IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.12664 of 2017 (O&M)
Date of decision : 12.01.2018

Baljit Singh ..... Petitioner

versus

State of Punjab and others ..... Respondents

CWP No. 13166 of 2017 (O&M)

Gurpal Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13553 of 2017 (O&M)

Rakesh Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13579 of 2017 (O&M)

Jagvir Inder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13578 of 2017 (O&M)

Puneet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13530 of 2017 (O&M)

Kamaljit Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13428 of 2017 (O&M)

Gurwinder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13574 of 2017 (O&M)

Ashok Chandak ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13573 of 2017 (O&M)

Kuldeep Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13586 of 2017 (O&M)

Puneet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13509 of 2017 (O&M)

Avtar Singh and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13510 of 2017 (O&M)

Harsimran Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13511 of 2017 (O&M)

Kanwar Mahip Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13512 of 2017 (O&M)

Avtar Singh and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13570 of 2017 (O&M)

AG Mines ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13571 of 2017 (O&M)

M/s Jagadhri Royalty Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13572 of 2017 (O&M)

Kamaljit Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13587 of 2017 (O&M)

M/s KBM Contractors ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13588 of 2017 (O&M)

M/s KBM Contractors ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13508 of 2017 (O&M)

Hardeep Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13522 of 2017 (O&M)

Dharminder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13567 of 2017 (O&M)

Punit Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13427 of 2017 (O&M)

Kulbir Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13311 of 2017 (O&M)

Navjit Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13521 of 2017 (O&M)

Arvinderpaul Dhounsi ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13577 of 2017 (O&M)

M/s S.M. Contractors and Suppliers ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13531 of 2017 (O&M)

Sunil Grover ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13581 of 2017 (O&M)

Karanvir Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13583 of 2017 (O&M)

Jai Luxmi Suppliers ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13585 of 2017 (O&M)

M/S Satluj Contractor ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13580 of 2017 (O&M)

Babu Ram Sharma ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13584 of 2017 (O&M)

Raghav Chandak ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13524 of 2017 (O&M)

Gobindpur Royalty Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13523 of 2017 (O&M)

Puneet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13590 of 2017 (O&M)

Kanwarmahip Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13568 of 2017 (O&M)

Gobindpur Royalty Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13569 of 2017 (O&M)

Doaba Contractors ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13564 of 2017 (O&M)

Gurwinder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13532 of 2017 (O&M)

Kanwar Mahip Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13994 of 2017 (O&M)

Sukhpal Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 14002 of 2017 (O&M)

Kabal Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13264 of 2017 (O&M)

Sanjeev Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13426 of 2017 (O&M)

Kamal Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13513 of 2017 (O&M)

KBM Contractors ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13514 of 2017 (O&M)

Manpreet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13515 of 2017 (O&M)

M/S Shree Guru Nanak Mines ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13516 of 2017 (O&M)

M/S S.M. Contractors and Suppliers ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13517 of 2017 (O&M)

M/S K.B.M. Contractors ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13518 of 2017 (O&M)

Balwinder Kumar ......Petitioner

versus

State of Punjab and others ....Respondents

CWP No. 13519 of 2017 (O&M)

Kamaljit Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13520 of 2017 (O&M)

Sanjiv Bhardwaj ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13525 of 2017 (O&M)

Silver North Mines ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13526 of 2017 (O&M)

Kamaljit Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13527 of 2017 (O&M)

Brij Bhushan ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13533 of 2017 (O&M)

AKM Screening Plant ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13563 of 2017 (O&M)

Yadwinder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13565 of 2017 (O&M)

Des Raj ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13566 of 2017 (O&M)

Shri Kanwar Mahip Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13575 of 2017 (O&M)

Hardeep Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13576 of 2017 (O&M)

Kanwar Mahip Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13582 of 2017 (O&M)

M/S Zirakpur Royalty Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13589 of 2017 (O&M)

Avneet Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13591 of 2017 (O&M)

Mohan Pal Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25701 of 2017 (O&M)

Surjeet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25703 of 2017 (O&M)

Sarban Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25733 of 2017 (O&M)

DC Taneja and Sons ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25734 of 2017 (O&M)

Ram Sarup ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25736 of 2017 (O&M)

DC Taneja and Sons ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25755 of 2017 (O&M)

DC Taneja and Sons ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25775 of 2017 (O&M)

Navjeet Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25779 of 2017 (O&M)

M/S Arman Singh and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25786 of 2017 (O&M)

M/S Ranjit Singh and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25790 of 2017 (O&M)

Kuldeep Singh and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25838 of 2017 (O&M)

Ram Sarup ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 25839 of 2017 (O&M)

Parkash Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 26001 of 2017 (O&M)

Ram Sarup ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 26263 of 2017 (O&M)

Harjinder Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 26266 of 2017 (O&M)

Swaran Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 26292 of 2017 (O&M)

Kuldeep Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 26306 of 2017 (O&M)

Munish Grover and Co. ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13993 of 2017 (O&M)

Gauravjit Singh Deol ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 13996 of 2017 (O&M)

Surinder Kumar ......Petitioner

versus

State of Punjab and others .....Respondents

CWP No. 14003 of 2017 (O&M)

Gurmeet Singh ......Petitioner

versus

State of Punjab and others .....Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON’BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Arjun Pratap Atma Ram, Advocate and
Mr. Dushyant Sarvesh, Advocate
Mr. Gurminder Singh, Sr. Advocate with
Mr. R.P.S. Brar, Advocate
Mr. Mansur Ali, Advocate
Mr. H.S. Deol, Advocate

Mr. Jatinder Pal Singh, Advocate
Mr. T.P.S. Makkar, Advocate
Mr. Sanjeev Sfharma, Sr. Advocate with
Mr. Shekhar Verma, Advocate
Mr. Atul Lakhanpal Sr. Advocate with
Mr. Arjun Lakhanpal, Advocate
for the petitioners.

Ms. Rameeza Hakeem, Addl. A.G., Punjab.

*****

SUDHIR MITTAL, J.

The petitioners are holders of contracts permitting them to mine minor minerals in the State of Punjab. There common grievance is that the State of Punjab, by virtue of the impugned notices, has asked them to either surrender their existing contracts or to execute a fresh contract at the rate, at which mines within the Districts, have been given for prospecting of minor or minerals by auction through 'progressive bidding'; in the absence of any mines having been auctioned by 'progressive bidding' within the District, at the auction rate of adjoining District. Since, common questions of fact and law arise in this bunch of writ petitions, this judgment will decide CWP No.12664 of 2017 (O&M) titled Baljit Singh versus State of Punjab and others, CWP No. 13166 of 2017 (O&M) titled Gurpal Singh versus State of Punjab and others, CWP No. 13553 of 2017 (O&M) titled Rakesh Kumar versus State of Punjab and others, CWP No. 13579 of 2017 (O&M) titled Jagvir Inder Singh versus State of Punjab and others, CWP No. 13578 of 2017 (O&M) titled Puneet Singh versus State of Punjab and others, CWP No. 13530 of 2017 (O&M) titled Kamaljit Singh versus State of Punjab and others, CWP

No. 13428 of 2017 (O&M) titled Gurwinder Singh versus State of Punjab and others, CWP No. 13574 of 2017 (O&M) titled Ashok Chandak versus State of Punjab and others, CWP No. 13573 of 2017 (O&M) titled Kuldeep Singh versus State of Punjab and others, CWP No. 13586 of 2017 (O&M) titled Puneet Singh versus State of Punjab and others, CWP No. 13509 of 2017 (O&M) titled Avtar Singh and Co. versus State of Punjab and others, CWP No. 13510 of 2017 (O&M) titled Harsimran Singh versus State of Punjab and others, CWP No. 13511 of 2017 (O&M) titled Kanwar Mahip Singh versus State of Punjab and others, CWP No. 13512 of 2017 (O&M) titled Avtar Singh and Co. versus State of Punjab and others, CWP No. 13570 of 2017 (O&M) titled AG Mines versus State of Punjab and others, CWP No. 13571 of 2017 (O&M) titled M/s Jagadhri Royalty Co. versus State of Punjab and others, CWP No. 13572 of 2017 (O&M) titled Kamaljit Singh versus State of Punjab and others, CWP No. 13587 of 2017 (O&M) titled M/s KBM Contractors versus State of Punjab and others, CWP No. 13588 of 2017 (O&M) titled M/s KBM Contractors versus State of Punjab and others, CWP No. 13508 of 2017 (O&M) titled Hardeep Singh versus State of Punjab and others, CWP No. 13522 of 2017 (O&M) titled Dharminder Singh versus State of Punjab and others, CWP No. 13567 of 2017 (O&M) titled Punit Singh versus State of Punjab and others, CWP No. 13427 of 2017 (O&M) titled Kulbir Singh versus State of Punjab and others, CWP No. 13311 of 2017 (O&M) titled Navjit Kumar versus State of Punjab and others, CWP No. 13521 of 2017 (O&M) titled Arvinderpaul Dhounsi versus State of Punjab and others, CWP No. 13577 of 2017 (O&M) titled M/s S.M. Contractors and Suppliers versus State of Punjab and others, CWP No. 13531 of 2017 (O&M) titled Sunil Grover versus State of Punjab and others, CWP No. 13581 of 2017 (O&M) titled Karanvir Singh versus State of Punjab and others, CWP No. 13583 of 2017 (O&M) titled Jai Luxmi Suppliers versus State of Punjab and others, CWP No. 13585 of 2017 (O&M) titled M/S Satluj Contractor versus State of Punjab and others, CWP No. 13580 of 2017 (O&M) titled Babu Ram Sharma versus State of Punjab and others, CWP No. 13584 of 2017 (O&M) titled Raghav Chandak versus State of Punjab and others, CWP No. 13524 of 2017 (O&M), Gobindpur Royalty Co. versus State of Punjab and others, CWP No. 13523 of 2017 (O&M) titled Puneet Singh versus State of Punjab and others, CWP No. 13590 of 2017 (O&M) titled Kanwarmahip Singh versus State of Punjab and others, CWP No. 13568 of 2017 (O&M) titled Gobindpur Royalty Co. versus State of Punjab and others, CWP No. 13569 of 2017 (O&M) titled Doaba Contractors versus State of Punjab and others, CWP No. 13564 of 2017 (O&M) titled Gurwinder Singh versus State of Punjab and others, CWP No. 13532 of 2017 (O&M) titled Kanwar Mahip Singh versus State of Punjab and others, CWP No. 13994 of 2017 (O&M) titled Sukhpal Singh versus State of Punjab and others, CWP No. 14002 of 2017 (O&M) titled Kabal Singh versus State of Punjab and others, CWP No. 13264 of 2017 (O&M) titled Sanjeev Kumar versus State of Punjab and others, CWP No. 13426 of 2017 (O&M) titled Kamal Kumar versus State of Punjab and others, CWP No. 13513 of 2017 (O&M) titled KBM Contractors versus State of Punjab and others, CWP No. 13514 of 2017 (O&M) titled Manpreet Singh versus State of Punjab and others, CWP No. 13515 of 2017 (O&M) titled M/S Shree Guru Nanak Mines versus State of Punjab and others, CWP No. 13516 of 2017 (O&M) titled M/S S.M. Contractors and Suppliers versus State of Punjab and others, CWP No. 13517 of 2017 (O&M) titled M/S K.B.M. Contractors versus State of Punjab and others, CWP No. 13518 of 2017 (O&M) titled Balwinder Kumar versus State of Punjab and others, CWP No. 13519 of 2017 (O&M) titled Kamaljit Singh versus State of Punjab and others, CWP No. 13520 of 2017 (O&M) titled Sanjiv Bhardwaj versus State of Punjab and others, CWP No. 13525 of 2017 (O&M) titled Silver North Mines versus State of Punjab and others, CWP No. 13526 of 2017 (O&M) titled Kamaljit Singh versus State of Punjab and others, CWP No. 13527 of 2017 (O&M) titled Brij Bhushan versus State of Punjab and others, CWP No. 13533 of 2017 (O&M) titled AKM Screening Plant versus State of Punjab and others, CWP No. 13563 of 2017 (O&M) titled Yadwinder Singh versus State of Punjab and others, CWP No. 13565 of 2017 (O&M) titled Des Raj versus State of Punjab and others, CWP No. 13566 of 2017 (O&M) titled Shri Kanwar Mahip Singh versus State of Punjab and others, CWP No. 13575 of 2017 (O&M) titled Hardeep Singh versus State of Punjab and others, CWP No. 13576 of 2017

(O&M) titled Kanwar Mahip Singh versus State of Punjab and others, CWP No. 13582 of 2017 (O&M) titled M/S Zirakpur Royalty Co. versus State of Punjab and others, CWP No. 13589 of 2017 (O&M) titled Avneet Kumar versus State of Punjab and others, CWP No. 13591 of 2017 (O&M) titled Mohan Pal Singh versus State of Punjab and others, CWP No. 25701 of 2017 (O&M) titled Surjeet Singh versus State of Punjab and others, CWP No. 25703 of 2017 (O&M) titled Sarban Singh versus State of Punjab and others, CWP No. 25733 of 2017 (O&M) titled DC Taneja and Sons versus State of Punjab and others, CWP No. 25734 of 2017 (O&M) titled Ram Sarup versus State of Punjab and others, CWP No. 25736 of 2017 (O&M) titled DC Taneja and Sons versus State of Punjab and others, CWP No. 25755 of 2017 (O&M) titled DC Taneja and Sons versus State of Punjab and others, CWP No. 25775 of 2017 (O&M) titled Navjeet Kumar versus State of Punjab and others, CWP No. 25779 of 2017 (O&M) titled M/S Arman Singh and Co. versus State of Punjab and others, CWP No. 25786 of 2017 (O&M) titled M/S Ranjit Singh and Co. versus State of Punjab and others, CWP No. 25790 of 2017 (O&M) titled Kuldeep Singh and Co. versus State of Punjab and others, CWP No. 25838 of 2017 (O&M) titled Ram Sarup versus State of Punjab and others, CWP No. 25839 of 2017 (O&M) titled Parkash Singh versus State of Punjab and others, CWP No. 26001 of 2017 (O&M) titled Ram Sarup versus State of Punjab and others, CWP No. 26263 of 2017 (O&M) titled Harjinder Singh versus State of Punjab and others, CWP No. 26266 of

2017 (O&M) titled Swaran Singh versus State of Punjab and others, CWP No. 26292 of 2017 (O&M) titled Kuldeep Singh versus State of Punjab and others, CWP No. 26306 of 2017 (O&M) titled Munish Grover and Co. versus State of Punjab and others, CWP No. 13993 of 2017 (O&M) titled Gauravjit Singh Deol versus State of Punjab and others, CWP No. 13996 of 2017 (O&M) titled Surinder Kumar versus State of Punjab and others and CWP No. 14003 of 2017 (O&M) titled Gurmeet Singh versus State of Punjab and others. CWP No.12664 of 2017 titled Baljit Singh Vs. State of Punjab, has been taken as the lead case and the facts are being extracted therefrom.

Facts

2. The Udhyog and Commercial Department, Government of Punjab, issued E-auction notice dated 10.11.2015 in respect of 83 mines in various Districts of the State of Punjab. This auction was conducted by following a process of 'reverse bidding'. The petitioners were successful in this auction. Vide letter dated 04.03.2016 issued by the Ministry of Environment, Forest and Climate Change, Government of India, environmental clearance was transferred to the respective petitioners from the Executive Director, Punjab Small Industries and Export Corporation, Limited. The General Manager-cum-Mining Officer, District Industries Centre, SAS Nagar, issued letter dated 14.10.2016 thereafter, granting final approval for operating the quarry allotted. The petitioners were subsequently granted consent to operate under the Air (Prevention and Control of Pollution) Act, 1981, and

Water (Prevention and Control of Pollution) Act, 1974, whereafter, they commenced operation of extraction of minor minerals. On 31.03.2017, another notification was issued for E-auction of 59 mines, through the process of 'reverse bidding'. According to this notice, the date of E-auction was 18.04.2017. However, a fresh notice dated 12.04.2017, was issued postponing the date of E-auction to 24.04.2017. Vide another notification dated 17.04.2017, the date of E-auction was further postponed to 05.05.2017. On 19.04.2017, a meeting of the Cabinet took place, in which a decision was taken, inter alia, to auction mines of minor minerals by the process of 'progressive bidding'. Consequently, public notice dated 20.04.2017 was published, cancelling the auction of 59 mines notified vide notification dated 31.03.2017. A fresh auction notice dated 03.05.2017 was issued for auction of the aforementioned 59 mines through the process of 'progressive bidding'. The auction took place on 19.05.2017 and 20.05.2017. On 27.05.2017, the Director Mining, Industries and Commerce Department, issued a letter to the General Manager-cum-Mining Officer of various Districts in the State of Punjab, directing them to send notices to the contractors, who were successful in the auction held pursuant to the notice dated 10.11.2015 (the petitioners, who had secured contracts through auction held by the process of 'reverse bidding') to change their existing contract to one through 'progressive bidding' or to surrender the mining contract in accordance with Rule 39 of the Punjab Minor Minerals Rules, 2013, (hereinafter referred to as 'the Rules'). A copy of this letter has been annexed as Annexure P-10 on the record. Reliance was placed on the Cabinet decision dated 19.04.2017. It was further stated therein that average cost of bid received for a mine through 'progressive bid' will be worked out in the District and will be made applicable to the contract allotted by the process of 'reverse bidding'. In case, no contract has been allotted within the district by 'progressive bidding', the average rate of the adjoining district where contracts have been awarded through 'progressive bidding' would be made applicable. Pursuant to this letter, the General Manager-cum-Mining Officer, District Industries Center, issued letter dated 29.05.2017 to the respective petitioners giving them seven days' time to submit their option. It was also stated that in case of non-receipt of any reply within stipulated time, it would be deemed that the contractor had nothing to say. A copy of this letter has been annexed as Annexure P-11 with the writ petition. The said notices dated 27.05.2017 (Annexure P-10) and 29.05.2017 (Annexure P-11) have been challenged in these writ petitions.

3. Pursuant to notice issued by this Court, the State filed its written statement challenging the maintainability of the writ petitions on the ground that the petitioners were only licensees and had no vested legal right for seeking a writ in the nature of mandamus and that a writ petition against a policy decision was not maintainable. On merits, it was stated that the provisions of the Mines and Minerals (Development

and Regulations) Act, 1957, (hereinafter referred to as 'the Act'), the Rules and Government Instructions permitted the State Government to alter the terms of an existing contract. The State Government, in public interest, was not bound by the terms of a previous contract and that conditions existed for switch over to process of 'progressive bidding' because the system of 'reverse bidding' had resulted in creation of a mining mafia, illegal extraction of minor minerals, reduction in supply of minor minerals in the market and recurring loss to the State Exchequer. It is also pleaded that the action of the State is inspired solely by public interest and is not violative of any rights guaranteed under Part-III of the Constitution of India. Thus, dismissal of the writ petitions is sought as they lack merit.

<u>Reverse Bidding versus Progressive Bidding</u>

4. Before proceeding further, it would be apposite to set-out the differences between 'reverse bidding' and 'progressive bidding'. In auctions by 'reverse bidding', the State pre-determines various components, which the bidder will pay such as royalty, compensation to land owner, environmental clearance expenses, weightage expenses etc. The profit of the bidder is also fixed and is added to the components hereinbefore mentioned. These various components are added up to calculate 'pit head sale price', which is the maximum sale price per ton at which the contractor will sell the minor mineral at the pit head for transportation to the retail market. Bidding inter se, is for the purpose of reduction in the 'pit head sale price' and the lowest

bidder is granted the contract. This can be best illustrated by an example taken from the present case itself. For the quarry of Bassi Gulam Hussain, District Hoshiarpur, the 'pit head sale price' was worked out as follows:-

1.	Royalty	Rs.30/- per ton
2.	EMF (10% of the royalty)	Rs.3/- per ton
3.	Compensation of land owner	Rs.50/- per ton
4.	Labour charges	Rs.25/- per ton
5.	Environmental clearance expenses	0.26 paisa per ton
6.	Weighbridge expense	0.62 paisa per ton
7.	Profit	Rs.10/- per ton
	Pit head sale price	**Rs.118.89 per ton rounded of to Rs.119/- per ton**

5. Thus, it is clear that the contractor had a maximum profit of Rs.10/- per ton, which was reduceable at the time of auction. In case of tie, i.e. if nobody bids below the maximum 'pit head sale price', a draw of lots is resorted to for determining the successful bidder.

5A. As opposed to this, in 'progressive bidding' the cap on the 'pit head sale price' is removed and the bidder is permitted to place his bid for the value of mine as he deems commercially fit. The reserve price is fixed in accordance with the quantity of minor minerals extractable per year, 1/3rd of which is the earnest money. Resultantly, the 'pit head sale price' in auctions by 'progressive bidding' could be to the tune of Rs.3200/- per ton in a particular case. Thus, the 'pit head sale price' is much higher than when auction is conducted by 'reverse bidding'.

6. At this stage, we may also note that during the course of the hearing, we had given an option to the petitioners, to surrender their respective contracts, after receiving in advance the profit for the balance term of their respective contracts. This could be worked out very simply by multiplying the quantity of balance extractable minor mineral by the bid price and subtracting the expenses from it. After seeking instructions from the petitioners, their learned counsel did not accept this option given by the Court.

7. The arguments of both the parties have to be appreciated in the context of the aforementioned factual matrix. Broadly, the submissions on behalf of the petitioners are:-

(i) The Cabinet decision dated 19.04.2017 is confined to future auctions and does not cover the case of the petitioners. The existing contract holders are not the subject matter of the Cabinet decision and thus, the impugned letters Annexures P-10 and P-11 are without jurisdiction. The existing contracts came into being by virtue of a policy decision of the Cabinet to switch over to 'reverse bidding' and the change over to 'progressive bidding' can only be done by a policy decision of the Cabinet;

(ii) The terms of a subsisting contract cannot be changed in exercise of administrative powers;

(iii) The decision of the Cabinet is not in public interest as minor minerals will become unaffordable;

(iv) The impugned decision is arbitrary and unreasonable inter alia, because it amounts to premature termination of contract without existence of conditions requisite for terminating a contract;

(v) Action is mala-fide, intended to oust the existing licensees;

(vi) No opportunity of hearing has been granted before passing the impugned orders;

(vii) The changed policy cannot be applied retrospectively; and

(viii) There is a violation of the doctrine of legitimate expectation.

8. On the other hand, the State submits that the impugned action has the sanction of law and is in public interest. The action has been taken to curb the menace of illegal mining, rationalization of supply and prices and maximization of State revenue. Reference has been made to various provisions of the Act and Rules, conditions of licence granted and terms of the notification issued for inviting tenders for the auctioned mines.

<u>Statutory Scheme:-</u>

9. Before dealing with the respective arguments, it is necessary to examine the Statutory Scheme governing the contracts because that will reveal the scope and extent of the powers of the Government. It is not in dispute that the Act, Rules, conditions mentioned in the contracts signed by the parties in Form-L (part of the schedule to the Rules), terms of the E-auction notice and notification

inviting tenders govern contracts like the one entered into by the petitioners.

The long title of the Act is:-

‘an Act to provide for the [[1]development and regulation of mines and minerals] under the control of the Union.’

The introduction to the Rules is as follows:-

> ‘In exercise of the powers conferred by Section 15 and Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957 (Central Act, 67 of 1957), and all other powers enabling him in this behalf, the Governor of Punjab is pleased to make the following Rules for regulating the grant of various forms of minerals concessions in respect of minor minerals and for the purpose connected therewith, namely;’

10. It is, thus, clear that the Act and Rules have been framed to regulate prospecting of mines and minerals. They provide for a ‘regulatory regime’ to govern the grant of concessions in respect of mines and minerals, which are the property of the State. The relevant provisions of the Act and Rules are reproduced hereinbelow:-

<u>Act</u>

> **‘4-A Termination of prospecting licenses or mining leases**:-
>
> xxxxx
>
> 2. Where the State Government is of the opinion that it is expedient in the interest of regulation of mines and minerals development, preservation of natural environment, control of floods, prevention of

pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may by an order, in respect of any minor minerals, make premature termination of a prospecting license or mining lease with respect to the area or any part thereof covered by such license or lease.

3. No order making a premature termination of a prospecting license or mining lease shall be made except after giving the holder of the license or lease a reasonable opportunity of being heard.'

xxxxx

'**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 minerals concessions) in respect of minor minerals and for purposes connected therewith.

(1-A) 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:—

xxxxx

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other minerals concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other minerals concessions;

xxxxx

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

xxxxx

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

xxxxx

'19. Prospecting licences and mining leases to be void if in contravention of Act:- Any [reconnaissance permit, prospecting licence or mining lease] granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

Explanation.—Where a person has acquired more than one 1 [reconnaissance permit, prospecting licence or mining lease] and the aggregate area covered by such [permits, licences or leases], as the case may be, exceeds the maximum area permissible under Section 6, only that [reconnaissance permit, prospecting licence or mining lease] the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void.'

xxxxx

Rules

'Rule 34. Grant of contracts by auction. –

(1) Contracts may be granted by the Government by auction for a maximum period of five years.

(2) No contract shall be renewed or extended beyond the maximum period of five years.

(3) No contract shall be granted to a person, who does not hold a certificate of approval in Form “B”.
(4) The contract shall be granted for a quantity of the minerals to be excavated per annum as specified in Form 'L'.
(5) If the contractor excavates excess quantity of minerals during the period for which the advance payment has been made, then he shall make advance payment for subsequent quarter(s) also before further excavation.’

xxxx

‘Rule 36. Notice of Auction. - The auction shall be notified, -
(i) on the notice-board of the Director, the Mining Officers and at least in two newspapers with a wide circulation in the area where the mine is situated, at least one newspaper being in Punjabi;
(ii) in the Punjab Government Gazette at least fifteen days before the date of auction. A copy of the auction notice shall be sent to the local authority having jurisdiction over the area where the mine is situated, for giving wide publicity;
(iii) on a website specified by the Director;
(iv) the notice of auction shall contain a brief description regarding the place, time and method of auction (including electronic auction), the mines/quarries to be auctioned, the periods of concessions, reserve values, earnest moneys and main terms and conditions of auction; and
(v) the detailed description, terms and conditions of the auction and the intended concessions shall be available in the offices of the Director and the Mining

Officers concerned and on the website specified by the Director.'

xxxxx

'Rule 39. Surrender of a Mining Contract:- The Government may accept the contractor's request for surrender of a contract or part thereof, in cases where it is established that it has not been found feasible to operate the contract granted for whatsoever reasons subject to the condition that the contractor,-

(i) has been regular in furnishing the production returns as required in terms of the contract agreement;

(ii) has been taking the requisite steps for the progressive mine closure plan as per the conditions of the contract granted; and

(iii) is not in default of payment of any dues of the Government as on the date of making such application and undertakes to pay all such dues till the date of expiry of the notice period either in cash in advance or by way of adjustment of the security or both:

Provided that in case the contractor makes an application for surrender the contract or part thereof, it shall not result in any pro rata reduction of the contract money and the rate of contract amount payable and applicable for the entire area at the time of making such application shall remain intact.'

xxxxx

'Rule 41. General Restrictions for Grant of Minerals Concession:-

xxxxx

(2) The Government shall decide the mode and nature of grant of Minerals Concession under these rules in different areas i.e. lease, contract, permit etc. from time to time.'

xxxxx

'Rule 44. Appeal when allowed:- (1) Any person aggrieved by an order of the Director,-

(i) cancelling or terminating of minerals concession or forfeiting any deposit there under in whole or in part; or

(ii) refusing to permit transfer of a minerals concession.'

'15. Similarly, the procedure of auction is set out in Rule-37. It would be relevant to note here that pursuant to Rule 36 above, the State Government had issued notification dated 10th November, 2015 containing within it Condition No.46, which read as under:-

'46. During the period of contract, any amendment done by the Govt. in the Punjab Minor Minerals Rules 2013, Government Rules and Instructions shall be applicable on the contract.'

<u>Form 'L' (Contract)</u>

'Clause 18. Determination of contract in public interest:-

The Government may be giving one month's prior notice in writing determine the contract if the Government consider it to be in a public interest.

Provided that in the state of National Emergency or war, the contract may be determined without giving such notice.'

E-auction notice (Annexure P-1)

Condition No.46

> 'During the period of contract, any amendment done by the Govt. in the Punjab Minor Minerals Rules 2013, Government Rules and Instructions shall be applicable on the contract.'

11. The above provisions leave no manner of doubt that the State is empowered to regulate prospecting of mines and minerals in accordance with the powers provided by the Act and Rules. Such regulation includes formulation of the terms and conditions on which a mining lease or licence or concession is to be granted, the procedure for obtaining the same, the period for which the concession may be granted, the terms and conditions of auction, the manner in which the contract money is payable and the conditions under which termination of lease/licence may be done. They also provide that the amendments made to the Rules, Government Rules and Instructions would be applicable to subsisting contract.

12. Presently, a reference may also be made to Chapter-II of the Rules, which is divided into sub chapters A, B and C. Sub Chapter A pertains to 'grant of mining lease', sub Chapter B pertains to 'grant of short term permits' and sub Chapter C pertains to 'grant of contracts.' The present case is not of a lease or a short term permit. It is a case of contract, the maximum period for which as per Rule 34(1), is five years. Thus, a contract may also be granted for a lessor period than five years. Further, Rules 8 to 33 (part of sub Chapter A and B)

are not applicable to the present case and only Rules 34 to 42 (part of sub Chapter C) are applicable.

13. Now, the stage is set for examining the respective arguments.

Cabinet decision does not apply to the case of the petitioners.

14. At the very outset, we take up for examination the argument of the petitioners that the Cabinet decision dated 19.04.2017, is not applicable to their contracts. The Memorandum for the meeting dated 19.04.2017, has been placed on the record as Annexure P-14 and the decision of the Cabinet is Annexure P-15. The decision is reproduced as under:-

> ‘GOVERNMENT OF PUNJAB
> (Cabinet Ministers Matters Branch)
>
> Subject:- To take a decision regarding contracts of excavation of minor minerals through progressive bidding/reverse bidding method.
>
> Chief Secretary, Government of Punjab, Department of Industries and Commerce may give his kind attention to his letter No.9/23/2017/AS4/650B dated 18.04.2017.
>
> After discussing the letter dated 18.04.2017 of the Department of Industries and Commerce, the proposal mentioned in para 2(B) has been approved.
>
> The action taken by the Department for implementing the decision taken by the Cabinet be intimated to this branch within a period of 2 weeks.
>
> Sd/-
> Superintendent
>
> Chief Secretary Punjab
> Department of Industries and Commerce dated 19.04.2017’

15. It is clear that the Cabinet approved the proposal mentioned in para 2(B). The said proposal is also reproduced hereinbelow:-

> 'B. The department may conduct the auction of the contract as shown in para 1.7 under progressive bidding procedure, through E-auction as well as royalty rates may be increased from Rs.30/- to Rs.60/- of the gravel and simple sand gradually under Punjab Minor Minerals Rules, 2013, Schedule A, Sr. No.4 and 10. Upon making decision in favour of progressive bidding old mines running on contract under reverse bidding procedure may be changed as shown in para 1.8 above. Compensation to the landlord may be increased from Rs.50/- per ton to Rs.60/- per ton.'

16. The above proposal is for auctioning mines by 'progressive bidding procedure' through E-auction and for increasing royalty rates from Rs.30/- to Rs.60/- gradually. The proposal further is for changing the existing contracts under 'reverse bidding' as provided in para 1.8 of the Memorandum (Annexure P-14). Para 1.8 of the said Memorandum is also reproduced below:

> '1.8 Comparative chart of progressive bidding and reverse bidding both procedure is as under:-

Expected revenue	Quantity (tonns per annum	Through reverse bidding (royalty @ Rs.30/- per ton* +EMF @ 10% of royalty +DMF @ 1/3rd of royalty=Rs.43/-	Through reverse bidding (royalty @ Rs.60/- per ton** +EMF @ 10% of royalty +DMF	Through progressive bidding (royalty @ Rs.100/- per ton*** +EMF @ 10% of royalty +DMF @ 1/3rd or royalty=Rs.143/-	Difference in royalty

		per ton)	@ 1/3rd or royalty=Rs.86 per ton)	per ton)	
1	2	3	4	5	5-3=6
From 67 operational mines	1.05 cr. Ton per annum	Rs.45 cr.	Rs.90 cr.	Rs.150 cr.	Rs.105 cr.
From 59 Mines to be auctioned	0.27 cr. Ton per annum	Rs.12 cr.	Rs.23 cr.	Rs.38 cr.	Rs.26 cr.
From 59 Mines to be auctioned	1.90 cr. Ton per annum	Rs.82 cr.	Rs.163 cr.	Rs.271 cr.	Rs.189 cr.
Total	3.22 cr. Ton per annum	Rs.139 cr.	Rs.276 cr.	Rs.459 cr.	Rs.320 cr.

*Existing Rate

** In case present per ton royalty rate of Rs.30/- increased to Rs.60/-

*** Average royalty rate received in last four progressive bidding auctions.

In the above mentioned table existing operational mines are 87, 59 mines are those whose auction notification has been issued and it is expected to get environment clearance from concerned authorities, thereafter their contracts shall also be allotted. The year wise excavatable quantity has been mentioned in column No.2 which is 3.22 cr. ton. If these mines will be allotted @ Rs.30/- per ton by reverse bidding then the annual contract amount shall be worked out to the tune of Rs.139 crore. In case royalty rate is increased from Rs.30/- to Rs.60/- then in that condition as mentioned in column No.4 the Government will receive contract amount of Rs.276 crore. In case the contracts of the mines are being allotted through progressive bidding procedure then under this procedure it is expected that the Government can receive contract amount of Rs.459 crore as mentioned in column No.5 according to the average contract amount received in last few years, which is expected to be Rs.320 crore more than the existing procedure.'

17. The relevant portion of para 1.9 is also reproduced below:-

'In case a decision is being made to conduct the auction according through progressive bidding procedure then in current situation the contracts of the mines which have already been allotted through reverse bidding, it would be appropriate to take decision of the same. It would also be appropriate that the contracts which have been allotted through reverse bidding to bring them in progressive bidding procedure. Condition No.46 of the notification dated 31 March, 2017 is as under:-

During the tenure of the contract, in case any amendment is being made in the Punjab Minor Minerals Rules, 2013, Government rules or instructions, the same shall be applicable upon the contractor (Annexure K).

Keeping in view of the above, the condition is included in the notification.

The contractors of reverse bidding shall be given an opportunity as mentioned below:-

The contractor can surrender his mining contract as per Contractor Rules 39 (Annexure J) or,

His mining contract shall be transferred keeping in view of the mines auction through progressive bidding.

The procedure of the same shall be as under:-

Average cost will be calculated as per the bidding received per ton in the District in respect of the Mines allotted through progressive bidding procedure and it would be applicable upon the contracts running in the District under reverse bidding procedure. In the contracts allotted through reverse bidding procedure, affixed pithead selling rate shall be abolished. In case any contract is not been allotted under progressive bidding procedure in the Districts, in those Districts according to average amount of royalty rates in respect of the contracts allotted through progressive bidding procedure in the adjoining Districts shall be made applicable upon the contracts allotted under reverse bidding procedure.'

18. A bare reading of the aforenoted paragraphs brings out that para 1.8 pertains to enhancement of revenue after adopting the process of 'progressive bidding'. The calculations in this para include '67 operational mines', which are the mines of the petitioners. The calculations have been done for consideration by the Cabinet so that an informed decision may be taken, whether the process of 'progressive bidding' should be adopted for auction of minor minerals. Once, such a decision was taken, the clause reproduced above of para 1.9 automatically became operative. Thus, it is fallacious to submit that the Cabinet decision does not refer to the mines of the petitioners. As a natural consequence thereof, the argument of the petitioners that the impugned notices, i.e. Annexures P-10 and P-11, are beyond the Cabinet decision, must fail. A related argument based on the Rules of the Business of the State Legislature that a previous policy decision of the

Cabinet can only be replaced by a subsequent policy decision thereof, is also liable to be rejected.

19. Law laid down by the Hon'ble Supreme Court of India in '**M.R.F Limited Vs. Manohar Parikar and others, 2010 (11) SCC 374**, which is relied upon by the learned counsel for the petitioners, has not been violated as the Rules of Business framed under Article 166 (3) of the Constitution of India have been strictly followed. The Memorandum placed before the Cabinet (Annexure P-14) was only for the purpose of re-visiting the earlier policy of auction through 'reverse bidding' and it is factually incorrect to submit that the earlier decision of the year 2015 was not under consideration.

Terms of contract are immutable

20. This argument has to be examined in the light of the statutory scheme. It is contended on behalf of the petitioners that the impugned orders, Annexures P-10 and P-11 are purely executive decisions, which cannot alter the terms and conditions of a subsisting contract. Reliance has also been placed upon the decision of the Hon'ble Supreme Court of India in **'Polymat India (P) Ltd. Vs. National Insurance Company Limited 2005 (9), SCC 174**. This argument has been countered by the State by submitting that the executive decision is sanctioned by the Act, Rules, terms of the E-auction and conditions mentioned in Form-L and therefore, is not illegal. It is further submitted that in exercise of powers of 'regulation' an existing and subsisting contract may not only be varied, but may

even be destroyed. Additionally, it is stated that a contract cannot fetter executive powers of the State in public interest. Reliance has been placed upon **'Dabhol Power Company Vs. Maharashtra State Electricity Board, Writ Petition No.1205 of 2001, decided on 05.03.2002'** by a Division Bench of the Bombay High Court, '**D.K. Trivedi Vs. State of Gujarat, 1986 (Supp.), SCC 20'** and **'Pallava Granite Industries (India) Ltd. Vs. Union of India, 2007 (15), SCC 30.**

21. The State of Punjab has taken a conscious policy decision to change the mode of auction. This is a decision taken by the Cabinet, which is the highest policy-making body of the State. It amounts to an amendment of the existing 'Government Rules and Instructions' referred to in Condition No.46 of the Notification dated 10.11.2015 (Annexure P-1) and therefore, the said amendment would apply to subsisting contracts. Thus, the argument of the petitioners that the terms of a subsisting contract cannot be changed by virtue of an executive decision, cannot be countenanced. The executive decisions, i.e. Annexures P-10 and P-11 have been taken pursuant to a decision of the Cabinet of Ministers dated 19.04.2017 (Annexure P-15). The said decision is a policy decision and is covered by the expression 'Government Rules and Instructions'. Hence, it can supplant the terms of a subsisting contract by virtue of Condition No.46 (supra). Moreover, the freedom of the State to exercise its executive powers for running its affairs cannot be restricted in any manner by contract. This

has been elaborated by the Hon'ble Supreme Court of India in '**Pallava Granite Industries case'** (supra). After examining the law on the subject, it has been held as follows:-

> 'As stated above, G.O.No.1290 was a decision to grant a mining lease in favour of the appellants. Even assuming for the sake of the argument that G.O.No.1290 constituted a grant by itself still, as held in the above decisions, such a grant cannot fetter or hamper future executive action/decision to revoke the grant in public interest. In the present case, the State Government detected an important source of revenue in the form of granite reserves. It is true that at one point of time the State Government decided to exploit the granite through private parties. However, later on with globalization, the State Government decided to go for global tender. This course of action was open to the State Government. The State Government decided to exploit the granite through its agency, namely, APMDC. The object was to earn commercial profits and revenue. APMDC was given liberty either to excavate the granite on its own or through joint ventures. The land belongs to the State Government. The granite belongs to the State Government. Therefore, a mere decision in G.O.No.1290 to grant mining leases to the appellants cannot hamper or fetter the power of the Government to exploit the resources through its own agency. In the circumstances, we do not find any mala fides in the decision of the Government reserving the area admeasuring acres 61.50 for exploitation by

> APMDC, either on its own or through its joint ventures/partners.'

22. The judgment in **D.K. Trivedi's case** (supra) is however, not strictly applicable in the facts of this case, because no new rules have been framed by the State in exercise of powers contained in Section 15(1) of the Act. Instead, a policy decision has been taken which, as stated earlier, applies to subsisting contracts. Similarly, the judgment in **Dabhol Power Company's case** (supra) is also not applicable to the facts of this case to support the proposition being considered presently.

23. For the above reasons, the subsisting contracts are subject to change. The argument of the petitioners is rejected.

Cabinet decision not in public interest:

24. The petitioners through their learned counsel vehemently contend that the policy decision dated 19.04.2017, is not in public interest because it would result in sky rocketing of prices of minor minerals. It is submitted that minor minerals are not only required for creation of necessary infrastructure in the State, but also for construction activity being undertaken by a common-man. If the prices sky rocket and minor minerals become unaffordable, immense hardship would be caused to the common-man. The cost of projects being executed in public interest would also increase manifold resulting in a drain on the State Exchequer, which would ultimately affect the common-man. Thus, according to the petitioners, the common-man

would bear the brunt of the policy, which has been adopted. It cannot sub-serve public interest by any stretch of imagination.

25. This argument has been countered firstly on facts and then in law. The learned Additional, Advocate General, Punjab, submits that the prices are not likely to rise because by adoption of the new policy, the supply of minor minerals would increase greatly because the contractor would prospect to the maximum possible extent permissible so as to recover his costs. If adequate supply is available in the market, the prices will self stabilize and market forces will place a check on them. Reliance has also been placed on data collected after the new policy has been brought into effect to show that the retail price of minor minerals has remained at the same level as earlier and in some Districts has even reduced. Submissions have also been made regarding the meaning of 'public interest' and that maximization of State revenue is also in public interest.

26. We are in agreement with the submissions made on behalf of the State because the facts support them. The theoretical aspect of supply and demand need not be gone into. Reliance can be placed on a chart produced by the State on record vide application dated 27.11.2017 and the same is reproduced below:-

> 'Comparison of sand rates (in 100 cft.) in various districts of the State is as under:-

Sr. No.	**District**	**Market selling price in Rs. (as on 01.10.2017)**	**Market selling price in Rs. (as on 01.11.2017)**
1	Ludhiana	2100-2200	1100-1200
2	Moga	1300	1100
3	Amritsar	1900-2100	1800-2000
4	Tarn Taran	1900-2100	1900-2100
5	Jalandhar	2000	1250
6	Hoshiarpur	1500-1700	1500-1700
7	Gurdaspur	1400-1700	1100-1400
8	Pathankot	1400-1700	1200-1400

27. The above chart being self-explanatory, nothing further needs to be said.

28. The objectives with which the policy decision dated 19.04.2017 (Annexure P-15) has been taken, can be culled-out from the Memorandum submitted to the Cabinet (Annexure P-14). The principle objectives were to curb illegal mining, to reduce spiralling prices, to maximize production of minor minerals and to augment State revenue. These objectives are in consonance with Article 39(a) and (b) of the Constitution of India and therefore, we have no hesitation in holding that the policy decision dated 19.04.2017 (Annexure P-15) is in public interest. The judgment relied upon by learned counsel for the State, viz., '**Kasturi Lal Lakshmi Reddy V. State of J&K, 1980 (4), SCC 1,** is squarely applicable because the Hon'ble Supreme Court has held therein that an action taken in furtherance of the directive

principles is in public interest because the concept of public interest must receive its orientation from the directive principles.

29. Thus, although the pit head sale price, in this case, would increase to a great extent, but the same will not result in increase of retail price because there is likely to be optimization of production and reduction in illegal mining because a contractor would protect its territory from outsiders in his own interest. Moreover, the cartelization would be reduced if not completely eradicated, because a contractor has to pay 25% of the annual contract amount as security deposit plus the contract money for first quarter of the ensuing year in advance. It would, therefore, be difficult for one person to obtain contracts in respect of large number of mines because of the cost factor involved, whereas in the 'reverse bidding method' cartelization was highly probable due to low cost of auction.

30. For the foregoing reasons, the argument that the new policy decision dated 19.04.2017 (Annexure P-15) is not in public interest, is rejected.

Action is violative of Article 14 of the Constitution of India and mala-fide:

31. Another argument has been advanced on behalf of the petitioners that the impugned orders are arbitrary and unreasonable for the reason that practically the action amounts to premature termination of a subsisting contract without the existence of preconditions envisaged under the Act or Rules. It is also submitted that a person like the petitioner is being asked to pay the average of bids in the

District/bids in the neighbouring Districts, whereas a person, who is a first time bidder may be able to acquire the mine at a much lessor rate than that payable by the petitioner(s). On the other hand, the State submits that there is no premature termination in this case as the petitioner(s) have been given the choice to continue mining under a different mode of auction. Only if the choice is not acceptable i.e. continuing operations is not commercially feasible, they can surrender the contract. Premature termination involves a completely different connotation. Regarding the argument that equals are being treated as unequal and therefore, the right of equality under Article 14 of the Constitution of India is being violated, it is stated that persons like the petitioner(s) are not equal to new bidders who may enter the arena and thus, there is no question of equals being treated unequally.

32. In the earlier part of this judgment, we have held that the State was entitled to change its policy and such a changed policy is applicable to existing contracts. The impugned action has been taken pursuant to a changed policy and therefore, is legal and permissible in law. Pursuant thereto, an option has been given to the existing contractors to either carry on prospecting under the changed conditions or to exercise their right under Rule 39 and surrender the contract. It is difficult for us to hold that the first option is no option at all because as discussed earlier, an option had been given to the petitioners to take the amount, which they would have earned during the balance period of the contract in advance and surrender the mine. The petitioners chose to

contest the case instead, clearly indicating that the excuse of inability to carry on prospecting under changed conditions, was merely a red herring. Thus, a workable option was given by the State and therefore, we cannot hold that in fact there was only one option of surrender available to the petitioners. Moreover, no malafides can attach to an action taken in exercise of statutory powers and therefore, there is no arbitrariness involved.

33. The petitioners are a class apart from new entrants into the field. They cannot claim to be equal to persons who may choose to bid for a mine after introduction of the new policy. Unequals cannot seek protection of Article 14 of the Constitution of India and thus, the argument is misconceived.

<u>No opportunity of hearing:</u>

34. The impugned orders have been passed after the Cabinet took a policy decision to auction all mines by way of 'progressive bidding' and to apply the same parameters to the existing contractors. There is no illegality attached to the said Cabinet decision and the Cabinet of a State, is free to take policy decisions as it deems fit. The said policy decision is also applicable to the petitioners. Under the situation, can the petitioners claim a right of hearing? In our opinion, the right of hearing, in such a situation, is not vested in the petitioners. The law permits the Government to change the terms of a contract during its subsistence and the concept of opportunity of hearing is not attracted unless some provision of the Acts or the Rules provides for

the same. The petitioners could have claimed a right of hearing in case there was a termination of their subsisting contract, but such a right cannot be claimed once we have already held that no premature termination is involved in this case.

35. Therefore, we reject this argument as well.

Policy decision cannot apply retrospectively:

36. The concept of 'retrospectivity' involves the existence of a vested right and destruction of the same from an earlier date. There is no vested right in the petitioners to continue prospecting without any change in conditions of the contract. Moreover, the petitioners are not being asked to pay the price determined by 'progressive bidding' with effect from the date of their contract. We are unable to understand the basis of the argument of 'retrospectivity'. The terms of the contract are liable to be changed in accordance with law and the petitioners are being asked to accept the method of 'progressive bidding' prospectively. Therefore, this argument is totally misconceived.

Violation of Legitimate expectation:

37. The petitioners submit that once a contract had been entered into, it was their legitimate expectation that the same would run its complete course unless interrupted through termination for violation of any of the prescribed terms. It is their submission that the State has not pointed out any violation of terms by the petitioners and therefore, the legitimate expectation of the petitioners would prevail over the impugned action. This argument is being noticed only to be rejected.

The underlying principle of Doctrine of Legitimate Expectation is a promise held out by the State. In this case, no promise has ever been held out by the State that the terms of the contract would not be changed during its subsistence. On the contrary, the provisions of the Act, Rules, E-auction notice and conditions of Form-L show that statutorily the State could alter the terms of an existing contract. Thus, the very basis being non-existent in this case, the argument has to be rejected.

38. Moreover, it is settled law that legitimate expectation does not provide an independent enforceable right. It only enables the Court to test Government action and nothing more. In any case, legitimate expectation has to yield to public interest. The decision in **'Sethi Auto Service Station Vs. Delhi Development Authority, 2009 (1), SCC 180,** cited on behalf of the State can be referred to in this regard. It has been held in this judgment that:-

> '32. An examination of the afore-noted few decisions shows that the golden thread running through all these decisions is that a case for applicability of the doctrine of legitimate expectation, now accepted in the subjective sense as part of our legal jurisprudence, arises when an administrative body by reason of a representation or by past practice or conduct aroused an expectation which it would be within its powers to fulfill unless some overriding public interest comes in the way. However, a person who bases his claim on the doctrine of legitimate expectation, in the first instance, has to satisfy that he has relied on the said representation and the denial of that

expectation has worked to his detriment. The Court could interfere only if the decision taken by the authority was found to be arbitrary, unreasonable or in gross abuse of power or in violation of principles of natural justice and not taken in public interest. But a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

33. It is well settled that the concept of legitimate expectation has no role to play where the State action is as a public policy or in the public interest unless the action taken amounts to an abuse of power. The court must not usurp the discretion of the public authority which is empowered to take the decisions under law and the court is expected to apply an objective standard which leaves to the deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based on legitimate expectation might be affected. Therefore, a legitimate expectation can at the most be one of the grounds which may give rise to judicial review but the granting of relief is very much limited. [Vide Hindustan Development Corporation]'

Conclusion:

39. Before parting with this judgment, we may, once again, make reference to the Statutory Scheme. It is clear that the Statutory Scheme is to create a 'regulatory regime' in respect of prospecting of mines and minerals because minerals, both major and minor, are the

wealth of the Nation and their prospecting must be regulated in public interest. Therefore, mines and minerals must be prospected wisely, so that optimum revenue can be earned by the State. The word 'regulate' includes within its meaning not only action prescribed by the statute, but also embraces within itself the powers incidental to such regulation including varying or even destroying existing and subsisting contracts. The case of **Dabhol Power Company** (supra) can be referred to with approval in this regard. The issue involved in this case was regarding the jurisdiction of the Bombay High Court to decide disputes between the Dabhol Power Company and Maharashtra State Electricity Board. The dispute arose out of the rescission of the power purchase agreement between the Dabhol Power Company and the Maharashtra State Electricity Board, under which a power station was constructed at Dabhol in the State of Maharashtra in two phases. The import of the word 'regulate' has been examined as follows:-

> 'It is thus clear that the word 'regulate' is a word of broad import having wide meaning comprehending all facets not only specifically enumerated in the Act but also embracing within its fold the powers incidental to the regulation envisaged in good faith with an eye single to the public welfare. It would also be seen that the assumption that the power to regulate does not include power to vary the terms and conditions of the contract is not correct. In V.S.R. Oil Mills Vs. State of Andhra Pradesh (supra) Section 3 of Madras Essential Articles Control and

Regulating (Temporary Powers) Act, 1949, was consideration by the Supreme Court Section 3(1) read as under:-

‘The State Government so far as it appears to them to be necessary or expedient for maintaining increasing or securing supplies of essential articles or for arranging for their equitable distribution and availability at fair price may, by notified order, provide for regulating or prohibiting the supply, distribution and transfer of essential articles and trade and commodities therein.

The dispute which gave rise to the appeals before the Supreme Court pertain to two notified orders passed by the State under Section 3(1) purporting to increase electricity rate and the grievance of the appellants was that the State had no authority to change this important term of the contract to the prejudice by taking recourse to Section 3(1). Repelling this argument the Supreme Court held that:-

16. Section 3(1) is obviously intended to secure supplies of essential articles and to arrange for their equitable distribution and availability of fair prices. If electrical energy is one of the essential articles mentioned in the Schedule, there can be no difficulty in holding that a notified order can be issued under Section 3(1) for regulating the supply of the said energy and making it available at a fair price. Indeed, it is not disputed and cannot be disputed that if electrical energy is produced by a private licensee and is then supplied to the consumers, such a supply

would fall within the mischief of Section 3(1) and the terms on which it can and should be made to the consumers can be regulated by a notified order. There can also be o serious dispute that terms of contract entered into between a private supplier of electrical energy and the consumer could be modified by a notified order. Section 3(1) undoubtedly confers power on the State Government to vary and modify contractual terms in respect of the supply or distribution of essential articles. If that be so, on a plain reading of Section 3(1) it seems very difficult to accept the argument that the supply of electrical energy which is included in Section 3(1) if it is made by a private producer should go outside the said section as soon as it is produced by the State Government. The emphasis is not on who produces and supplies, but on the continuance of the equitable distribution and supply of essential articles at fair prices. If the object of Section 3(1) has in mind is such equitable distribution and availability at fair prices of essential articles, that object would still continue to attract the provisions of Section 3(1) even though the essential article may be produced by the State and may be supplied by it to the consumers. The words used in Section 3(1) are so clear, unambiguous and wide that it would be unreasonable to limit their scope artificially on the ground that by giving effect to the wide language of the section, might reach a result which is not completely harmonious or consistent with the assumed object and purpose of the Act. Indeed, as we have just indicated, if the purpose of the Act is to secure the

> supply of essential articles at fair prices, it would be irrelevant as to who makes the supply. What is relevant is to regulate the supply at a fair price. Therefore, we are not prepared to accede to Mr. Setalvad's argument the Section 3(1) does not confer on the respondent the power to modify the terms of agreements between it and the appellants.'

40. Thus, in exercise of its regulatory powers, the State is entitled to vary and modify the terms of an existing contract. The exercise has been undertaken in public interest, so as to rationalize prospecting of minor minerals. No mala-fides are attributable to the State. Therefore, the impugned orders are justified on this score as well.

41. It is also settled that writ Courts rarely interfere with policy decisions unless a policy suffers from want of authority or is patently arbitrary, capricious and not informed by reason. The onus is upon the petitioners to satisfy the conditions referred to and unless they are able to discharge this burden, the writ Court will not exercise its powers to set-aside a policy decision. The petitioners herein have miserably failed in this regard. Moreover, the Courts are not equipped to examine the merits and de-merits of different economic policies (procedure of auction is in the realm economic policy) and therefore, interference in such a decision can be extremely risky.

42. For the aforementioned reasons, we do not find any merit in these writ petitions and the same are dismissed, however, without any order as to costs. It is directed that since the petitioners were litigating before this Court, let they be given one week's time afresh to exercise their option in terms of the impugned notices.

(SUDHIR MITTAL) **(SURYA KANT)**
JUDGE **JUDGE**

January 12, 2018
Ramandeep Singh

Whether speaking / reasoned Yes / No
Whether Reportable Yes/ No