounds of challenge to this provision of the Amendment Act. The period of 50 years is quite a long period from the date of awarding the prospecting licence-cum-mining lease. In any case, the law is well settled that the provision cannot be struck down being unconstitutional unless it is in violation of any of the fundamental rights guaranteed in Part.III of the Constitution or of any other constitutional provisions. It is not the case of the petitioners that the Parliament while enacting this provision lacked the legislative competence. In view of the law laid down by the Supreme Court in the judgments referred to in the foregoing paragraphs in particular in ***McDowell & Company, United Yarn Tex (P) Limited, P.Laxmi Devi, K.T. Plantation Private Limited*** and ***A.K.Thakur*** (supra), this ground of challenge deserve to be rejected outright.

38. This takes us to consider the provisions contained in Section 10B and Section 11 of the Amendment Act. It would be relevant to reproduce the said provisions, which read thus:-

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

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

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

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

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

(6) Without prejudice to the generality of sub-section (5), the Central Government shall, if it is of the opinion that it is necessary and expedient to do so, prescribe terms and conditions, procedure and bidding parameters in respect of categories of minerals, size and area of mineral deposits and a State or States, subject to which the auction shall be conducted:

Provided that the terms and conditions may include the reservation of any particular mine or mines for a particular end-use and subject to such condition which allow only such eligible end users to participate in the auction.

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

**11. For section 11 of the principal Act, the following section shall be substituted, namely:—**

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

(2) In areas where there is evidence to show the existence of mineral contents as required by clause (a) of sub-section (2) of section 5, the State Government shall grant a mining lease for minerals other than notified minerals following the procedure laid down in section 10B.

(3) In areas where there is inadequate evidence to show the existence of mineral contents as required under clause (a) of sub-section (2) of section 5, the State Government shall grant a prospecting licence-cum-mining lease for minerals other than notified minerals in accordance with the procedure laid down in this section.

(4) The State Government shall notify the areas in which prospecting licence-cum-mining leases shall be granted for any minerals other than notified minerals, the terms and conditions subject to which such prospecting licence-cum-mining leases shall be granted, and any other relevant conditions, in such manner as may be prescribed by the Central Government.

(5) For the purpose of granting prospecting licence-cum-mining leases, the State Government shall select, through auction by method of competitive bidding, including e-auction, an applicant who fulfils the eligibility conditions as specified in this Act.

(6) The Central Government shall prescribe the terms and conditions, and

procedure, subject to which the auction shall be conducted, including the bidding parameters for the selection, which may include a share in the production of the mineral, or any payment linked to the royalty payable, or any other relevant parameter, or any combination or modification of them.

(7) Without prejudice to the generality of sub-section (6), the Central Government shall, if it is of the opinion that it is necessary and expedient to do so, prescribe terms and conditions, procedure and bidding parameters in respect of categories of minerals, size and area of mineral deposits and a State or States, subject to which the auction shall be conducted.

(8) The State Government shall grant a prospecting licence-cum-mining lease to an applicant selected in accordance with the procedure laid down in this section.

(9) The holder of a prospecting licence-cum-mining lease shall be required to complete, within the period laid down in section 7, the prospecting operations satisfactorily as specified in the notice inviting applications.

(10) A holder of a prospecting licence-cum-mining lease, who completes the prospecting operation as laid down in sub-section (9) and establishes the existence of mineral contents in the area in conformity with such parameters as may be prescribed for this purpose by the Central Government, shall be required to apply for a mining lease for such area and shall have the right to get the mining lease and thereafter undertake mining operations in accordance with the provisions of this Act.”.

(emphasis supplied)

38.1 These provisions were challenged on the grounds that they are vague and arbitrary. It was submitted that the language of sub-section(2) of Section 10B and sub-section (3) of Section 11 of the Amendment Act is vague since there is no empiric data that could be made available regarding available quantity and in the absence thereof, the auction would be speculative and based on chance. It was further submitted that such vagueness is not permissible in legislation and is in violation of Article 14 of the Constitution. It was then submitted that there is no consideration or provision made for mineral based industries in order to safeguard availability of raw-materials to them and, on this ground also these provisions deserve to be struck down being arbitrary and violative of Article 14. It was also submitted that for not providing protection or showing distinction for industries based on mineral raw material and creating the possibility of larger corporations and multinational companies to corner the mineral amounts to placing unreasonable restriction and so also discriminatory and hence in violation of Articles 14 and 19(i)(g)

of the Constitution. A reference was also made to Article 39 to submit that mandate cast upon the State under clause (b) and (c) thereof to protect the mineral and natural resources and ensure equal distribution of the same has been violated since auction has the direct effect of person having (money) resources to control minerals.

39. Insofar as Section 10B is concerned, the challenge is to the provisions contained in sub-sections (2) and (4) thereof, in particular, and sub-section (3) and (5) of

Section 11. The provisions contained in Section 10B and 11 of the Amendment Act are similar. The difference between these provisions is that Section 10B provides for grant of mining lease in respect of the notified minerals through auction, whereas Section 11 provides for grant of prospecting licence-cum-mineral licence through auction in respect of the minerals other than notified minerals. Both the provisions are not applicable to cases covered by Section 10A or Section 17A or minerals not specified in Part A or Part B of the First Schedule or to land in respect of which minerals do not vest in the Government.

39.1 Having noticed the difference between these two provisions, we would now deal with the grounds of

challenge raised by the petitioners. Sub-section (2) of Section 10B provides that where there is inadequate evidence to show the existence of mineral contents of any notified mineral in respect of any area, the State Government, may, after obtaining the previous approval of the Central Government, grant a prospecting licence-cum-mining lease for the said notified mineral in such area in accordance with the procedure laid down in Section 11. Section 11 lays down the procedure for grant of a prospecting licence-cum-mining lease for the notified mineral in the area where there is inadequate evidence to show the existence of the mineral contents.

According to the petitioners, such vagueness in the

provisions contained in sub-section (2) of Section 10B and sub-section (3) of Section 11 is not permissible in Legislation and is, therefore, in violation of Article 14 of the Constitution.

39.2 The submissions that the provisions contained in Sections 10B and 11 are unconstitutional being vague deserve to be rejected outright. This provision on the contrary keeps the participants in the auction process informed about the inadequate evidence to show the existence of mineral contents which would help the participants to quote accordingly in the auction process and that they would not be misled or misguided. It is for the applicant to decide whether he would like to participate in the auction process if there is inadequate evidence to show the existence of mineral contents.

39.3 The provision cannot, in any case, be challenged on this ground. It is well settled that a law made by the Legislature can be struck down on only two grounds viz., lack of legislative competence and violation of any of the fundamental rights guaranteed in Part.III of the Constitution or of any other constitutional provision. There is no third ground. Further, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/equal protection clause enshrined therein. None of the learned counsel appearing for the parties could demonstrate as to how there is violation of any of the fundamental rights or these provisions are violative of Article 14 or violative of equality clause/equal protection clause enshrined in the Constitution. The Supreme Court in ***United Yarn Tex (P) Limited*** (supra) observed that in considering the validity of a statute the presumption is always in favour of constitutionality and the burden is upon the person who attacks it to show that there has been transgression of constitutional principles. We do not find from perusal of these provisions any transgression of constitutional principles nor could learned counsel for the parties point out such transgression. The only submission



advanced by the learned counsel for the parties was that this provision is vague and vagueness is not permissible in the legislation. The Supreme Court in ***P.Laxmi Devi*** (supra) observed that the Legislature must be given freedom to do experimentations in exercising its powers, provided of course, it does not clearly and flagrantly violate its constitutional limits. Bearing this in view we are satisfied that by no stretch of imagination it can be stated that these provisions violate constitutional limits. That apart, this provision cannot be treated as unreasonable or arbitrary. The principle of reasonableness, undoubtedly, is an essential element of equality or non-arbitrariness pervades Article 14 and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. The Government cannot act arbitrarily at its sweet will and like a private individual and it must act in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. In the present case, it is not possible to state that the Government is dealing with the public in giving licences/leases at its sweet will. On the contrary by way of amendment, the Government has made allotment of licences/leases more transparent way by adopting rational method for disposal of natural resources. Thus, the challenge to the provisions of Section 8 of the Amendment Act also deserves to be rejected.

40. Though in the prayer clause challenge was made to Section 10 of the Amendment Act whereby three (3) sub-sections viz., Sections 10A, 10B and 10C were inserted, learned counsel for the parties did not make any submission whatsoever in respect of Section 10C. Similarly, no arguments were advanced by learned counsel for the parties in respect of Section 13 of the Amendment Act.

41. Many statutes, which may deprive a person of his property,

have the protection of Article 30 (1A), 31A, 31B and 31C and they are immune from challenge under Article 19 or Article 14 of the Constitution. On deletion of 19(1)(f), the available ground of challenge is Article 14, the basic structure and the rule of law, apart from the grounds of legislative competence as held by the Supreme Court in **K.T.Plantation Private Limited** (supra). The Supreme Court in **I.R.Coelho v. State of Tamil Nadu**<sup>[43]</sup> stated that the basic structure was defined in terms of fundamental rights as reflected under Articles 14, 15, 19, 20, 21 and 32. In that case the Supreme Court held that Statutes mentioned in Ninth Schedule are immune from challenge on the ground of violation of fundamental rights, but if such laws violate the basic structure, they no longer enjoy the immunity offered by Ninth Schedule.

41.1        Insofar as the Principal Act is concerned, it is mentioned in Ninth Schedule and, therefore, obviously immune from challenge on the ground of violation of fundamental rights. As a matter of fact, none of learned counsel appearing for the petitioners could demonstrate as to how any of the provisions, under challenge, are in violation of fundamental rights. That apart, it is not the contention of the petitioners that the provisions under challenge in these petitions violate the basic structure of the Constitution. Therefore, on this ground also the challenge to the provisions fails and is liable to be rejected. Similarly, the provisions under challenge cannot be described as arbitrary or unreasonable. In other words, these provisions cannot be stated to be not reasonable and are manifestly arbitrary. The expression 'arbitrary' as stated by the Supreme Court in **Sharma Transport** (supra) means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. Similarly, these

provisions cannot be described or treated as discriminatory. As a matter of fact, the Parliament by introducing auction as the method for allocation of prospecting licence-cum-mining lease has given equal opportunity to all those who are interested in the minerals. The question of favoritism also does not arise. The provisions do not even indirectly suggest to do any favour to any larger Corporations or class of persons. The question of giving any protection to any particular mineral based industries also does not arise. The apprehension expressed that the method of auction has the hazard of small industry being cornered by larger

industry-corporation is only an imaginary and in any case on this ground the provisions providing for auction, which is otherwise rational method for disposal of public property, cannot be stated to be discriminatory. In our opinion, duly publicized auction conducted fairly and impartially is perhaps the best method for discharging this burden and the methods like first-come-first-served when used for alienation of natural resources/public property are likely to be misused by unscrupulous people who are only interested in garnering maximum financial benefit and have no respect for the constitutional ethos and values, as observed by the Supreme Court in **2G Case** (supra).

Though auction, as the method of disposal of natural resources, cannot be declared as constitutional mandate under Article 14 of the Constitution, it is always considered as best method giving equal opportunity to all those who are interested and if the Legislature in its wisdom has provided that as the method for issuing prospecting licences-cum-mining leases under Sections 10 and 11 of the Amendment Act, it cannot be declared arbitrary, unreasonable and discriminatory being violative of Articles 14, 19(g), 39, 30, 300A and 301 of the Constitution of India.

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13206, 13208, 13643 and 15132 of 2015**

42. The petitioners in these nine writ petitions apart from the grounds of challenge, as raised in the other writ petitions in the batch, have also raised challenge to the provisions of the Amendment Act based on the Fifth Schedule of the Constitution dealing with Scheduled Areas and Scheduled Tribes. The petitioners claim that they belong to Scheduled Tribes community. The additional ground of challenge is that no Prospecting licence or Mining lease can be granted in the scheduled areas to any person who is not a member of the Scheduled Tribe. These petitioners placed heavy reliance upon sub-section (5) of Section 11 of the Principal Act inserted vide G.O.Ms.No.264, I&C, dated 07.08.1991 w.e.f 14.08.1991 (for short 'the State Amendment') to contend that this provision safeguards the interest of Scheduled Tribes from the competitive field of mining leases/licences in Scheduled Areas. As a result of insertion of this provision (sub-section (5) of the State amendment) the vast extent of scheduled areas in the States of Andhra Pradesh and Telangana are preserved and protected for the benefit of the Scheduled Tribes living in scheduled areas for their socio-economical and political empowerment to reach the social justice, that being a part of the basic structure of the Constitution. It was submitted on behalf of the petitioners that by virtue of deletion of Section 11 of the Principal Act by Section 11 of the Amendment Act, sub-section (5), inserted by the State Amendment, also stood omitted and thereby the protection to the scheduled areas has been taken away. It was further submitted that in view of deletion/omission of Section 11 from the Principal Act, even non-tribals will participate in the auction process to be conducted by virtue of the provisions introduced/amended by the Amendment Act of the minerals/mines in the Scheduled Areas and that would violate the very basic structure of the Constitution.

43. It is true that Section 11 has been deleted and by virtue

thereof sub-section (5) inserted by the State Amendment also stood omitted and as a result thereof even non-tribals may compete with the tribals if the auction is conducted in scheduled areas, if similar provision is not introduced by the State Government. In view thereof, when we specifically asked the learned Advocate General for the State of Andhra Pradesh and the learned Additional Advocate General for the State of Telangana whether they intend to introduce similar provisions [sub-section (5)] by way of State Amendment in view of the substitution of Section 11 of the Principal Act, they both submitted that the State Government may do so. Though they so stated, they could not make any positive statement within how much time the State Amendment will be introduced protecting the rights and interests of the members of Scheduled Tribes. The learned Advocate General for the State of Andhra Pradesh, however, submitted that in any case, the question, as raised, based on the Fifth Schedule of the Constitution of India, need not be considered at this stage since the State Government has not issued any notification inviting bids for minerals in the scheduled areas. He submitted that challenge based on these provisions and on this ground can be kept open to be considered if the State Government either do not

bring the amendment in terms of sub-section (5) of

Section 11 of the Principal Act (State amendment) and if steps are taken to conduct auction of the mines/minerals in the scheduled areas before such amendment. In response to this submission, the learned counsel for the petitioners in these nine writ petitions have fairly stated that this issue may be kept open to be raised if the circumstances so demand leaving it open to the petitioners to take appropriate remedy for challenging any such notification for conducting auction without carrying out necessary amendment. In this view of the matter, we refrain from entering into merits of the question of law based on the Fifth Schedule of the Constitution and keep it open to be considered in an appropriate proceeding. All

contentions in respect thereof are kept open.

44. In the result, the writ petitions are disposed of answering both the questions, as framed in paragraph 6 of this judgment, in the negative. No order as to costs.

45. Miscellaneous petitions pending in the writ petitions, if any, also stand disposed of.

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**Dilip B.Bhosale, ACJ**

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**S.V.Bhatt, J**

11<sup>th</sup> September, 2015.  
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[1] (2012) 10 SCC 1  
[2] (2014) 9 SCC 516  
[3] (2012) 3 SCC 1  
[4] (1980) 4 SCC 1  
[5] (1987) 2 SCC 295  
[6] (1988) 1 SCC 166  
[7] (1997) 7 SCC 592  
[8] (2000) 8 SCC 262  
[9] (2009) 7 SCC 561  
[10] (2003) 8 SCC 100  
[11] 1981 4 SCC 675  
[12] 1986 Supp 1 SCC 20  
[13] AIR 1996 SC 1627  
[14] (2007) 6 SCC 236  
[15] (2008) 4 SCC 720  
[16] (2011) 9 SCC 1  
[17] (2008) 6 SCC 1  
[18] (1978) 1 SCC 248  
[19] (1974) 4 SCC 3  
[20] (1979) 3 SCC 489

- [21] (2002) 2 SCC 188
- [22] (1994) 2 SCC 691
- [23] (1996) 2 SCC 405
- [24] (2002) 2 SCC 333
- [25] (2011) 7 SCC 639
- [26] (2005) 8 SCC 534
- [27] (2011) 6 SCC 570
- [28] AIR 1996 SC 2921
- [29] (2007) 9 SCC 78
- [30] (1996) 6 SCC 702
- [31] (1981) 2 SCC 205
- [32] 2013 AIR SCW 2484
- [33] 2013 AIR SCW 2484
- [34] (2004) 1 SCC 663
- [35] (2004) 8 SCC 1
- [36] AIR 1957 SC 540
- [37] AIR 1958 SC 554
- [38] (2007) 13 SCC 492
- [39] (2014) 5 SCC 219
- [40] (2006) 3 SCC 354
- [41] (2008) 12 SCC 112
- [42] (2014) 4 SCC 657
- [43] (2007) 2 SCC 1