

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD  
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH

\*\*\*

WRIT PETITION Nos.4122 & 4246 of 2018

Between:

VUSB Bhushan Kumar

.....Petitioner

and

The State of Andhra Pradesh rep. by its Principal Secretary, Mining  
Department and 2 others

.....Respondents

Date of Judgment pronounced on : 02-04-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No  
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No  
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No  
Of the Judgment?

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> HEAD NOTE:

! Counsel for the petitioner : Sri N. Ashwani Kumar

^ Counsel for the respondents : learned Government Pleader  
for Mines & Geology

? Cases referred

1. 1981 (2) SCC 205
2. 2007 (15) SCC 30
3. (1981) 2 SCC 205
4. 2007 (15) SCC 30
5. 2007 (9) SCC 78
6. 2017 (10) SCJ 42 = 2017 (12) SCALE 586
7. (2015) 1 SCC 1
8. (2008) 4 SCC 362
9. (2009) 2 SCC 589
10. (2017) 2 SCC 125



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

W.P. Nos.4122 & 4246 of 2018

COMMON ORDER:

The self-same petitioner by name VUSB Bhushan Kumar has maintained the two writ petitions against three Respondents by name (1). State of Andhra Pradesh, represented by its Principal Secretary, Mining Department, Velagapudi, (2). the Director of Mines & Geology, and (3). the Assistant Director, Mines & Geology, Kurnool, Andhra Pradesh State. The prayers in the Writ Petitions, filed on 06.02.2018 & 07.02.2018, are self-same and consequently impugning the different letters bearing Nos.27495/R4-2/2010 and 25636/R4-2/2010 of even date 02.02.2018 in respect of the extent of 50.000 hectares reduced area in each out of 108.232 hectares and 121.157 hectares respectively and for more clarity reproduced as under:

1.(a). W.P.No.4122 of 2018

“To issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the amendment made to clause (f) of Sub-rule (5) of Rule 12 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 vide G.O.Ms.No.29, Industries & Commerce (Mines-II) Department, dated 15.02.2017, issued by respondent No.1 is only prospective and will not affect the letters of intent or the proposed mining lease issued to the petitioner vide Memo No.14636/M.1(1)/2012, Industries & Commerce (Mines-I) Department dated 17.10.2012 and as also vide Memo No.14636/M.II(1)/2012, Industries & Commerce (Mines-II) Department dated 24.03.2016 as illegal, arbitrary, without jurisdiction, and in violation of the dicta laid by this Court in W.P.No.40130 of 2017, and in violation of the provisions of A.P.M.M.C. Act and Rules and

consequently declare the letter No.27495/R4-2/2010 dated 02.02.2018 issued by respondent No.2 - Director of Mines & Geology in the name of respondent No.1 requesting the petitioner to give consent for a reduced area of 50.000 hectares as against the applied extent of 108.232 hectares, in terms of the amended Rule 12(5)(f) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 as illegal, arbitrary, without jurisdiction, and in violation of the dicta laid by this Court in W.P.No.40130 of 2017 and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

### 1.(b). W.P.No.4246 of 2018

"To issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the amendment made to clause (f) of Sub-rule (5) of Rule 12 of the Andhra Pradesh Minor Mineral Concession Rules, 1966 vide G.O.Ms.No.29, Industries & Commerce (Mines-II) Department, dated 15.02.2017, issued by respondent No.1 is only prospective and will not affect the letters of intent or the proposed mining lease issued to the petitioner vide Memo No.15325/M.1(1)/2012, Industries & Commerce (Mines-I) Department dated 17.10.2012 and as also vide Memo No.14325/M.II(1)/2012, Industries & Commerce (Mines-II) Department dated 24.03.2016 as illegal, arbitrary, without jurisdiction, and in violation of the dicta laid by this Court in W.P.No.40130 of 2017 and in violation of the provisions of A.P.M.M.C. Act and Rules and consequently declare the letter No.25636/R4-2/2010 dated 02.02.2018 issued by respondent No.2 - Director of Mines & Geology in the name of respondent No.1 requesting the petitioner to give consent for a reduced area of 50.000 hectares as against the applied extent of 121.157 hectares, in terms of the amended Rule 12(5)(f) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 as illegal, arbitrary, without jurisdiction, and in violation of the dicta laid by this Court in W.P.No.40130 of 2017 and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. The self-same affidavit averments, but for variation to the extent of description of the letters for the respective extents, in nutshell, vis-à-vis the oral submissions by the Counsel for Petitioner in both the matters are that:

2(a). The petitioner-Bhushan Kumar applied for mining lease under the relative rules, by then in force, by applications dated 21.06.2010 and 16.06.2010 for Silica Sand and Yellow Ochre over an extent of Ac.625.00 cents in S.No.339/A in W.P.No.4122/2018 and an extent of Ac.361.40 cents in S.No.203 in W.P.No.4246/2018 at Bukkapuram Village in Veldurthy Mandal of Kurnool District and after survey by the Mines & Geology Department, the applied area comes to 108.032 hectares in W.P.No.4122/2018 and 121.457 hectares in W.P.No.4246/2018 and the writ petitioner-applicant has also given his consent to said reduced area supra respectively. Said area was declared as Assessed Waste (AW) land. Necessary proposals were sent by the Director of Mines & Geology-respondent No.2 to the Principal Secretary, Mining Department-respondent No.1, dated 17.10.2012, to consider grant of mining lease for 20 years respectively and notice was issued to the petitioner for submission of approved mining plan under Rule 22(4) of the Mineral Concession Rules, 1960.

2(b). Subsequent to the grant of said letter of intent supra the respondents issued proceedings in Memo Nos.14636 & 14325/M.II(1)/2012 dated 24.03.2016, in principle agreed for grant of the mining lease for the respective extents for the respective periods and environmental clearance orders were also issued for the respective extents. The respondents issued

proceedings vide Lr.Nos.27495 & 25636/R4-2/2010 dated 15.07.2016 directing the applicant to pay the enhanced fee towards the application fee i.e., difference amount of (Rs.9,000/- and Rs.63,25,000/- for 108.032 hectares in W.P.No.4122/2018) and (Rs.9,000/- and Rs.36,75,000/- for 121.457 hectares in W.P.No.4246/2018) towards deposit amount for processing the applications of petitioner and in compliance of the same, the petitioner stated paid Rs.27,25,000/- for 108.032 hectares and Rs.30,50,000/- for 121.457 hectares with letter of even date 23.08.2016. However, the respondents failed to respond despite subsequent representations by petitioner, dated 27.03.2017, for early grant of the mining lease and instead of granting, the respondents issued show cause notices respectively dated 04.05.2017 that as per the amended Rule 12(5)(f) of the A.P.M.M.C. Rules, 1966 the area of mining lease cannot exceed 100 hectares and the respective two applications of the petitioner cannot be considered.

2(c). In fact, by reply dated 08.05.2017 the writ petitioner-applicant explained to the respondents saying the amendment is prospective in nature and as such the same is not applicable to his case and requested to process the grant of mining lease and also made representation dated 08.01.2018 with reminder dated 29.01.2018 informing that

there is already the approved mining plan and environmental clearance for grant of mining lease and the two letters of intent were also issued on 17.10.2012 and confirmed on 24.03.2016 and he paid necessary application fees and security deposit in terms of the G.O.Ms.No.56, Industries & Commerce (M.II) Department, dated 30.04.2016, and the subsequent G.O.Ms.No.29, Industries & Commerce (M.II) Department, dated 15.02.2017, is not applicable to his cases for the same are prospective in nature. However, to the surprise of the petitioner-applicant, the Director of Mines & Geology-respondent No.2 by the consequential impugned letters Nos.27495 and 25636/R4-2/2010 dated 02.02.2018 require to comply with G.O.Ms.No.29, dated 15.02.2017, to consider the two applications of petitioner for the extent of 50 hectares only respectively as per the amended Rule 12(5)(f) of the A.P.M.M.C. Rules, 1966.

2(d). The petitioner is thereby constrained to maintain the two writ petitions for no effective alternative relief in seeking the relief of said amended Rule 12(5)(f) vide G.O.Ms.No.29 dated 15.02.2017 is prospective and cannot give retrospective effect to the subordinate legislation in the form of Rules or regulations or notifications which shall ordinarily prospective and a right or a liability created for the first time cannot be given retrospective effect and thereby, the same is

not applicable to the two applications of petitioner in question; apart from the amended Rule does not indicate that it is retrospective in operation and the law passed today cannot apply to the events of the past as the applicants for grant of quarry leases made applications on the belief that they will be entitled to proceed in the matter in accordance with the existing law and obviously arranged their affairs and made plans by relying upon the existing law and if the amended Rule is retrospectively applied to present facts of the case, the plans of the applicant would be upset and the affairs they arranged relying on the existing law would suffer a set back as the application of the amended Rule retrospectively would change the character of the past transaction carried on upon the faith of the then existing law.

3. The respective counter affidavits of respondent No.2- The Director of Mines & Geology in the two writ petitions vis-à-vis the oral submissions of the learned Govt. pleader for mines are also with self-same contentions in questioning the maintainability of the writ petitions saying:

3(a). The writ petitions won't lie and the remedy is misconceived from the reason of amendment made to Rule 12(1) of the A.P.M.M.C. Rules, 1966 through G.O.Ms.No.81, Industries & Commerce (Mines-II) Department, dated 01.06.2017 issued by the Government of Andhra Pradesh,

represented by the Secretary, Industries & Commerce Department, though Rule 12(1) and Rule 12(5)(f) deals with completely different situations having different objects and the petitioner's attempt to place the operation of the two rules on the same footing is with no legal base and the same are liable to be dismissed. It is contended that pursuant to the applications of petitioner for Silica Sand and Yellow Ochre in S.Nos.339/A and 203 of Bukkapuram Village, Veldurthy Mandal, Kurnool District respectively for 625 acres and 361.40 acres. The Government vide Memo Nos.14636 & 14325/M1(I)/2012, dated 17.10.2012, issued notice to the petitioner to submit approved mining plan, EC and CFE within six months and the petitioner submitted the approved mining plan vide letters, dated 18.05.2013, bearing Nos.1688 & 1691/MP-KNL/2013, EC dated 18.09.2014 and CFE dated 08.10.2014

3(b). Later the Government of India amended the MMDR Act with effect from 12.01.2015 and in pursuance of the notification of the Government of India S.O.423(E) dated 10.02.2015, the Government of Andhra Pradesh vide G.O.Ms.No.34, Industries & Commerce Department, dated 14.03.2016 by delegated the powers to the Director of Mines & Geology-respondent No.2 for granting mining lease in respect of the proposed 31 minor minerals which were

converted from the category of major minerals to minor minerals by the Government of India vide its S.O.423 supra. The Government of Andhra Pradesh vide G.O.Ms.No.56, Industries & Commerce Department, dated 30.04.2016 issued amendments to the A.P.M.M.C. Rules for regulation of Mineral Concession for 31 minerals and conduct of quarry operations with the approved mining plan. The Director of Mines & Geology-respondent No.2 thereby directed the applicant to submit security deposit by the impugned letters in Nos.27495 & 25636/R4-2/2010 dated 15.07.2016 in accordance with the amended A.P.M.M.C. Rules, 1966 which are prevailing as on the date of issue of letter to the applicant directing to pay the same and accordingly, the applicant paid requisite amounts on 24.08.2016 or so.

3(c). In the meantime, to the processing of the applications further, the Government made amendments to Rule 12(5)(f) vide G.O.Ms.No.29 dated 15.02.2017 restricting the extents for grant of leases under clause (f) of Sub-rule (5) of Rule 12 under the proviso (ii), the area covered by lease for granite and 31 minerals mentioned at serial numbers 18 to 48 in schedule 1 of Rule 10 shall not be less than one hectare, but not exceeding 100.000 hectares in case of a lease serving as captive purpose to a processing industry and 50.00 hectares for non-captive purpose. Pursuant to which they directed the

applicant vide letter Nos.27495 & 25636/R4-2/2010 dated 02.02.2018 to submit his consent by restricting for an extent of 50.00 hectares only, since it is for the non-captive purpose, as is permissible under the amended Rule supra.

3(d). It cannot be contended therefrom of the Government cannot restrict to opt for 50.00 hectares. The Government cannot still be asked to follow old procedure ignoring the existing rules in force. In the case of hand, the question of the issue of prospective and retrospective operation does not arise and it is only following the existing law as on the date of consideration of the application, that too the amendment made by the State Government is in tune with the changed policy of the Government of India. In the light of the amendments to the Mines and Minerals (Development & Regulation) Act, 1957 and declaration of Silica Sand and Yellow Ochre as minor minerals and all the pending applications as on the date of amendment were thereby subject to the said G.O. issued by the State Government to apply to all pending applications not disposed of by the competent authority and as per the rule existing as on the date of consideration. The petitioner thus has no vested right for the claim for grant of mining lease much less as per the old rule.

3(e). The Apex Court in this regard laid law in State of Tamilnadu v. M/s. Hind Stone<sup>1</sup>, that was followed in later similar cases, that the Rules existing as on the date of consideration of the application has to be followed. It is also contended that grant of a letter of intent in favour of the petitioner respectively does not amount to crystallized right in his favour and at best the petitioner can be said to have an Inchoate Right and such a proposition of law is laid down by the Apex Court in the judgment dated 07.11.2016 in Civil Appeal No.4702/2006 in M/s. Pallava Granite Industries (India) Private Limited v. Union of India<sup>2</sup> and the petitioner having an Inchoate Right thereby cannot as a matter of right seek for issuance of a mandamus from the Hon'ble Court. The State by virtue of its sovereign power can change policy in public interest and pursuant to that mandate can issue orders or carry out amendments to rules from time-to-time, which are applicable as on the date of consideration of the grant from G.O.Ms.No.29 dated 15.02.2017 supra since applicable. Thereby that ought to apply from which no any accrued right of the petitioner taken away, but for the State Government is intending to reduce the area of mining to 50.00 hectares for the non-captive purpose for the said minor mineral in question and sought for dismissal of the writ petitions.

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<sup>1</sup> 1981 (2) SCC 205

<sup>2</sup> 2007 (15) SCC 30

4. Heard both sides pursuant to the above writ petitions' affidavit averments, the counter-affidavit averments as part of the evidence, the documents referred supra, and perused the legal provisions and the propositions in relation thereto for common disposal of the both the writ petitions involving the same issue between the same parties.

5. In the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957) (for short, 'the Act') as amended by the Mines and Minerals (Development and Regulation) Amendment Act, 2016 (25 of 2016) with reference to the respective rules concerned, Section 10 to 16 of the Act extracted as under:

10. Application for prospecting licences or mining leases.—(1) An application for [a reconnaissance permit, prospecting licence or mining lease] in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the [permit, licence or lease].

[10A. Rights of existing concession-holders and applicants—(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

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

- (a) applications received under section 11A of this Act;
- (b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit-holder or the licensee, as the case may be,—
  - (i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

- (ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;
  - (iii) has not become ineligible under the provisions of this Act; and
  - (iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government;
- (c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

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

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

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

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

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

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

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

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

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

10C. Grant of non-exclusive reconnaissance permits.—(1) Non-exclusive reconnaissance permits may be granted in respect of any notified mineral or non-notified mineral or a group of specified minerals, other than minerals specified in Part A or Part B of the First Schedule, subject to such terms and conditions as may be prescribed by the Central Government.

(2) The holder of such non-exclusive reconnaissance permit shall not be entitled to make any claim for the grant of any prospecting licence-cum-mining lease or a mining lease.]

11. Grant of prospecting licence-cum-mining lease through auction in respect of minerals other than notified minerals.—(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.

11A. Granting of reconnaissance permit, prospecting licence or mining lease.—(1) Notwithstanding anything contained in this Act, the Central Government may, for the purpose of granting reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal or lignite, select any of the following companies through auction by competitive bidding, on such terms and conditions as may be prescribed, namely:-

- (a) a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be, or any other company incorporated in India; or
- (b) a company or a joint venture company formed by two or more companies,

that carry on coal mining operations in India, in any form either for own consumption, sale or for any other purpose in accordance with the permit, prospecting licence or mining lease, as the case may be.

(2) The Central Government may, with a view to rationalize coal and lignite mines referred to in sub-section (1), so as to ensure the coordinated and scientific development and utilization of resources consistent with the growing requirements of the country, from time to time, prescribe-

- (i) the details of mines and their location;
- (ii) the minimum size of such mines;
- (iii) such other conditions,

which in the opinion of that Government may be necessary for the purpose of mining operations or mining for sale by a company.

(3) The State Government shall grant such reconnaissance permit, prospecting licence or mining lease in respect of any area containing coal or lignite to such company as selected through auction by competitive bidding or otherwise under this section.

Provided that the auction by competitive bidding under this section shall not be applicable to any area containing coal or lignite-

- (a) where such area is considered for allocation to a Government company or corporation or a joint venture company formed by such company or corporation or between the Central Government or the State Government, as the case may be;
- (b) where such area is considered for allocation to a company or corporation or that has been awarded a power project on the basis of competitive bids for tariff (including Ultra Mega Power Projects).

11B. Power of Central Government to make rules for regulating atomic minerals specified under Part B of First Schedule.—The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of mining leases or other mineral concessions in respect of minerals specified in Part B of the First Schedule and for purposes connected therewith, and the State Government shall grant a reconnaissance permit, prospecting licence or mining lease in respect of any such mineral in accordance with such rules.

11C. Power of Central Government to amend First Schedule and Fourth Schedule.—The Central Government may, by notification in the Official Gazette, amend the First Schedule and the Fourth Schedule so as to add or delete any mineral as may be specified in the notification.

12. Registers of prospecting licences and mining leases.—(1) The State Government shall cause to be maintained in the prescribed form—

- (a) a register of applications for prospecting licences;
- (b) a register of prospecting licensees;
- (c) a register of applications for mining leases;
- (d) a register of mining lessees;
- (e) a register of applications for reconnaissance permits; and
- (f) a register of reconnaissance permits,

in each of which shall be entered such particulars as may be prescribed.

(2) Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

[12A. Transfer of mineral concessions.—(1) The provisions of this section shall not apply to minerals specified in Part A or Part B of the First Schedule.

(2) A holder of a mining lease or a prospecting licence-cum-mining lease granted in accordance with the procedure laid down in section 10B or section 11 may, with the previous approval of the State Government, transfer his mining lease or prospecting licence-cum-mining lease, as the case may be, in such manner as may be prescribed by the Central Government, to any person eligible to hold such mining lease or prospecting licence-cum-mining lease in accordance with the provisions of this Act and the rules made thereunder.

(3) If the State Government does not convey its previous approval for transfer of such mining lease or prospecting licence-cum-mining lease, as the case may be, within a period of ninety days from the date of receiving such

notice, it shall be construed that the State Government has no objection to such transfer:

Provided that the holder of the original mining lease or prospecting licence-cum-mining lease shall intimate to the State Government the consideration payable by the successor-in-interest for the transfer, including the consideration in respect of the prospecting operations already undertaken and the reports and data generated during the operations.

(4) No such transfer of a mining lease or prospecting licence-cum-mining lease, referred to in sub-section (2), shall take place if the State Government, within the notice period and for reasons to be communicated in writing, disapproves the transfer on the ground that the transferee is not eligible as per the provisions of this Act:

Provided that no such transfer of a mining lease or of a prospecting licence-cum-mining lease, shall be made in contravention of any condition subject to which the mining lease or the prospecting licence-cum-mining lease was granted.

(5) All transfers effected under this section shall be subject to the condition that the transferee has accepted all the conditions and liabilities under any law for the time being in force which the transferor was subject to in respect of such a mining lease or prospecting licence-cum-mining lease, as the case may be.

(6) The transfer of mineral concessions shall be allowed only for concessions which are granted through auction.

Provided that where a mining lease has been granted otherwise than through auction and where mineral from such mining lease is being used for captive purpose, such mining lease may be permitted to be transferred subject to compliance of such terms and conditions and payment of such amount or transfer charges as may be prescribed.

*Explanation.*— For the purposes of this proviso, the expression “used for captive purpose” shall mean the use of the entire quantity of mineral extracted from the mining lease in a manufacturing unit owned by the lessee.

13. Power of Central Government to make rules in respect of minerals.—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of [reconnaissance permits, prospecting licences and mining leases] in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the person by whom, and the manner in which, applications for [reconnaissance permits, prospecting licences or mining leases] in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;
- (b) the time within which, and the form in which, acknowledgement of the receipt of any such application may be sent;
- (c) the matters which may be considered where applications in respect of the same land are received on the same day; .....
- .....
- .....
- (r) any other matter which is to be, or may be, prescribed under this Act.

13A. Power of Central Government to make rules for the grant of prospecting licences or mining leases in respect of territorial waters or continental shelf of India.—(1) The Central Government may, by notification in the Official Gazette, make rules for the grant of prospecting licences or mining leases in respect of any minerals underlying the ocean within the territorial waters or the continental shelf of India.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the conditions, limitations and restrictions subject to which such prospecting licences or mining leases may be granted;
- (b) regulation of exploration and exploitation of minerals within the territorial waters or the continental shelf of India;

(c) ensuring that such exploration or exploitation does not interfere with navigation and

(d) any other matter which is required to be, or may be, prescribed.

14. [Sections 5 to 13] not to apply to minor minerals.—The provisions of [sections 5 to 13] (inclusive) shall not apply to [quarry leases, mining leases or other mineral concessions] in respect of minor minerals.

NB: Section 14 was amended only by Act, 37 of 1986, w.e.f. 10.02.1987.

15. Power of State Governments to make rules in respect of minor minerals.—(1) The State Government may, by notification in the Official Gazette, make rules for, regulating the grant of [quarry leases, mining leases or other mineral concessions] in respect of minor minerals and for purposes connected therewith.

[(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day; .....

.....

(o) any other matter which is to be, or may be, prescribed.

(2) Until rules are made under sub-section (1), any rules made by a state Government regulating the grant of [quarry leases, mining leases or other mineral concessions] in respect of minor minerals which are in force immediately before the commencement of these Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay [royalty or dead rent, whichever is more] in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of [royalty or dead rent] in respect of any minor mineral for more than once during any period of [three] years.

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:—

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.

15A. Power of State Government to collect funds for District Mineral Foundation in case of minor minerals.—The State Government may prescribe the payment by all holders of concessions related to minor minerals of amounts to the District Mineral Foundation of the district in which the mining operations are carried on.

16. Power to modify mining leases granted before 25<sup>th</sup> October, 1949.—[(1) (a) All mining leases granted before the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 [if in force at the date of commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1994 shall be brought in conformity with the provisions of this Act and the rules made thereunder within two years from the

date of the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1994], or such further time as the Central Government may, by general or special order, specify in this behalf.

(b) Where the rights under any mining lease, granted by the proprietor of an estate or tenure before the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, have vested, on or after the 25<sup>th</sup> day of October, 1949, in the State Government in pursuance of the provisions of any Act of any Provincial or State Legislature which provides for the acquisition of estates or tenures or provides for agrarian reform, such mining lease shall be brought into conformity with the provisions of this Act and the rules made thereunder within [two years from the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1994], or within such further time as the Central Government may, by general or special order, specify in this behalf.

(1A) Where any action is taken under clause (a) or clause (b) of sub-section (1) to bring the period of any lease in conformity with the provisions of this Act and the rules made thereunder, then notwithstanding anything contained in section 8, the period of such lease shall continue to operate for a period of two years from the date of bringing such lease in conformity with the provisions of this Act.]

(2) The Central Government may, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of sub-section (1) and in particular such rules shall provide—

- (a) for giving previous notice of the modification or alteration proposed to be made in any existing mining lease to the lessee and where the lessor is not the Central Government, also to the lessor and for affording him an opportunity of showing cause against the proposal;
- (b) for the payment of compensation to the lessee in respect of the reduction of any area covered by the existing mining lease; and
- (c) for the principles on which, the manner in which, and the authority by which, the said compensation shall be determined.

## 6. The G.O.Ms.No.56, Industries & Commerce(M.II) Department, dated 30.04.2016, reads as under:

“In the GSR 2<sup>nd</sup> read above, Government of India have notified 31 Major Minerals as Minor Minerals in addition to the minerals already declared by the notification under section 3 (e) of Mines & Minerals (Development & Regulation) Act, 1957. Therefore, suitable provisions for granting of mineral concessions and regulation of mining operations in respect of these 31 minerals have to be created under Andhra Pradesh Minor Mineral Concession Rules, 1966.

2. In the G.O 3<sup>rd</sup> read above, Government have amended Rule 10 of Andhra Pradesh Minor Mineral Concession Rules, 1966 thereby incorporating the 31 minerals in Schedule-I to rule 10.

3. In the reference 4<sup>th</sup> read above, the Government of India notified guidelines for constitution of District Level Environmental Impact Assessment Authorities and other guidelines for issue of Environmental Clearances for Minor Mineral leases for an extent of less than 5.000 Hectares etc. Accordingly, Mining Plan has become a pre-requisite for obtaining Environmental Clearance. Hence, a provision to the effect that quarry operations for Minor Minerals shall be conducted in accordance with the Approved Mining Plan has to be incorporated.

4. In the G.O. 5<sup>th</sup> read above, the Government while Rechristening of DMRTUF Trust as MERIT, and ordered to collect 2% on seigniorage fee on all Minor Minerals as contribution to MERIT. As such, Andhra Pradesh Minor Mineral Concession Rules, 1966 has to be amended to enable the department to collect 2% on seigniorage fee from the Lease holders.

5. In the G.O. 6<sup>th</sup> read above, orders were issued delegating the powers to the Director of Mines and Geology, A.P., Hyderabad for grant of mining leases in respect of newly declared (31) minor minerals.

6. In the G.O. 7<sup>th</sup> read above, the Government have announced the Manufactured Sand Policy - 2016.

7. In the letter 8<sup>th</sup> read above, the Director of Mines and Geology has proposed certain amendments to the Andhra Pradesh Minor Mineral Concession Rules, 1966 for providing for grant and regulation of mineral concession for 31 minerals and conduct of quarry operations of the all Minor Minerals other than Granite and Marble in accordance with the Approved Mining Plan.

8. The Government after careful examination of the proposal have decided to amend the Andhra Pradesh Minor Mineral Concession Rules, 1966.

9. Accordingly, the following notification will be published in an Extra-ordinary issue of the Andhra Pradesh Gazette dated.30-04-2016.

#### NOTIFICATION

In exercise of the powers conferred by sub-section (1) of section 15 of the Mines & Minerals (Development and Regulation) Act, 1957 (Central Act 67 of 1957), the Governor of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Minor Mineral Concession Rules, 1966 issued in G.O.Ms.No.1172, Industries and Commerce (M.I) Department, dated.04-09-1967 as subsequently amended from time to time.

#### AMENDMENTS

In the said rules, -

1. after sub-rule (f) of rule 4, the following shall be added, namely, -
 

“(g) ‘Mining Plan’ means a Mining Plan prepared under rule 7-A and scrutinized by Deputy Director of Mines and Geology for the development of mineral deposits in the area concerned.

(h) ‘Recognized Qualified Person’ means a person or an agency granted recognition by the Director of Mines and Geology or Indian Bureau of Mines (IBM) accredited person or consultancy to prepare Mining Plan.”
2. for the words ‘Granite and Marble’ wherever occur, the words ‘Granite, Marble and 31 Minerals mentioned at Sl.Nos.18 to 48 in Schedule - I of rule 10,’ shall be substituted.
1. after rule 5 , the following shall be added namely, -
 

“ 5 A (i) All the Mining Leases granted for the 31 Major Minerals that are declared as Minor Minerals and incorporated at Sl.Nos. from 18 to 48 in Schedule-I of rule 10 shall be regulated in accordance with the Andhra Pradesh Minor Mineral Concession Rules, 1966.

(ii) The provisions of rule 9 (iii) and rule 12 (5) (a) (ii) shall not be applicable in respect of 31 minerals mentioned at Sl.Nos. from 18 to 48 in Schedule-I of rule 10”.
2. after rule 7, the following rule shall be added namely, -
 

“7 A(i) For systematic and scientific development of minor mineral deposits, quarry operations shall be under taken in accordance with the Mining Plan approved by the competent authority.

(ii) Mining Plan shall be prepared by a Recognized Qualified Person (RQP) in accordance with in Form -T for Minor Minerals other than Granite and Marble and submit to the authority authorized in this behalf for approval duly paying an amount of Rs.1,000/- towards processing fee.

(iii) Every Mining Plan duly approved under these rules shall be valid for the entire duration of the lease. The lessee shall review the mining plan and submit the scheme of mining for the next five years of the lease, 120 days before the expiry of the every five years period, for approval wherever quarry lease is required beyond 5 years.

(iv) If the Approved Mining Plan requires modifications within the lease period, the lessee shall carry out such modifications and re-submit the modified mining plan to the officer duly authorized in this behalf for approval”.
5. after sub-rule (5) of rule 10, the following shall be added, namely, -
 

(6) When the quarry lease is granted, the lessee shall pay an amount equal to 2% on Seigniorage Fee towards contribution fund for Mineral Exploration, Research and Innovation Trust (MERIT)”.

6. in rule 12, -

(i) for sub-rule (3) of the following shall be substituted, namely, -

“(3) The quarry lease applications for minor minerals under [items at Sl.No.1 to 3(a)] of Schedule-I to rule 10 shall be disposed off by the Deputy Director in order specified below:

- (i) Application filed by Manufactured Sand Units (Existing units without quarry and green field units).
- (ii) Crusher owners who do not have quarries.
- (iii) Applications of Societies of Professional/(local) Traditional stone cutters (Waddaras).
- (iv) Others.

Provided that the above priorities shall prevail if the subsequent applications are received within 30 days of the receipt of the first application, otherwise the applications shall be disposed off in the order of their receipt.

Provided further that the Deputy Director may with the prior approval of the Government grant a quarry lease overlooking the above priorities for any special reasons to be recorded in writing.

Provided also that whenever more than one application falling under category (1) above are received for grant of quarry lease and have to be considered, the Deputy Director shall refer the matter to the Government with his recommendations for a direction”.

(ii) sub-rule (4) shall be omitted.

(iii) in item (a) of sub-rule (5) for sub item (i), the following shall be substituted, namely,-

“(i) A Prospecting License or a quarry lease for Granite useful for cutting and polishing, Marble and the 31 minerals mentioned at Sl.No.18 to 48 in schedule I of rule 10 shall be granted by the Director on an application made to the Assistant Director of Mines and Geology concerned in Form “N” or “P” and each application shall be accompanied by a sketch drawn to the scale demarcating the boundaries duly signed by the applicant and by a qualified surveyor and by a treasury challan for Rs.10,000/- (Rupees Ten Thousand) towards non refundable application fee and deposit of Rs.25,000/- (Rupees Twenty Five Thousand) for every hectare or part thereof in a bank account notified by the Director for this purpose. The deposit amount shall be refundable when the application is rejected on technical grounds like non availability of area, rejection of No Objection Certificate (NOC). The deposit amount shall be forfeited when the applicant fails to attend survey and inspection, withdrawal of the application by the applicant and non execution of the lease, and any other lapse on the part of the applicant.

Provided that the Andhra Pradesh Mineral Development Corporation Limited, (a wholly owned State Government Undertaking) is exempted from payment of deposit”.

7. in sub-rule (2) of rule 13,

(a) for the words “at least ninety days before”, the words “before ninety days” shall be substituted.

(b) after the words “.... it shall be disposed off before expiry of the lease period”, the words “the Director of Mines & Geology may condone the delay in filing the application for renewal of quarry lease after the time limit prescribed and such application is received before expiry of the lease period”.

8. in the Note available under Second renewal of Condition (xiv) of rule 31, for item (3), the following shall be substituted, namely,-

“(3) In case of leases for Minor Minerals useful for Road Metal, Ballast and Manufacture Sand serving as captive source for crushing unit/Manufactured

Sand unit, the renewal may be granted as long as crushing/manufactured sand unit is in operation”.

## 7. The G.O.Ms.No.29, Industries & Commerce (Mines-II) Department, dated 15.02.2017 reads as under:

“The Director of Mines & Geology, Government of Andhra Pradesh in the letter read above has submitted proposal to make certain amendments to the Andhra Pradesh Minor Mineral Concession Rules, 1966.

2. After careful examination of the said proposal, the Government hereby decided to make amendments to the said Rules, 1966.
3. Accordingly, the following notification is published in the Extraordinary issue of the Andhra Pradesh Gazette dt.15.02.2017.
4. This order issues with the concurrence of the Finance Department vide their U.O.N 45027/469/2016, dt. 02.01.2017 in the e-file of this Department.

### NOTIFICATION

*In exercise of the powers conferred under sub-section (1) of section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 as amended from time to time, the Government of Andhra Pradesh hereby makes the following amendments to the Andhra Pradesh Minor Mineral Concession Rules for Regulation of grant of Mining Leases in respect of Minor Minerals in the State.*

### AMENDMENTS

1. In the said Rules, for the clause (f) of sub-rule (5) of rule 12, the following shall be substituted, namely:-

“(f) *Period and Extent to be granted for Prospecting Licence or Quarry Lease:-*

- (i) A prospecting license for granite, marble and 31 minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of Rule 10 shall be granted for a period not exceeding two years. The area covered by prospecting license for granite and 31 minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of Rule 10 shall not be less than one hectare, but not exceeding hundred hectares in case of leases serving as captive purpose to a processing industry and fifty hectares for non-captive purpose. The minimum area covered by prospecting license for marble shall not be less than four hectares with a restriction that the dimensions of any one side of such area shall not be less than two hundred meters and the maximum area covered by Prospecting License shall be on par with granite and 31 minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of rule 10.
- (ii) The period for which a quarry lease for granite, marble and 31 minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of rule 10 shall be thirty years in case of leases serving as captive purpose to a processing industry and twenty years for non-captive purpose:

The area covered by lease for granite and 31 minerals mentioned at Sl.Nos. 18 to 48 in Schedule-I of Rule 10 shall not be less than one hectare, but not exceeding hundred hectares in case of leases serving as captive purpose to a processing industry and fifty hectares for non-captive purpose. The area covered by quarry lease for marble shall not be less than four hectares with the restriction that the dimension on any one side of such area shall not be less than two hundred metres and the maximum area covered by Quarry lease shall be on par with granite and 31 minerals mentioned at Sl.Nos. 18 to 48 in Schedule-I of rule 10.

- (iii) The Director Mines and Geology on his satisfaction after due consideration of production level, Geographical or Topographical condition may for reasons to be recorded in writing, grant or renew a license or lease over an area less than the minimum area specified under this rule.
- (iv) The Government reserves the right to grant more than the prescribed limits of the area”.

2. for the sub clause (viii) of clause (h) of sub-rule (5) of rule 12, the following shall be substituted, namely:-

“(viii) The prospecting licenses and quarry leases granted for the purpose of non-captive consumption are not transferable.

The prospecting licenses and quarry leases granted for captive consumption to a processing industry are transferable provided that the licensee or lessee shall transfer the lease alongwith the processing industry.

However, the licensee or lessee shall not assign, sublet, transfer or otherwise dispose of the license or lease that was granted for captive consumption along with processing industry, without obtaining the previous sanction in writing from the Director.

The transfer application shall be made to the Assistant Director of the District concerned in Form R along with nonrefundable application fee of Rs.10,000 (Rupees Ten Thousand only). The license or lease deed shall be executed as per the provision under clause (e):

The permission for transfer of lease along with processing industry shall be accorded on payment of an amount equivalent to ten times of annual dead rent per hectare or the amount equivalent to the dead rent per hectare for the unexpired period of lease, whichever is higher.

Provided further that the transferor and the transferee shall not be in arrears of any mineral revenue to the Government”.

3. after sub-clause (xvi) of clause (h) of sub rule (5) of rule 12, the following shall be added; namely:-

“(xvii) Right of pre-emption:-

The State Government shall have the right of preemption to direct the lease holder of the said minerals lying in or upon the said lands hereby demised shall with all possible expedition deliver minerals to the processing industries in the State on fair market price or through e-auction with industry having first right of refusal under the power conferred by this provision.”

4. for condition (ix) under rule 31, the following shall be substituted, namely:-

“(ix) The quarry leases for minor minerals except Sand, Granite, marble and 31 minor minerals mentioned at Sl.Nos.18 to 48 in Schedule-I of rule 10 are not transferable.

However, the quarry leases granted for minor minerals such as Road Metal, Ballast and Manufactured Sand serving as captive source for crusher unit are transferable if the lessee transfers the lease along with crusher unit, operating unit or as the case may be.

The lessee shall not assign, sub-let, transfer or otherwise dispose of the lease that was granted for captive consumption along with processing industry, without obtaining the previous sanction in writing of the Deputy Director concerned.

The permission for transfer of lease along with processing industry shall be accorded on payment of an amount equivalent to ten times of annual dead rent per hectare or the amount equivalent to the dead rent per hectare for the unexpired period of lease, whichever is higher.

Provided further that the transferor and the transferee shall not be in arrears of any mineral revenue to the Government.”

5. In the Forms appended to the rules, prescribed under rule 12(5)(h)(viii) in MODEL FORM-R, in para 2, for the words and figures “Rs.5000/- (Rupees five thousand only)” the words and figures “Rs.10,000/- (Rupees Ten thousand only)” shall be substituted.”

## 8. The G.O.Ms.No.34, Industries & Commerce (M.II)

Department, dated 14.03.2016 reads as under:

" 1. In the reference 1<sup>st</sup> read above, the Government of India enacted Mines & Minerals (D&R) Amendment Act 2015 and the same has come into force w.e.f. 12<sup>th</sup> January, 2015. Accordingly, certain minerals are eligible for grant of mining leases, under sub-section (2) of Section 10A, where a letter of intent has been issued before commencement of the Mines & Minerals (Development and Regulation) Amendment Act, 2015.

2. In the reference 2<sup>nd</sup> read above, the Ministry of Mines, Government of India, have issued a Notification in the Gazette of India, New Delhi declaring the following (31) minerals as minor minerals, by exercising the powers conferred under clause (e) of section 3 of the Mines & Minerals (Development and Regulation) Act, 1957:

1. Agate, 2. Ball Clay, 3. Barytes, 4. Calcareous Sand, 5. Calcite, 6. Chalk, 7. China Clay, 8. Clay (Others), 9. Corundum, 10. Diaspore, 11. Dolomite, 12. Dunite/Pyroxenite, 13. Felsite, 14. Felspar, 15. Fireclay, 16. Fuschite quartzite, 17. Gypsum, 18. Jasper, 19. Kaolin, 20. Laterite, 21. Limekankar, 22. Mica, 23. Ochre, 24. Pyrophyllite, 25. Quartz, 26. Quartzite, 27. Sand (others), 28. Shale, 29. Silica Sand, 30. Slate, 31. Steatite or Talc or Soap stone.

Accordingly, the State Government has got the powers to make rules for these 31 minerals to regulate the grant of leases under Section 15(2) of Mines & Minerals (D&R) Amendment Act, 2015.

3. After careful examination of the matter, Government hereby delegate the powers to the Director of Mines & Geology, A.P., Hyderabad to take further action for granting of mining leases in respect of the proposals relate to the newly declared (31) minor Minerals, in which letter of intent was issued as per sub-section (2) of Section 10A of Mines & Minerals (D&R) Amendment Act, 2015 and any arising applications under the relevant provisions of A.P. Minor Mineral Concession Rules, 1966.

4. The Director of Mines & Geology, A.P., Hyderabad shall take necessary action accordingly."

9. From the above, coming to the facts, the petitioner applied for mining lease by his application dated 21.06.2010 for 108.032 hectares in S.No.339/A of Bukkapuram Village for 20 years and by another application dated 16.06.2010 for 121.457 hectares in S.No.203 of Bukkapuram Village for 20 years for Silica Sand and Yellow Ochre is not in dispute and the Tahsildar, Veldurthy issued NOC referring land as Assessed Waste and combined sketch showing Geo-coordinates with signatures of the Tahsildar, Veldurthy and the Assistant Director, Mines & Geology, Kurnool, and the applicant was submitted in respect of the extents and the applicant was asked respectively to submit the approved mining plan under

Rule 22(4) of the Mineral Concession Rules, 1960 and also consent for establishment from the A.P. Pollution Control Board and environmental clearance from the Government of India under Environmental Impact Assessment as per S.O.1533 dated 14.09.2006 and communicated by Memo Nos.14636 and 14325/M1(1)/2012 dated 17.10.2012 and consequently the petitioner submitted the approved mining plan vide letter Nos.1688 & 1691/MP-KNL/2013 dated 18.05.2013 and EC dated 18.09.2014 and CFE dated 08.10.2014 and the Director of Mines & Geology-R2 vide F.Nos.27495 & 25636/R3-2/2010 dated 31.10.2014 submitted proposals to the Government for taking necessary action are not in dispute and the same were prior to coming into force of the amended Act, and that came into force with effect from 12.01.2015 are also not in dispute.

10. No doubt, Section 10A(1) of the amended Act 10 of 2015 speaks all applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall become ineligible. However, Section 10A(2) speaks without prejudice to subsection (1) the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, of which as per Section 10A(2)(c), part of which we are now concerned, it speaks 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 amended Act, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act. G.O.Ms.No.34, Industries & Commerce Department, dated 14.03.2016 also speaks the same as reference No.1 therein.

11. The sum and substance of Section 10A(2)(c), we are now concerned as referred supra, thereby speaks the eligibility even from the date of commencement of the amended Act; it indicates if a letter of intent has been issued by the State Government to grant a mining lease before the commencement of the amended Act, such mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the amended Act.

12. The above provision says in unequivocal terms with all emphasis of if a letter of intent (by what ever name called expressing the intention or aim for granting) has been issued by the competent authority (Central or State Govt. as the case maybe) who can grant such mining lease before the commencement of the amended Act 10 of 2015,

certain right in equity can be taken as accrued to the applicant to seek protection therefrom to get the lease, in such a situation the mining lease shall be granted.

13. The letter of the Director of Mines & Geology referred supra in F.Nos.27495 & 25636/R3-2/2010 dated 31.10.2014 is not the letter of intent by the Secretary to Government to the applicant in fact. But, the letter of the Director of Mines & Geology to the Secretary to Government is a proposal to the Government for taking further necessary action in the matter. Thus, there is no letter of intent by the Government, as on the date the amended Act came into force, in favour of the petitioner is the contest of the learned Government Pleader.

14. What the two documents placed reliance by the learned counsel for the petitioner in the two writ petitions in support of the averments contained in the two respective writ petitions' affidavits, particularly paragraph No.4 is only referring to the respondent No.1's consideration of respondent No.2 proposal, dated 17.10.2012, is the letter of intent. It is also the contest of the learned Government Pleader that same is not a letter of intent for not by the Government, even any such proposal sent by respondent No.2 to respondent No.1 in marking copy to the petitioner respectively, it is only a proposal for nothing to show that

respondent No.2 as on that date or at any date prior to the amended Act 10 of 2015, came into force on 12.01.2015, was competent to issue any letter of intent and it is at best only pursuant to the proposal, by application of the petitioner to respondent No.2 by way of offer; respondent No.2 forwarded the proposal, if at all to accept by granting the same or by issuing the letter of intent by respondent No.1. From these, even coming to the respective memo Nos.14636 & 14325/M.II(1)/2012 dated 24.03.2016 by the State Government-respondent No.1 only refers the above as reference No.1 of the Government proposed to grant a mining lease for Silica Sand and Yellow Ochre over the respective extents of 108.032 hectares in S.No.339/A and 121.457 hectares in S.No.203 of Bukkapuram Village in favour of the petitioner for 20 years is subject to submission of the approved mining plan with Pollution Control Board consent and environmental clearance within six months therefrom and the Director of Mines & Geology-respondent No.2, in the reference 2<sup>nd</sup> cited therein, submitted the proposal to the Government along with mining plan, EC & CFE for taking further necessary action in the matter.

15. The Government Memos dated 17.10.2012 were no doubt marked to the petitioner respectively referring to his respective applications and requirement of the petitioner to

submit the approved mining plan, EC & CFE. That letter of communication dated 17.10.2012 respectively by the Government duly signed by the Principal Secretary to Government is referring to his application respectively and the Government, after examination of the proposal by the Director respectively, has proposed to grant, subject to the conditions. Once the conditions are fulfilled and it comes into effect, the next question to consider is the fulfillment is after the amended Act 10 of 2015 came into force on 12.01.2015 or prior to that. In this regard, the above referred Memo Nos.14636 & 14325/M.II(1)/2012 dated 24.03.2016 speaks the compliance of the conditions by and submission of the proposal with that compliance by the Director of Mines & Geology to the Government by marking copy to the petitioner, if any, with letter dated 31.10.2014, which is prior to 12.01.2015.

16. From this, it is to consider further as to G.O.Ms.No.34 dated 14.03.2016 issued by the State Government delegating the powers of the Government to the Director of Mines & Geology to take further action for granting of said mining leases in respect of the proposals relate to the newly declared 31 minor minerals, in which letter of intent was issued as per Section 10A(2) of the amended Act 2015 and any arising applications under the relevant provisions of the

A.P.M.M.C.Rules,1966 and it clearly refers that the Government is agreed in principle to the proposal of Director of Mines & Geology to grant mining lease for Silica Sand and Yellow Ochre in respect of the above extents in favour of the petitioner for 20 years, subject to satisfaction of the provisions of the Act and the A.P.M.M.C.Rules,1966 keeping in view the amended Act 10 of 2015. As referred supra from Section 10A(2)(c) of the amended Act 10 of 2015, the eligibility on and from the date of commencement of the amended Act 2015 is only where letter of intent (by whatever name called) has been issued, before commencement of the amended Act, subject to fulfillment of conditions of the previous approval or of the letter of intent.

17. These two proceedings referred supra dated 24.03.2016 even taken as letter of intent with delegation of power to the Director of Mines & Geology to grant mining lease where the letter of intent is issued, for not in dispute of the fact that Silica Sand and Yellow Ochre are falling under minor minerals as per the G.O.Ms.No.34 dated 14.03.2016 supra, from the Government of India notification in GSR No.423(E) dated 10.02.2015 as items 29 and 23 respectively. It is clear to say that these two items are minor minerals pursuant to the GSR No.423(E) dated 10.02.2015, which is subsequent to the amended Act 10 of 2015 came into force

and this classification is also referred under the amended Act by said GSR No.423(E) dated 10.02.2015, to say that prior to the amended Act those are major minerals. No doubt, as per Section 14 of the Act amended by Act 37 of 1986, Sections 5 to 13 of the Act (both inclusive) have no application to minor minerals. It is Section 15 of the Act referred supra that enables the State Government to make rules in respect of minor minerals and it is only as per Section 15(1), that G.O.Ms.No.34 dated 14.03.2016 was issued in respect of 31 major minerals declared as minor minerals delegating the power of State Government to the Director of Mines & Geology for grant of mining leases in respect of the proposals relate to the same, in which letter of intent was issued as per Section 10A(2)(c) of the amendment Act 10 of 2015. G.O.Ms.No.37 of even date was also issued by the State Govt., with punitive measures to control illegal mining and transportation of the minor minerals supra referring to Section 15(1) of the amended Act and Rules 12 & 26 of the A.P.M.M.C. Rules, 1966. It is subsequent to the representation by the Secretary, Mines, dated 24.03.2016 on Memos to the State Government, the State Government issued G.O.Ms.No.29 dated 15.02.2017 bringing amendments to the A.P.M.M.C. Rules, 1966. The said G.O.Ms.No.29 reproduced above speaks that the Director of Mines & Geology submitted a proposal to

make certain amendments to the A.P.M.M.C. Rules, 1966 supra, from which the Gazette notification dated 15.02.2017 was issued after Finance concurrence dated 02.01.2017 for the said 31 minor minerals and granite and marble in respect of the prospective license it shall not exceed twenty years and shall not be less than one hectare and not more than 50 hectares for non-captive purpose and for marble it shall not be less than four hectares and not be less than 200 meters dimension and shall not exceed the maximum area for non-captive and captive respectively. It is to say so far as the writ reliefs concerned is covered by G.O.Ms.No.29 dated 15.02.2017 sought to apply prospective and not retrospective, which does not mean it can override the amended statutory provision covered by Section 10A(2)(c) and that too when the State Government Memos referred supra dated 24.03.2016 when are referring to G.O.Ms.No.34 dated 14.03.2016 delegating power to the Director of Mines & Geology referring to the letter of intent where already granted for Silica Sand and Yellow Ochre - which two items cover the case of the petitioner-applicant, same is binding to grant lease pursuant to the letter of intent already granted earlier to it.

18. In this regard, among the decisions placed reliance by the learned Government Pleader for Mines in State of

Tamilnadu v. M/s. Hind Stone<sup>3</sup> while speaking about the object of the Act supra made in the public interest to enable the Union to take under its control the regulation of mines and development of minerals, it was observed that making a rule, which is perfectly in order is not to be considered as misuse of the rule-making power, if it advances the interest of the State, which really means the people of the State. Rivers, Forests, Minerals and such other resources constitute a nation's natural wealth, which are not to be frittered away and exhausted by any one generation. It was held on the issue as to is it open to the State Government to keep applications for the grant of leases and applications for renewal of the leases for a long time and then to reject them on the basis of Rule 8-C, in respect of black granite that was made mineral, notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. Though 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

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<sup>3</sup> (1981) 2 SCC 205

or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms.No.1312 should be dealt with as if Rule 8-C did not exist. The principle of law laid down supra has no application at all to the facts of the case on hand, in view of Section 10A(2)(c) of the amendment Act 10 of 2015.

19. The other decision placed reliance is M/s. Pallava Granite Industries (India) Pvt. Ltd. v. Union of India<sup>4</sup> on the two questions arise for determination before the Apex Court's Two Judge Bench as to G.O.Ms.No.1290 dated 27.08.1991 constitutes a decision to grant or whether it constitutes a grant of mining lease per se and secondly whether the decision to revoke to said G.O. was actuated by mala fides in order to deprive the appellants of their mining rights. It was answered that the said G.O.Ms.No.1290 is not in the nature of a grant as alleged, that too when the land vested in Government as surplus land under The Andhra Pradesh Land

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<sup>4</sup> 2007 (15) SCC 30

Reforms (Ceiling on Agricultural Holdings) Act, 1973 and entered in Prohibitory Order Book where subsequently found galaxy granites as an important asset for the State and conferment of rights on the appellants was not the main purpose of the said G.O., leave about within one month it was withdrawn on filing of the Public Interest Litigation. The expression supra is also no way applicable to the facts and circumstances of the case.

20. Coming to the third decision in M.P. Ram Mohan Raja v. State of Tamilnadu<sup>5</sup> wherein it was held no one has a vested right in mines and minerals. Further, in the writ petition filed in the High Court by the appellant it was directed the State Government to dispose of his application for mining lease under Rule 39 of the Tamilnadu Minor Mineral Concession Rules, 1959 within a specified period, however within expiry of said period fixed, Rule 39 was repealed and the very basis of which the High Court has issued the direction changed; that resulted rejection of his application by the Collector and once the High Court rightly refused to grant relief in the writ petition, as per the Apex Court, there is nothing to interfere. This decision also has no application to the facts of the present case for the fact that Section 10A(2)(C) of the amended Act 10 of 2015 confers right to get mining lease where letter of intent if already granted.

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<sup>5</sup> 2007 (9) SCC 78

21. Coming to the other expression placed reliance of the three Judge Bench of the Apex Court in *Federation of Indian Mineral Industries v. Union of India*<sup>6</sup>, the issue therein was whether contribution is required to be made to the District Mineral Foundation by the existing holder of mining lease or prospecting licence-cum-mining lease in addition to payment of royalty pursuant to the amended Act 10 of 2015 came into force with effect from 12.01.2015. It was held that the District Mineral Foundations were not established retrospectively even though the notifications established them from a date anterior to the date of the notifications, but not before the date of the ordinance promulgated (12/01/2015) and even assuming the District Mineral Foundations were established it was of no consequence in saying their validity could be saved by reading them as operational prospectively from the date of publication. It is held that:

“42. The position with regard to contribution to the DMF by the holders of a mining lease or a prospecting licence-cum-mining lease for coal, lignite and sand for stowing is quite different from the situation of the other holders of a mining lease or a prospecting licence-cum-mining lease. The reason for this is to be found in the text of paragraph 3 of the notification of 20th October, 2015 which is very explicit. It provides that the contribution, though payable, shall be paid only from the date of the notification (20<sup>th</sup> October, 2015) or from the date of establishment of the DMF in the concerned State, whichever is later. Therefore, only Madhya Pradesh, Odisha and Telangana would be entitled to the contribution from holders of a mining lease or a prospecting licence-cum-mining lease from 20<sup>th</sup> October, 2015 since their DMF was established much earlier. As far as all other States are concerned, the holders of a mining lease or a prospecting licence-cum-mining lease could claim to postpone payment to the DMF till it was established, as per the notification issued by the State Government.

43. It is true that many notifications establishing the DMF provided the date of establishment as 12<sup>th</sup> January, 2015 but as mentioned earlier the Rule making power of the Central Government and the State Government under the MMDR Act does not permit retrospective operation of subordinate legislation. It cannot also be said that the Contribution Rules have retrospective operation by necessary implication. Even this occasion does not arise. Furthermore, as held above, the rate at which the contribution was to be paid came to be notified only on 20<sup>th</sup> October, 2015. Therefore in view of the

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<sup>6</sup> 2017 (10) SCJ 42 = 2017 (12) SCALE 586

law discussed above, it cannot be said that the contribution should be paid by the holders of a mining lease or a prospecting licence-cum-mining lease with effect from 12<sup>th</sup> January, 2015.

44. The learned Additional Solicitor General sought to rely on the subsequent notification dated 31<sup>st</sup> August, 2016 which substituted paragraph 3 in the notification of 20<sup>th</sup> October, 2015 with the requirement that the contribution “shall be paid with effect from the 12<sup>th</sup> January, 2015.” For the same reasons already given by us, such a retroactive substitution is *ultra vires* the Rule making power of the Central Government. The notification dated 31<sup>st</sup> August, 2016 is clearly beyond the Rule making power of the Central Government and must be struck down and we do so. All that this means is that the notification of 20<sup>th</sup> October, 2015 remains untouched and must be read and understood on its plain language. The result is that in respect of coal, lignite and sand for stowing the holder of a mining lease or a prospecting licence-cum-mining lease shall pay the contribution to the DMF from 20<sup>th</sup> October, 2015 or the date of establishing the DMF, whichever is later.

45. Finally, it was submitted by one of the learned counsel that Section 9B of the MMDR Act was a conditional legislation and that it could become operative only on the fulfillment of certain conditions. We cannot agree. Section 9B of the MMDR Act delegates power to the State Governments to establish the DMF without any pre-condition. Similarly, it delegates power to the Central Government to prescribe the rate at which the contribution should be made to the DMF. This again is without any pre-condition. In view of this, we are unable to describe Section 9B of the MMDR Act as a conditional legislation.

#### Conclusion

46. Having considered the issues raised by the petitioners and by the learned Additional Solicitor General in different perspectives, we hold:

(i) Merely because the DMFs have been established or are deemed to have been established from a date prior to the issuance of the relevant notifications does not make their operation retrospective. (ii) In any event, the establishment of the DMFs (assuming the establishment is retrospective) from 12<sup>th</sup> January, 2015 does not prejudicially affect any holder of a mining lease or a prospecting licence-cum-mining lease. (iii) In view of the failure of the Central Government to prescribe the rate on 12<sup>th</sup> January, 2015 at which contributions are required to be made to the DMF, the contributions to the DMF cannot be insisted upon with effect from 12<sup>th</sup> January, 2015. Fixing the maximum rate of contribution to the DMF is insufficient compliance with the law laid down by the Constitution Bench in *Vatika*. (iv) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of minerals other than coal, lignite and sand for stowing with effect from 17<sup>th</sup> September, 2015 when the rates were prescribed by the Central Government. (v) Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of coal, lignite and sand for stowing with effect from 20<sup>th</sup> October, 2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later. (vi) The notification dated 31<sup>st</sup> August, 2016 issued by the Central Government is invalid and is struck down being *ultra vires* the Rule making power of the Central Government under the MMDR Act.”

22. For that conclusion the three judge Bench of the Apex Court placed reliance on the Five Judge Constitution Bench expression in Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Private Limited<sup>7</sup> wherein it was observed that the charge in respect of the surcharge created for the first time by insertion of Section 113 proviso in

<sup>7</sup> (2015) 1 SCC 1

the Income Tax Act, 1961 with effect from 01.06.2002 (by Finance Act, 2002) is prospective in operation, and the amendment is neither purports to be merely clarificatory/retrospective nor is there any material to suggest that it was intended by the Parliament to give retrospective effect; by overruling the expression in Commissioner of Income Tax v. Suresh N Gupta<sup>8</sup> in Vatika township's case (supra 7).

23. In fact, in W.P.No.40130 of 2017, another Bench of this Court, on the issue G.O.Ms.No.81, Industries & Commerce (Mines-II) Department, dated 01.06.2017, Rule 12(1) of the A.P.M.M.C.Rules,1966 is prospective or retrospective in operation; referring to the Constitution Bench of the Apex Court in Vatika's case (supra 7) and other expressions, it was held as prospective in operation and mainly referred to the expression in Panchi Devi v. State of Rajasthan<sup>9</sup> that was referred in Federation of India Mineral Industries case (supra) of a delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given a retrospective effect.

24. Here the main issue from the above is the legal consequence of the letter of intent if already issued, lease is to be granted. In this regard in Bhushan Power and Steel

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<sup>8</sup> (2008) 4 SCC 362

<sup>9</sup> (2009) 2 SCC 589

Limited v. S.L.Seal, Additional Secretary (Steel & Mines), State of Odisha<sup>10</sup> referring to the Act 1957, particularly referring to Section 10A(2)(c) of the amended Act 10 of 2015 supra, it was observed that the applicants to be saved by Section 10A(2)(a), 10A(2)(b) and 10A(2)(c) of the amended Act in essence for attracting protection is letter of intent where issued from which some kind of right in law must have vested in the applicants concerned as per the unamended provisions. However, recommendation for grant of lease by the State Government under the Act 1957 prior to the amended Act 10 of 2015 concerned does not amount to letter of intent so as to save by Section 10A(2)(c) of the Act, where previous approval of Central Government is essential before such letter of intent can even be granted.

## 25. Section 5 of the Act extracted as hereunder.

5.Restrictions on the grant of prospecting licences or mining leases.—(1) A State Government shall not grant a [reconnaissance permit, prospecting licence or mining lease] to any person, unless such person—(a) is an Indian national, or a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013); and (b) Satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation.—For the purposes of this sub-section, a person shall be deemed to be an Indian national,—

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is satisfied that—

(a) there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government.

<sup>10</sup> (2017) 2 SCC 125

(b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.

Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.

26. As per Section 5 of the Act supra, the State Government is the competent authority to grant mining lease in question for what the proviso to Section 5(1) says is for any mineral specified in Part A and Part B of the First Schedule, no prospecting license or mining lease shall be granted by the State Government without prior approval of the Central Government. So far as the mining lease in the case on hand in respect of Silica Sand and Yellow Ochre and lime stone are concerned, none of the items supra are covered by Part A or Part B of the First Schedule under the Act, to say any permission of the Central Government is required in respect thereof. Once it is the State Government that is competent to grant mining lease in respect of Silica Sand and Yellow Ochre and lime stone are concerned and for that it is not required of permission or approval of the Central Government, it cannot be called any conditional contract, nor it can be said same must be subject to approval of the Central Government.

27. In Bhushan Power (supra 10) the conclusion arrived on facts with reference to law mainly on the scope of Section 10A (1) & (2)(c) of the amended Act were that:

“17.Undoubtedly, as per sub-section(1) of Section 10A, all applications received prior to coming into force of the Amendment Act, 2015, become ineligible. Reason for interpreting such a provision is not far to seek. Before the passing of the Amendment Act, 2015, it was the Central Government which had the ultimate control over the grant of licenses insofar as mining of major minerals is concerned. As per the procedure then existing, State Government could recommend the application submitted by any applicant for grant of mining lease to the Central Government and the Central Government was given the power to grant or refuse to grant the approval. Thus, 'previous approval' from the Central Government was essential for grant of lease, without which the State Government could not enter into any such lease agreement with the applicant. Shortcomings of this procedure were noticed by this Court in its judgment rendered in Centre for Public Interest Litigation Vs. Union of India [(2012) 3 SCC 1] (for short, 'CPIL case') and also in Re.: Spl.Ref.No.1 of 2012 [(2012) 10 SCC 1]. In these judgments, this Court expressed that allocation of natural resources should normally be by auction. Judgment in CPIL case had a direct relevance to the grant of mineral concessions as the Government found that it was resulting in multipurpose litigation which was becoming counter productive. Mining Ordinance, 2015 was passed on January 12, 2015 which was ultimately replaced when the Parliament enacted the Amendment Act, 2015.

18. The exhaustive Statement of Objects and Reasons reveals that the extensive amendment in the Act were effected after extensive consultations and intensive scrutiny by the Standing Committee on Coal and Steel, who gave their Report in May, 2013. As is evident from the Statement that difficulties were experienced because the existing Act does not permit the auctioning of mineral concessions. It was observed that with auctioning of mineral concessions, transparency in allocation will improve; Government will get an increased share of the value of mineral resources; and that it will alleviate the procedural delay, which in turn would check slowdown which adversely affected the growth of mining sector.

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

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

21. These amendments brought in vogue: (i) auction to be the sole method of allotment; (ii) extension of tenure of existing lease from the date of their last renewal to March 31, 2030 (in the case of captive mines) and till March 31, 2020 (for the merchant miners) or till the completion of renewal already granted, if any, or a period of 50 years from the date of grant of such lease; (iii) establishment of District Mineral Foundation for safeguarding interest of persons affected by mining related activities; (iv) setting up of a National Mineral Exploration Trust created out of contributions from the mining lease holders, in order to have a dedicated fund for encouraging exploration and investment; (v) removal of the provisions requiring 'previous approval' from the Central Government for grant of mineral concessions in case of important minerals like iron ore, bauxite, manganese etc. thereby making the process simpler and quicker; (vi) introduction of stringent penal provisions to check illegal mining prescribing higher penalties up to ₹5 lakhs per hectare and imprisonment up to 5 years; and (vii) further empowering the State Government to set up Special Courts for trial of offences under the Act.

22. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved.

22.1. First, applications received under Section 11A of the Act. Section 11A, under new avatar is an exception to Section 11 which mandates grant of prospecting license combining lease through auction in respect of minerals, other than notified minerals. Section 11A empowers the Central Government to select certain kinds of companies mentioned in the said Section, through auction by competitive bidding on such terms and conditions, as may be prescribed, for the purpose of granting reconnaissance permit, prospecting license or mining lease in

respect of any area containing coal or lignite. Unamended provision was also of similar nature except that the companies which can be selected now for this purpose under the new provision are different from the companies which were mentioned in the old provision. It is for this reason, if applications were received even under unamended Section 11A, they are saved and protected, which means that these applications can be processed under Section 11A of the Act.

22.2. Second category of applications, which are kept eligible under the new provision, are those where the reconnaissance, permit or prospecting license had been granted and the permit holder or the licensee, as the case may be, had undertaken reconnaissance operations or prospecting operations. The reason for protecting this class of applicants, it appears, is that such applicants, with hope to get the license, had altered their position by spending lot of money on reconnaissance operations or prospecting operations. This category, therefore, respects the principle of legitimate expectation.

22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the *raison d'être* is that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

22.4. It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led the Parliament to make such a provision saving those rights, and understandably so.

23. Here, the petitioner seeks to cover its case under the third category with the plea that insofar as the State Government is concerned, it had issued 'Letter of Intent'. The petitioner is treating letter dated May 24, 2014, which was sent by the State Government to the Central Government with a request to the Central Government to give its approval for grant of mineral concessions, as the 'Letter of Intent'. It is in this hue, submission is that the intention behind the said letter is to be seen even if it is not termed as 'Letter of Intent' and this argument is predicated on the words 'by whatever name called'.

24. No doubt, having regard to the words 'by whatever name called', the expression 'Letter of Intent' is to be given wider connotation. It means that nomenclature of the letter would not be the determinative

factor. It is the substantive nature of the letter in question that would determine as to whether it can be treated as the Letter of Intent. For this purpose, it is first necessary to find the meaning that has to be attributed to the term 'Letter of Intent'. As per the legal dictionary, Letter of Intent is a document that described the preliminary understanding between the parties who intend to make a contract or join together in another action. This term has come up for interpretation on few occasions before this Court.

25. In *Rishi Kiran Logistics Private Limited v. Board of Trustees of Kandla Port Trust and Others* [(2015) 13 SCC 233], relying upon an earlier decision, this Court held that a Letter of Intent merely indicates a party's intention to enter into a contract with other party in future, as can be seen from the following para 43 thereof, which reads as under:

“43. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of “the Rules and Procedure for Allotment of Plots” in question issued by Kandla Port Trust. As per Clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised “at any time without assigning any reasons thereto”. Clause 13 relates to “approvals from statutory authorities”, with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per Clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/competent authority. In view of this material on record and factual position noted in earlier paragraphs we are of the opinion that observations in *Dresser Rand S.A. v. Bindal Agro Chem Ltd.* would be squarely available in the present case, wherein the Court held that: (SCC p. 773, paras 39-40)

“39...a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. ...

40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the

work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter.” When the Lol is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.” {See also Rajasthan Cooperative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and Ors. [(1996) 10 SCC 405]}.

26. Applying the aforesaid meaning, can it be said that letter dated May 24, 2014 of the State Government would constitute a Letter of Intent? We are afraid, answer has to be in the negative. Reason is simple. As mentioned above, in order to enable the State Government to enter into any lease agreement/contract with the prospecting licensee, 'previous approval' of the Central Government was essential. Unless such approval came, the State Government could not communicate to the prospecting licensee/lessee its intention to enter into any contract as the pre-requisite prior approval would be lacking. Therefore, no promise could be held by the State Government to any applicant showing its intention to enter into a contract in the future. Position would have been different had letter dated May 24, 2014 been issued after receiving previous approval of the Central Government. However, that is not so. This letter to the Central Government was only recommendatory in nature and ultimate decision rested with the Central Government. It is a different thing if the Central Government refuses to give its approval on any extraneous reasons or mala fides or does not take into consideration relevant factors/material while rejecting the application, which may form a different cause of action and may become a reason to challenge the action of the Central Government rejecting the application on the grounds that are available

in law to seek judicial review of such an action. However, we are not dealing with that situation in the instant case. Our discussion is confined to the plea raised before us, viz., whether letter dated May 24, 2014 can be termed as 'Letter of Intent'. For the reasons stated above, we are of the view that it was not a Letter of Intent. The application of the petitioner, therefore, would not be covered by clause (c) of Section 10A of the Act.

27. We are conscious of the fact that the petitioner herein had originally succeeded in the appeal inasmuch as judgment dated March 14, 2012 was rendered giving direction to the State Government to recommend the case of the petitioner, in terms of the MoU entered into between the parties, to the Central Government. This was not done and the decision was reiterated in orders dated April 22, 2014 passed in Contempt Petition (Civil) No. 374 of 2012. It is possible that had the State Government acted promptly and sent the recommendations earlier, the Central Government might have accorded its approval. However, whether it could have done so or not would be in the realm of conjectures. Insofar as the Central Government is concerned, no direction was ever given by this Court. On the contrary, it was categorically observed in the order dated April 22, 2014 in Contempt Petition (Civil) No. 374 of 2012 that it would be for the Central Government to consider the recommendations of the State Government on its own merits and in accordance with law. If that has not been done by the Central Government, it cannot be the subject matter of present Contempt Petition".

28. From the above, this case is different from Bhusan Power supra for the fact that there the lease for iron ore for its grant the Central Government is competent and not the State Government being only recommending authority and that will not be considered as letter of intent of what State government forwarded to the central government for not by the Central Government to the petitioner to say as letter of intent by the competent authority. Whereas in the case on hand, the two items of the prospective lease covered by the

applications of the petitioner were though originally part of the major minerals under Section 5 of the Act referred supra those are not in schedule A & B like iron ore for the central government to grant lease and the State Government itself can grant as discussed supra.

29. Once such is the case, in coming back to the facts at repetition, the petitioner-Bhushan Kumar applied for mining lease under the relative rules, by then in force, by applications dated 21.06.2010 and 16.06.2010 for Silica Sand and Yellow Ochre over an extent of Ac.625.00 cents in S.No.339/A in W.P.No.4122/2018 and an extent of Ac.361.40 cents in S.No.203 in W.P.No.4246/2018 at Bukkapuram Village in Veldurthy Mandal of Kurnool District and after survey by the Mines & Geology Department, the applied area comes to 108.032 hectares in W.P.No.4122/2018 and 121.457 hectares in W.P.No.4246/2018 and the writ petitioner-applicant has also given his consent to said reduced area supra respectively. Said area was declared as Assessed Waste land. Necessary proposals were sent by the Director of Mines & Geology-respondent No.2 to the Principal Secretary, Mining Department-respondent No.1, dated 17.10.2012, to consider grant of mining lease for 20 years respectively and the Government vide Memo Nos.14636 & 14325/M1(I)/2012, dated 17.10.2012, issued notice to the petitioner to submit approved

mining plan, EC and CFE within six months and the petitioner submitted the approved mining plan under Rule 22(4) of the Mineral Concession Rules, 1960 vide letters, dated 18.05.2013, bearing Nos.1688 & 1691/MP-KNL/2013, EC dated 18.09.2014 and CFE dated 08.10.2014, same is nothing but letter of intent for all practical purposes to say the case of the petitioner comes for grant of lease under Section 10A(2)(c) of the amended Act No.10 of 2015 as the right accrued from the letter of intent before the amended Act came into force is saved and crystallized as enforceable by the amended Act Section 10(A)(2)(c) supra.

30. Accordingly and in the result, both the W.P.Nos.4122 & 4246 of 2018 are allowed holding that the Government vide Memo Nos.14636 & 14325/M1(I)/2012, dated 17.10.2012, issued notice to the petitioner to submit approved mining plan, EC and CFE within six months and the petitioner submitted the approved mining plan under Rule 22(4) of the Mineral Concession Rules, 1960 vide letters, dated 18.05.2013, bearing Nos.1688 & 1691/MP-KNL/2013, EC dated 18.09.2014 and CFE dated 08.10.2014, is the letters of intent for all practical purposes to grant the mining lease to the petitioner under Section 10A(2)(c) of the amended Act No.10 of 2015 and that the amendment made to clause (f) of Sub-rule (5) of Rule 12 of the Andhra Pradesh Minor Mineral Concession Rules,

1966 vide G.O.Ms.No.29, Industries & Commerce (Mines-II) Department, dated 15.02.2017, issued by respondent No.1 will no way effect said letters of intent for the proposed mining lease issued to the petitioner by the respondents and thus the Memo No.14636/M.II(1)/2012, Industries & Commerce (Mines-II) Department dated 24.03.2016 as contrary to law and without jurisdiction and accordingly set aside the same to grant the lease respectively to the petitioner as per the letters of intent pursuant to Section 10A(2)(c) of the amended Act. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date: 02.04.2018

Note: L.R. Copy to be marked

(B/o)

Mva/ska