

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1) CWP No.31002 of 2018 (O&M)

Baljit Singh and another

....Petitioners

Versus

State of Punjab and others

...Respondents

2) CWP-PIL No.4846 of 2018 (O&M)

Gagneshwar Walia

....Petitioner

Versus

State of Punjab and others

...Respondents

3) CWP No.9160 of 2019

M/s KBM Contractors and others

....Petitioners

Versus

State of Punjab and others

...Respondents

Date of Decision : April 23, 2019

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

**Present : Mr.Gurminder Singh, Sr. Advocate with
Mr.R.P.S.Bara, Advocate
for the petitioner(s).**

**Mr.D.S.Patwalia, Sr. Advocate with
Mr.Chandandeep Singh, Advocate
for the applicant in CM Nos.2240 & 2241-CWP-2019).**

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

**Mr.Satya Pal Jain, Addl.Solicitor General of India with
Mr. Arun Gosain, Senior Panel Counsel,
for Union of India.**

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MAHESH GROVER, J.(O)

By this judgment we propose to dispose of CWP No.31002 and CWP-PIL No.4846 of 2018 and CWP No.9160 of 2019.

The petitioners herein, before us are all mining contractors, who benefitted mining contracts as per the existing policy at that time.

The facts are being extracted from CWP-31002 of 2018.

The State of Punjab decided to dispense with the earlier policy to introduce grant of mining contracts through open auction and progressive bidding, ostensibly to maximize its benefits and curb the loopholes in the earlier policy that it perceived as loss making to the exchequer. There were bouts of litigation between the petitioners and the State earlier in this regard.

The petitioners have brought forward the facts in their petitions that in the year 2015 the State invited tenders for auction of mines situated in various places in the State of Punjab in which the petitioners and several others participated to be declared as successful resulting in lease of mines in their favour.

On 29.05.2017 notices were issued to the contractors to deposit the amount as per progressive bidding by calculating average amount on the quarries allotted in each district. These were challenged before this Court by way of CWP-12664-2017 and operation of the notice was stayed. The petitions came to be disposed of vide judgment dated 12.01.2018 upholding the action of the government. The matters were then challenged before the Hon'ble

Supreme Court in SLP No.1798 of 2018 resulting in an interim order protecting the contracts of the petitioners. The said SLP was disposed of with a direction that the contractors shall surrender their quarries immediately and the government will do necessary calculations within a period of one week and refund the amount of profit and security upto 25.05.2018. This was done on an assurance given by the State which eventually, according to the petitioners, was breached resulting in contempt petitions which are still pending. The short conclusion from the afore-narrated facts is that their claim for refund to which the petitioners plead their entitlement in view of the directions given by the Hon'ble Supreme Court succeeding an assurance by the State in this regard is pending and although not relevant for the purpose of the present petitions before us it is necessary to note the stand of the State that refund is subject to adjustments which if effected would warrant a recovery from the petitioners. Be that as it may, since this issue has been raised in contempt proceedings before the Hon'ble Supreme Court this need not engage our attention for the present.

The main controversy is a challenge to the policy introduced by the State Government on 26.10.2018 envisaging award of contracts for mining minerals by way of auction block wise consisting of stretches of rivers/contiguous blocks of districts wherever mineral is available. If in a particular area/district the mineral available is not sufficient, it would be clubbed with the adjoining district to form a workable block. There would be a cap on the sale price which was

fixed at Rs.9/- per cubic feet (Rs.225/- per Ton).

On 31.08.2018 auction notices were put out by way of publication with the date of auction as 14.12.2018 which was subsequently extended by way of corrigendum upto 27.12.2018. The contractors who were operating the mines under the previous contracts approached the Hon'ble Supreme Court by way of miscellaneous applications which were disposed of with liberty to the petitioners to take recourse to alternate remedies as per law. This is how the present writ petitions have come to be filed impugning the policy of the State Government on the following points :-

- i) The petitioners assert that introduction of the policy dated 26.10.2018 adversely affects their rights to mine particularly when the liabilities of the earlier contracts have not been settled by the State.
- ii) A perusal of the notification indicates creation of blocks but without identifying the area to be mined which according to the petitioners is ambiguous and incapable of being worked, besides being violative of various pronouncements of the Hon'ble Supreme Court and this Court.
- iii) In the absence of any identifiable area available for mining it would be difficult for any prospective bidder to assess the mineral wealth and state a price.
- iv) No impact assessment exercise has been carried out to understand the available mineral and resultant pricing as also the impact on attending issues such as environment etc. and

replenishment plans for the depleted mineral.

As a corollary to the afore-stated issues of lack of identification and impact assessment, there would be no effective plan to replenish the mineral extracted.

On the other hand, the State questions the locus of the petitioners as no legal right has been infringed and no enforceable right in law has been highlighted. It has been asserted on their behalf that in the absence of any violation of legal or an enforceable right the petitioners locus is questionable and even if the right to approach this Court is accepted the petitioners cannot insist on a right to licence or lease by asking for a contract in their favour. Neither can they derive any advantage from their previous contracts. It is further stated that what has been introduced by the State is a policy measure minimizing the right of a citizen to question and the ability of the Court to discard through intervention in writ proceedings. Our attention has been invited to the policy, its terms, the rules and other supporting guidelines which according to the respondents when read cumulatively would effectively offset the argument of the petitioners.

The notification dated 26.10.2018 states its objectives and award of concession and signing of agreement as under :-

- “1. Allotment of mining rights of stretches of rivers/contiguous blocks of districts to benefit from economies of scales and bring professionalism in this line of trade.
2. Better monitoring by assigning all hitherto uncovered areas, thus creating interest of contractors to check illegal mining in their areas.

3. Minimize motivation for illegal mining by allocating quantities for mining that are commensurate with demand estimated from consumption of cement in the State.
4. e-auction for the sake of transparency in process and confidentiality among participants.”

“10. Award of Concession and Signing of Agreement - The successful bidder shall be awarded the concession to mine sand and gravel for a period of 3 years. The successful bidder shall execute and register the concession agreement within 15 days from date of issuance of provisional acceptance as per Form-L1 under rule 42G of Punjab Minor Mineral Rules, 2013 which may be suitably amended from time to time and give requisite security deposit as prescribed in para above. The agreement may be extended by upto 6 months on same terms in case the next tender gets delayed due to unforeseen factors.”

Annexure -1 to the notification gives out the particulars of the blocks in various districts and the assessed quantity as also the reserve price.

To give effect to the policy e-auction notice was put up on 31.10.2018 and it would be imperative to extract the relevant portion of the notice intending to put to auction the blocks as created :-

Sr. No. (1)	Name of Mining Block (2)	District Involved (3)	Annual Concession Quantity (Lakh MT) (4)	Reserve Price (Cr.) (5)	EMD @ 25% of reserve price (cr.) (6)	Quarterly Land Compensation (cr.) (7)	Sand/ Gravel (8)	XEN Incharge (9)
1	Block 1	Ropar	89	76.54	19.14	13.35	Sand/Gravel	XEN Mohali
2	Block 2	SBS Nagar, Jalandhar, Ludhiana, Barnala, Sangrur, Mansa	48	41.28	10.32	7.20	Sand	XEN Ludhiana
3	Block 3	Moga, Ferozpur, Muktsar, Fazilka, Bathinda, Faridkot	32	27.52	6.88	4.80	Sand	XEN Ferozpur

Sr. No. (1)	Name of Mining Block (2)	District Involved (3)	Annual Concession Quantity (Lakh MT) (4)	Reserve Price (Cr.) (5)	EMD @ 25% of reserve price (cr.) (6)	Quarterly Land Compensation (cr.) (7)	Sand/ Gravel (8)	XEN Incharge (9)
4.	Block 4	Hoshiarpur, Gurdaspur	65	55.90	13.98	9.75	Sand/Gravel	XEN Hoshiarpur
5	Block 5	Kapurthala, Tarantaran, Amritsar	27	23.22	5.81	4.05	Sand	XEN Amritsar
6	Block 6	Pathankot	84	72.24	18.06	12.60	Sand/Gravel	XEN Gurdaspur
7	Block 7	Mohali, Patiala, Fatehgarh sahib	56	48.16	12.04	8.40	Gravel	XEN Mohali

It was specifically stated in the auction notice that mining rights of the stretch of rivers/areas of districts falling in mining blocks will be done block wise through progressive bidding process with every bid higher than the last one to eventually land the contract/concession to the highest bidder.

We have heard the learned counsel for the parties.

The contentions of the learned counsel for the petitioners are on the lines of the grievance set out in the petitions which we have already noticed above. While the State opposes the petitions by questioning the locus itself besides pointing to other safeguards and the inherent limitation of a court to step into the area of policy making by the State.

To our minds these petitions cannot be discarded on the issue of locus for more than one reason. The petitioners are indeed mining contractors who have conducted their business through valid contracts/lease arrangements in their favour and have been in contest with the State when their previous arrangements were disrupted. Surrender of mines and the consequent refund of amount that they claim would give them a sufficient reason to question the e-auction in

view of their unsatisfied claims even though it may not sustain a claim for any preferential treatment in view of the open proposed system of auction. Besides they are in this very trade and possibly intending participants in the fresh process. If they perceive any illegality in the policy, the implementation of which may affect them prejudicially, they would be well within their rights to question it. Whether the grounds taken by them to question the action of the State are legitimate and sustainable in the eyes of law would be determined in the exercise of determination of lis by this Court, but the petitions cannot be thrown out at the outset.

Even otherwise, issues such as these raising questions of public importance ought not to be thwarted by the Courts on technicalities, particularly when the petitioners earlier bout of litigation do offer a fig leaf and blurs lines between what is for the petitioners an actual and just cause while for the State it is an obstructive exercise and an illusory grievance.

We would, therefore, overrule this objection of the State and commence upon what we would like to describe as the substantive issues i.e. of the legitimacy of the policy and the limits of a court to examine it in the exercise of powers of judicial review.

There would indeed be enough substance to sustain the objection of the respondent-State that the Courts ought not to interfere in the policy decisions which lie in the domain of the State but nothing precludes the Courts to examine a policy and its possible conflict with law in the exercise of its powers of judicial review.

This being the settled position of law, we proceed to examine the policy.

Learned counsel for the State contends that adequate safeguards are inherent in the rules and the mining policies which would render the objections of the petitioners insignificant and warrant dismissal of the writ petitions. She has drawn our attention to Sustainable Sand Mining Management Guidelines, 2016. This incidentally is also relied upon by the petitioners in support of the argument that a mining area has to be an identifiable one. Clause (o) of General Approach to Sustainable Sand and Gravel Mining reads as under :-

“o) Demarcation of mining area with pillars and geo-referencing should be done prior to start of mining.”

Learned counsel for the petitioners read the afore-extracted guideline to mean that demarcation of a mining area with pillars and geo-referencing has to be done prior to the start of mining, which would mean an identifiable area, while the learned counsel for the State refers to the procedure and the policy itself which would envisage a creation of a mining plan essential for obtaining the environmental clearance. This according to her would automatically result in identifying the mining area. Clauses 11 and 12 of the impugned notification dated 26.10.2018 reads as follows :-

“11. Start of concession period : Concessionaire will be allowed to mine after signing of the contract agreement, obtaining all required clearances, installation of electronic weight bridge and deposit of the security amount and first quarterly advance installment. The 3 year period shall be counted from completion of all formalities including

taking environmental clearance or 4 months from award of contract, whichever is earlier.

12. Identification of Mines and Clearances : The concessionaire shall be responsible to identify mines in the block allotted to him, obtain consent of the land owner(s), arrange for all infrastructural requirements like a right of way etc. and obtain all clearances before starting the mining operations. When the mining is to be carried out in the river bed, the concessionaire shall intimate it 7 days in advance to the Chief Engineer, Drainage and carry out the operation such that it doesn't affect the flow of river or damage embankments. The concessionaire shall ensure that the sand excavation is carried out strictly in accordance with advice of the Chief Engineer, Drainage in this regard. List of the mines identified by the government, if any may be provided to the concessionaire, who shall proceed to make them operational in the most expeditious manner.”

A perusal of Clause 12 indicates that it shall be responsibility of the concessionaire to identify mines in the blocks allotted to him, obtain consent of the landowner, arrange for all infrastructural requirements like a right of way etc. and obtain all clearances before starting the mining operations. While mining in river bed the concessionaire would intimate 7 days in advance to the Chief Engineer, Drainage and carry out operations so as not to obstruct a flow of river and damage embankments. The concessionaire would also ensure that the sand excavation is carried out strictly in accordance with advice of the Chief Engineer, Drainage. List of mines identified by the Government, if any may be provided to the concessionaire who shall proceed to make them operational in the most expeditious manner. Form 'I' as given in this notification

contemplates a pre-feasibility report and a mining plan with a time line of 1.5 months.

Clause 21 of the policy envisages geo-tagging of mines, while clause 23 confers a right upon the government to undertake de-silting. Both these clauses read as under :-

“21. Geo-tagging of mines - Geo-tagging of the mine area will be carried out while conducting physical inspection as the boundary of the mine will be checked using the coordinates recorded in GPS device, and the monitoring team can check whether any mining activity is going on outside the permitted area or not.’

“23. Government’s Right to undertake De-silting - The Government reserves the right to take up de-siltation projects, in such allocated mining blocks, to maintain the river flow,safeguard the embankments and habitations along the rivers on account of geo-technical and hydrological considerations.”

Clause 24 lays down that an amendment to the Punjab Minor Mineral Rules, 2018 shall be made separately. Accordingly amendments have been made and Rules 38, 39, 42 and 43, as amended, are extracted herebelow :-

“38. Identification of Mines and Clearances - The concessionaire shall be responsible to identify mines in the block allotted to him preferably in river stretches, obtain consent of the land owner(s), arrange for all infrastructure requirements like a right of way etc. and obtain all clearances before starting the mining operations. When the mining is to be carried out in the river bed, the concessionaire shall intimate it 7 days in advance to the Chief Engineer, Drainage and carry out the operation such that it doesn't affect the flow of river or damage embankments. The

concessionaire shall ensure that the sand excavation is carried out strictly in accordance with advice of the Chief Engineer, Drainage in this regard. List of the mines identified by the government, if any may be provided to the concessionaire, who shall proceed to make them operational in the most expeditious manner.

39. Successful bidder shall be bound to install boundary pillars for demarcation and fix the bench marks for regulation of depth of excavation at site as his own expenses.”

“42. Government's Right to undertake De-silting - The government reserves the right to take up de-siltation projects, in such allocated mining blocks, to maintain the river flow, safeguard the embankments and habitations along the rivers on account of geo-technical and hydrological considerations.

43. List of the mines identified by the government, if any shall be provided to the concessionaire in whose Mining Block the mines are situated. The concessionaire shall arrange to get environment clearance by way of transfer from Government or otherwise shall make the mine so identified by the Government in the most expeditious manner.”

Rule 38 reiterates what has been stated in the policy that the concessionaire shall be responsible to identify mines in the block allotted to him preferably in river stretches and obtain requisite consent of the landowner(s). Rule 39 obligates the successful bidder to install boundary pillars for demarcation and fix the bench marks for regulation of depth of excavation at the site. Rule 43 provides list of mines identified by the government, if any, shall be provided to the concessionaire in whose mining block the mines are situated, whereafter the concessionaire shall arrange to get environment

clearance by way of transfer from the Government.

Chapter-IV of the Punjab Minor Mineral Rules, 2013 containing Rules 47 and 48, which are extracted here-below, provides for preparation of a mining plan.

“47. Mining Plan.- No Mineral Concession shall be granted unless a mining plan has been duly approved by the competent authority:

Provided that the Government may exempt certain specified mining activities from the requirements of preparation and approval of a mining plan.

48. Requirements of Mining Plan.- (1) The mining plan shall be prepared by a recognized person. It shall be in accordance with regulation 106 of Metalliferous Mines Regulations, 1961 and relevant guidelines issued by the Indian Bureau of Mines, Ministry of Mines, Government of India and shall incorporate the following:-

- (i) the plan of the precise area showing the nature and extent of the mineral deposit, spot or spots, where the excavation is to be done in the first year and its extent, a detailed cross-section and detailed plan of spots of excavation based on the prospecting data gathered by the applicant and a tentative scheme of mining for the first two years of the grant of Mineral Concession;
- (ii) details of the geology and lithology of the precise area including mineral reserves of the area;
- (iii) the extent of manual mining or mining by the use of machinery and mechanical devices on the precise area;
- (iv) the plan of the precise area showing natural water courses, limits of reserved and other forest areas and density of trees, if any, the impact of mining activity on forest, land surface and environment including air and water pollution, details of

scheme for restoration of the area by afforestation, land reclamation, use of pollution control devices and of such other measures as may be directed by the Government from time to time;”

Other safeguards pertaining to scientific mining are also elaborately set out under this provision.

Rule 49 provides that no mining plan shall be approved unless it is prepared by a recognized person.

Learned counsel for the State would then refer to the various procedures for obtaining environmental clearance which necessarily suggests appraisal of the mining plan and environment impact assessment by validly constituted authorities.

Clauses 2, 3, 5 and 6 of the Notification dated 14.09.2006 read as under :-

“2. Requirements of prior Environmental Clearance (EC):- The following projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

- (i) All new projects or activities listed in the Schedule to this notification;
- (ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity

beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.

3. State Level Environment Impact Assessment Authority :- (1) A State Level Environment Impact Assessment Authority hereinafter referred to as the SEIAA shall be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member - Secretary to be nominated by the State Government or the Union Territory administration concerned.

(2) The Member-Secretary shall be a serving officer of the concerned State Government or Union Territory administration familiar with environmental laws.

(3) The other two Members shall be either a professional or expert fulfilling the eligibility criteria given in Appendix VI to this notification.”

“5. Screening, Scoping and Appraisal Committees :-

The same Expert Appraisal Committees (EACs) at the Central Government and SEACs (hereinafter referred to as the (EAC) and SEAC) at the State or the Union territory level shall screen, scope and appraise projects or activities in Category 'A' and Category 'B' respectively. EAC and SEAC's shall meet at least once every month.”

“6. Application for Prior Environmental Clearance (EC):-

An application seeking prior environmental clearance in all cases shall be made in the prescribed Form 1 annexed herewith and Supplementary Form IA, if applicable, as given in Appendix II, after the identification of prospective site(s) for the project and/or activities to which the application relates, before commencing any construction

activity, or preparation of land, at the site by the applicant. The applicant shall furnish, along with the application, a copy of the pre-feasibility project report except that, in case of construction projects or activities (item 8 of the Schedule) in addition to Form 1 and the Supplementary Form IA, a copy of the conceptual plan shall be provided, instead of the pre-feasibility report.”

Having encapsulated the controversy and the related provisions of law, relevant policies, we now proceed to record our conclusions.

Since we have already negated the objection of the respondents on the question of locus, the next question for determination is of the power of judicial review in context of a challenge to a public policy.

The matter is no longer *res integra* and the courts by now have sufficiently established the scope of judicial review to be limited in the matters of public policy, formulation of which clearly lies in the domain of the State. Merely because things can be done in a different way would be no ground to strike down a policy matter. We are conscious of this and the judicial discipline imposed upon us by an authoritative pronouncement of the Hon'ble Supreme Court in *Balco Employees' Union (Regd.) v. Union of India and others*, **(2002)2 Supreme Court Cases 333**, relevant paras of which are extracted as below :-

“32. It was submitted by the learned Attorney General that the wisdom and advisability of economic policies of Government are not amenable to judicial review. It is not for Courts to consider the relative merits of different economic policies. Court is not the Forum for resolving the conflicting clauses regarding the wisdom or advisability of policy. It will be appropriate to consider some relevant decisions of this

Court in relation to judicial review of policy decisions.”

34. Applying the analogy, just as the Court does not sit over the policy of the Parliament in enacting the law, similarly, it is not for this Court to examine whether the policy of this disinvestment is desirable or not. Dealing with the powers of the Court while considering the validity of the decision taken in the sale of certain plants and equipment of the Sindri Fertilizer Factory, which was owned by a Public Sector Undertaking, to the highest tenderer, this Court in Fertilizer Corporation Kamgar Union (Regd.), Sindri and Others vs. Union of India and Others, (1981) 1 SCC 568 at page 584, while upholding the decision to sell, observed as follows :-

"We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The Court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

“36. In State of M.P. and Others vs. Nandlal Jaiswal and Others, (1986) 4 SCC 566 the change of the policy decision taken by the State of Madhya Pradesh to grant licence for construction of distilleries for manufacture and supply of country liquor to existing contractors was challenged. Dealing with the power of the Court in considering the validity of policy decision relating to economic matters, it was observed at page 605 as follows :-

"34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v. Union of India. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in *Morey v. Doud*.

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to

destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.'

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call 'trial' and error method' and, therefore, its validity cannot be tested on any rigid 'a priori' considerations or on the application of any strait-jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or 'play in the joints' to the executive. "The problem of government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Co. v. State of Chicago*.

'are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void'.

The Government, as was said in *Permian Basin Area Rate* cases, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy

decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article 14 of the Constitution."

"47. Process of disinvestment is a policy decision involving complex economic factors. The Courts have consistently refrained from interfering with economic decisions as it has been recognised that economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, is demonstrated to be so violative of constitutional or legal limits on power or so abhorrent to reason, that the Courts would decline to interfere. In matters relating to economic issues, the Government has, while taking a decision, right to "trial and error" as long as both trial and error are bona fide and within limits of authority. There is no case made out by the petitioner that the decision to disinvest in BALCO is in any way capricious, arbitrary, illegal or uninformed. Even though the workers may have interest in the manner in which the Company is conducting its business, inasmuch as its policy decision may have an impact on the workers' rights, nevertheless it is an incidence of service for an employee to accept a decision of the employer which has been honestly taken and which is not contrary to law. Even a government servant, having the protection of not only Articles 14 and 16 of the Constitution but also of Article 311, has no absolute right to remain in service. For example, apart from cases of disciplinary action, the services of government servants can be terminated if posts are abolished. If such employee cannot make a grievance based on part III of the Constitution or Article 311 then it cannot stand to reason that like the petitioners,

non-government employees working in a company which by reason of judicial pronouncement may be regarded as a State for the purpose of part III of the Constitution, can claim a superior or a better right than a government servant and impugn its change of status. In taking of a policy decision in economic matters at length, the principles of natural justice have no role to play. While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision.”

“92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the Court.”

“93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts. Here the policy was tested and the Motion defeated in the Lok Sabha on 1st March, 2001.”

“97. Judicial interference by way of PIL is available if there is injury to public because of dereliction of Constitutional or statutory obligations on the part of the government. Here it is not so and in the sphere of economic policy or reform the Court is not the appropriate forum. Every matter of public interest or curiosity cannot be the

subject matter of PIL. Courts are not intended to and nor should they conduct the administration of the country. Courts will interfere only if there is a clear violation of Constitutional or statutory provisions or non-compliance by the State with its Constitutional or statutory duties. None of these contingencies arise in this present case.”

“99. Lastly, no ex-parte relief by way of injunction or stay especially with respect to public projects and schemes or economic policies or schemes should be granted. It is only when the Court is satisfied for good and valid reasons, that there will be irreparable and irretrievable damage can an injunction be issued after hearing all the parties. Even then the Petitioner should be put on appropriate terms such as providing an indemnity or an adequate undertaking to make good the loss or damage in the event the PIL filed is dismissed.”

What we gather from the above is of the courts power of judicial review while scanning a policy ought to be lined with restraint.

We are thus of the opinion that the argument of the petitioners laying a challenge to the policy on the grounds mentioned is not tenable. There would be nothing wrong if the State proposes to hold the auction block wise and by way of progressive bids through open auction. The petitioners can hardly make any grievance of this particularly when they in the course of business have been adhering to the policies in vogue to obtain mining contracts. Besides, bidding in an open auction is one of the better established practices of awarding contracts. Therefore, there would be no hesitation to negate the challenge to the policy as such. Not only this the petitioners have been unable to show any flaw in the policy. Rather while making

submissions they exposed their intent and the fickleness of challenge by expressing their willingness in gaining access to the contracts by arguing that petitioners are ready to participate in the auction, if some preferential right is conferred upon them, in view of their previous contracts and unsettled claims.

The petitioners plea that the whole auction process be stalled or they be given a preferential right to mining contracts in view of their previous contracts would be misplaced. Indeed, they would be at liberty to get the issue settled with the State by availing themselves of the remedies in law.

A closer scrutiny of the issues raised before us reveals a grievance which though intricately wrapped in the principal challenge to the policy is yet capable of segregation without unsettling the propositions and that is the question to the ambivalent description of mining area in the policy and the resultant e-auction notice. To our minds that is the only surviving question in the present petition and we hence wean it away and deal with it. The e-auction notice in its present form is ambiguous and in contradiction to the scheme of mining under the Act and the Rules as also the guidelines of the Ministry of Environment. Rule 36 is extracted herebelow :-

“16. 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.”

The language of the aforesaid rule which has not been amended even though certain other provisions were subjected to amendment leaves no manner of doubt that the notice of auction shall contain a brief description regarding the place, time and method of auction, the mines/quarries to be auctioned, the periods of concessions, reserve values, earnest moneys and main terms and conditions of auction and further it shall contain the detailed descriptions, terms and conditions of the auction and other related information. The word 'description' of mines/quarries to be auctioned would warrant certain specifics for more than one reason. For example, a description of the area to be mined or the number of mines/quarries contained in a block, if identified would help the State in assessing the quantum of minerals available and its capacity to generate revenue besides offering in itself for replenishment plan. Importantly it would also help the

proposed concessionaire to make a bid as a sound business proposition.

In *Deepak Kumar and others v. State of Haryana and others* (2012)4 Supreme Court Cases 629 the Hon'ble Supreme Court laid great emphasis on the guidelines of the Ministry of Environment and Forest (MoEF) and while dealing with the matter it emphasized on para 19 of the judgment for the recommendations made by the MoEF and Clauses 4.8 and 4.9 are extracted herebelow :-

“4.8 Uniform Minor Mineral Concession Rules:

The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime.

4.9 Riverbed Mining:

4.9.1 Environment damage being caused by unregulated river bed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

(a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.

(b) The depth of mining may be restricted to 3m/water level,

whichever is less.

(c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case-to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.

Paras 20 and 24 of the said judgment are also extracted hereunder :-

“20. The report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a re-look to the definition of "minor minerals" per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines.”

“24. We are of the view that all State Governments/Union Territories have to give due weight to the above mentioned recommendations of MoEF which are made in consultation with all the State Governments and Union Territories. Model Rules of 2010 issued by the Ministry of Mines are very vital from the environmental, ecological and bio-diversity point of view and therefore the State Governments have to frame proper rules in accordance with the recommendations, under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957.

It is clear that in Clause 4.9.1(a) the guidelines suggest mining leases for riverbed sand mining to be specific stretches that ought to be identified and mining permits/lease be granted block wise.

In *M/s Haryana Royalty Company v. State of Haryana and*

another (2015) SCC OnLine P&H 1300 a Division Bench of this Court held that it is imperative to demarcate the area to be auctioned and para 32 of the judgment reads as under :-

“32. In view of our findings recorded and law elucidated above, we quash the impugned order dated 10.07.2014 (Annexure P10) passed by respondent No.2 and as a consequence direct the respondents to conduct fresh auction of the quarries situated in different district/villages across the State of Haryana only after conducting fresh and proper survey and demarcation of the area to be auctioned. The amount charged from the petitioner in pursuance to the auction in the present case, be refunded back to him without any forfeiture, recovery and penalty and if the petitioner so desire, shall be free to sit in the auction as and when conducted by the respondents afresh in accordance with law. It is made clear that since the impugned order 10.07.2014 (Annexure P-10) has been set-aside by us vide this judgment, all proceedings undertaken pursuant to the said impugned order dated 10.07.2014 (Annexure P-10) are also set-aside. With these observations, the writ petitions are allowed.”

Likewise, in **CWP No.6883 of 2005** (*Mohinder Kumar v. State of Punjab and others*), decided on 20.05.2005 this Court held as under :

“We have examined the issue in its totality. The impugned auction notices, depict only the “had-bast” numbers for all districts, other than the districts of Ropar and Patiala, without specifying the area over which quarrying is permitted. Learned counsel for the petitioners has invited the attention of this Court to Item No.1 for District Ropar, wherein “had-bast” has been identified as No.330 relating to the revenue estate of village Manakpur Sharif. It is sought to be explained, that the area identified by a “had-bast” number could

comprise of several thousands acres. For the aforesaid “had-bast” No.330, the permitted area for quarrying is, only 22.031 acres. The question posed by the petitioners is, how would a contractor who is granted the tender for “had-bast” No.330, identify the area of 22.031 acres out of thousands of acres of land included in the aforesaid “had-bast” number? It is, therefore, stated that it would be impossible for the contractors to identify the areas where quarrying is permissible, unless an express demarcation is made at the hands of the respondents.

We are satisfied, that the contention of the learned counsel demanding identification of the quarrying area, merits acceptance. We, accordingly, direct the respondents, first to specify the total area within the “had-bast”, wherein quarrying is to be allowed in all districts, and while doing so, also to specify the area by way of “khasra numbers”, as has been done for the districts of Ropar and Patiala, which is evident from the note recorded in the auction notices, which reads as under :-

“Note: The khasra number of the area of Rivulets of District Ropar can be seen in the office of General Manager, District Industries Centre, Mohali and the khasra numbers of the area of Rivulets of District Patiala can be seen in the office of General Manager, District Industries Centre, Sirhind Road, Patiala on any working days.”

To the similar effect is our following observation made in **CWP No.13068 of 2018** (*M/s Ghaggar Royalty Company v. State of Haryana and others*), decided on 24.08.2018:-

“It is the duty of the State to identify the land which they offer for mining and ensure that it is not only conducive for the purpose intended but also ensure that the area conforms to the measurements offered for mining. A survey preceding the e-auction is, therefore, of

essence if the State is to ensure the smooth sailing of a contract. It is the ambiguity that the State offers in identifying the land and the extent of area which opens up a room for dispute.”

If we see the e-auction notice in the context of what we have observed, it creates blocks but with no specified mining of area. For example, Block 1 is Ropar with the annual concession quantity, the reserve price with a defined annual concession quantity besides other particulars. Likewise, Block 2 consists of SBS Nagar, Jalandhar, Ludhiana, Barnala, Sangrur, Mansa, Block 3 Moga, Ferozpur, Muktsar, Fazilka, Bathinda, Faridkot, Block 4 Hoshiarpur and Gurdaspur, Block 5 Kapurthala, Tarantaran and Amritsar, Block 6 Pathankot and Block 7 Mohali, Patiala and Fatehgarh.

Such a vague description of the mining area is an invitation to ravage. It is difficult to comprehend how a mining contractor would make a bid in an open auction for mines that have not been identified or described by any revenue record or other means.

The State is not without resources or equipped with technological means to identify the stretches, quarries available for mining with an exercise to pre-determine the quantum of available minerals. There would be nothing wrong in creating blocks but the identity of the mines/quarries stretches existing therein would not only make it functionally viable but would also obviate chances of exploitation of mineral resource.

Learned counsel for the State has repeatedly referred to the safeguards contained in the Sustainable Sand Mining Management Guidelines 2016. However, we are of the opinion that there has to be

a harmonious reading of all the provisions. The initial onus of offering an area for mining and its identification rests with the State and it is thereafter the responsibility of the contractor begins to submit a mining plan for obtaining environmental clearances etc.

In view of the above, we uphold the policy of the State in creating blocks and going for open auction through progressive bidding but would observe, only after identifying the mining area and precisely for this reason we quash the e-auction notice as being totally vague and in contravention with the law laid down by various courts besides being violative of the guidelines of the MoEF.

Consequently, the writ petitions are disposed of with a direction to the State to issue a fresh auction notice by defining the mining areas. The needful be done within a period of three months and auction process be taken forward.

Till that time the petitioners who had mining contracts earlier be permitted to carry on as per the terms of the old policy so as not to stall the infrastructural projects and the people at large are not inconvenienced.

All the petitions stand disposed of accordingly.

Applications for impleadment i.e. C.M.Nos.8 and 2240 of 2019 are declined as the applicants have no locus to question the policy decision of the State. All other applications also stand disposed of.

(MAHESH GROVER)
JUDGE

April 23, 2019
dss

(LALIT BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes