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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 25.01.2019

Pronounced on: 06.02.2019

- + W.P.(C) 7537/2018 & CM APPLN. 28828/2018
M/S STANDARD METALLOYS PVT. LTD. Petitioner
versus
UNION OF INDIA AND ORS. Respondents
- + W.P.(C) 7553/2018 & CM APPLN. 28875-76/2018
M/S RVG MINERALS AND METALS PVT. LTD. Petitioner
versus
UNION OF INDIA AND ORS. Respondents
- + W.P.(C) 7555/2018 & CM APPLN. 28879-80/2018
M/S RVG METALS AND ALLOYS PVT. LTD. Petitioner
versus
UNION OF INDIA AND ORS. Respondents
- + W.P.(C) 7591/2018 & CM APPLN. 29004-05/2018
M/S APEX METALLOYS PVT. LTD Petitioner
versus
UNION OF INDIA AND ORS. Respondents

Advocates of the case:

Counsel for the Petitioners: Mr.Dhruv Mehta, Sr. Adv. with Mr.Aman Vachher, Mr. Saket Sikri, Mr.Yashraj Deora, Mr.Ashutosh Dubey, Ms.Anu Srivastava & Mr.Arun Nagar, Advs.

Counsel for the Respondents: Mrs. Maninder Acharya, ASG with Mr. Ripu Daman Bhardwaj, CGSC, Mr. Viplav Acharya, Mr. Sahil Sood, Ms. Hina Bhargava, Mr. Harshul Choudhary and Ms. Veena Kumari, Director, Ministry of Mines for UOI.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide these petitions, the petitioners have challenged the order dated 30.06.2016 passed by respondent No. 2 i.e. Controller General, IBM as Administering Authority appointed under Section 10 of the offshore Areas Mineral (Development and Regulation) Act, 2002 (herein after referred as OAMDR Act), whereby the respondent No. 2 has sought to annul the notification dated 07.06.2010 inviting applications for allotment of exploration license. As a result of the same, the respondent No. 2 has also annulled all the subsequent actions including the order dated 05.04.2011 by which the exploration licenses had been granted.

2. The facts and issues in the present petitions are same and similar, therefore, the present petitions are being disposed of by this common judgment. The facts and page numbers shall be discussed with reference to Writ Petition No. 7537/2018, however, facts and other petitions shall not be

repeated for the sake of brevity being similar.

3. The impugned order dated 30.06.2016 is broadly challenged on the following grounds:-

(a) The impugned order dated 30.06.2016 was without jurisdiction and ultra vires the statute as there is no power to review the order of grant under the OAMDR Act, 2002.

(b) The impugned order dated 30.06.2016 is vitiated on account of violation of principles of natural justice.

(c) The reasons provided in the impugned order dated 30.06.2016, to annul the notification dated 07.06.2010 viz. (i) that some blocks are allegedly overlapping with onshore area, (ii) prohibition on mining in CRZ area, are baseless.

4. The brief facts of the above-captioned cases are that the petitioners had initially filed W.P. No. 1529/2018 before this Court seeking a writ of mandamus for execution of the exploration license under the OAMDR Act, 2002, however, owing to certain subsequent events after the filing of the writ petition, the present petition is being preferred by way of abundant caution to also raise a challenge to the order dated 30.06.2016. Though the said order as of date does not exist owing to its having been set aside by this

Court vide order dated 09.11.2017 in W.P. No. 5734/2016. The respondent No.1 is the Ministry of Mines through Secretary. The grievance in the present petitions is that due to various directions being issued by the said Ministry from time to time, which have finally culminated into the order dated 30.06.2016 and even after the aforesaid order was set aside, due to directions issued by the said Ministry, exploration licenses have not been executed with the petitioners. The Controller General of respondent No.2 was originally appointed as the administering authority for implementing provisions of the OAMDR Act, 2002 and the grant order dated 05.04.2011. However, passed impugned order dated 30.06.2016. The respondent No.3 is the authority that has currently been appointed as the Administering Authority w.e.f. 06.04.2018.

5. OAMDR Act, 2002 was enacted in the year 2003 with a view to develop, regulate, exploit the mineral resources available in the territorial waters, continental shelf and other maritime zones of India so as to augment the national wealth. In exercise of powers under the said Act, the Offshore Areas Mineral Concession Rules, 2006 (hereinafter shall be referred as OAMC Rules, 2006) were framed to regulate the procedure for grant of operating rights in respect of such areas mentioned above. According to the

said Act and the said Rules, it is clear that the following stages/phases are contemplated, which are as follows:-

(a) Reconnaissance Permit - Stage-I

(b) Exploration License - Stage-II

(c) Production Lease – Stage-III

6. The concept of exploration license and production lease are two separate and different forms of permissions/ concessions. Whereas under the former, the licensee is only entitled to undertake investigation with the objective to find availability of mineral and commercial viability of operation. It is only on successful completion of such investigation under the exploration licence and finding suitable minerals which can be commercially exploited, the production lease will be granted. The instant petitions pertain to only exploration licences which have already been granted vide order dated 05.04.2011 and only the ministerial act of executing the licence under the form remains. With a view to exploit the minerals available in the offshore areas, which are admittedly not covered by the provisions of the Mines and Minerals (Development and Regulation) Act, 1957, (herein after referred as MMDR Act, 1957) Parliament enacted the OAMDR Act, 2002 in the year 2003. In exercise of powers under the said Act, the Offshore Areas

Mineral Concession Rules, 2006 were framed to regulate the procedure for grant of the operating rights in respect of such areas mentioned above, which came into force on 15.01.2010 and were notified in the official gazette on 11.02.2010. For the purpose of identifying the blocks, where the mineral concessions are to be granted as well as to make the grants, the power is vested in the Administering Authority, who has to be notified in the official gazette. Vide notification dated 11.02.2010 Controller General, IBM, was appointed as 'Administering Authority' (Respondent No. 2 herein) i.e. the statutory authority under the OAMDR Act, 2002 to carry out the functions prescribed under the provisions of the aforesaid Act, including and not limited to identifying offshore blocks and granting of exploration licences. The power to identify and grant mining concessions in offshore blocks is within the sole power of the Administering Authority. The said Authority in exercise of power under Section 10 of the OAMDR Act, notified 62 offshore blocks having size of 5 mins latitude x 5 mins longitude, for grant of exploration licenses vide notification S.O. 1341 (E) dated 07.06.2010, in offshore areas and stipulated conditions to be fulfilled by the applicants for grant of exploration licence. Pursuant to the aforesaid notification, publicity was given by IBM i.e. the Respondent No. 2 herein, both in print and

electronic media during three months i.e. from 09.06.2010 to 14.9.2010. Consequently, 53 applicants applied for the allotments of said blocks for exploration license(s) for one or more out of the notified 62 blocks. The said applicants were either companies registered under the Indian Companies Act, 1956 or were partnership firms.

7. The application for grant of the exploration license of the petitioners was for the following minerals:

“All minerals as specified in First Schedule of the OAMDR Act, 2002 along with 9 minerals namely diamond, construction sand, polymetallic nodules, copper tungsten, nickel, calcite, manganese, and phosphorite. And the First Schedule of the OAMDR Act includes minerals such as Ilmenite, Rutile, Sillimanite, Zircon etc., which are also part of the minerals specified as atomic minerals in Part-B of First Schedule to the MMDR Act, 1957.”

8. The Administering Authority, in view of the large number of applications took a decision to make the process appropriate and transparent, formed a Screening Committee to comparatively evaluate all the applications. The said Screening Committee consisted of one technical expert from Indian Institute of Oceanography, Goa, one technical expert from Geological Survey of India, Kolkata and one technical expert from Indian Bureau of Mines, Nagpur. After careful scrutiny of each application and once the authorities were satisfied about the fulfilment of the criteria

laid down in Section 12 of the Act, orders granting exploration license were uploaded on the website of Indian Bureau of Mines by Respondent No. 2 on 22.03.2011 and the petitioner was granted Exploration License in exercise of power under Section 12 of the OAMDR Act read with Rule 16(1) of the OAMC Rules, 2006 vide order of grant dated 05.04.2011, whereby respondent No. 2 communicated the grant of the exploration licence to the petitioner that the deed for exploration license in Form K has to be executed within 90 days in terms of the Rule 19 of the OAMC Rules, 2006. However, before the exploration licence could be executed certain petitions, details provided hereinafter, came to be filed before various High Courts viz., High Court of Bombay at Nagpur, High Court of Andhra Pradesh at Hyderabad and High Court of Madras by different parties raising challenges to either the selection process or the grants. Due to certain orders passed in the said petitions as well as due to the pendency of the said petitions, it was stated by the Respondent No. 2 that the execution of the exploration licence was suspended to await the outcome of the said writs.

9. Mr. Dhruv Mehta, learned senior counsel appearing on behalf of the petitioners submitted that at that stage itself the selection process for allocating the blocks was tested before the High Court of Bombay, Nagpur

Bench in Writ Petition No. 1502 of 2011 filed by one M/s Rare Earth Minerals. The High Court while rejecting the challenge of the said party, found that the process of allotment of exploration licence was fair and in accordance with the provisions of the OAMDR Act. Copy of the same is marked as Annexure P-7. The said order was challenged before the Hon'ble Supreme Court of India in SLP (Civil) No. 5530/2013 and the Hon'ble Court vide order dated 31.03.2014 was pleased to dismiss the SLP and refused to interfere with the order of the High Court. Copy of the order dated 31.03.2014 is marked as Annexure P-8.

10. Learned senior counsel further submitted that the aforesaid process for granting explorations licences was also challenged by two separate parties (M/s. TI Slag India Pvt. Ltd. And M/s Trimex Sands Pvt. Ltd.) before the High Court of Madras and High Court of Andhra Pradesh at Hyderabad vide W.P. (C) No. 12333/2011 and Writ Petition no. 12835 of 2011 respectively. The High Court of Madras vide order dated 24.06.2011 and thereafter, vide order dated 11.12.2013 in Writ Appeal No. 1610 of 2011 refused to grant relief in the terms sought. Insofar as the petition before the High Court of Andhra Pradesh is concerned, the same came to be dismissed as withdrawn on 28.04.2017. Copy of the same is marked as Annexure P-9.

11. It is further submitted that after the dismissal of the petition before the High Court of Bombay and thereafter on refusal of the Supreme Court to interfere with the matter regarding selection, the Petitioner herein approached the Administering Authority for execution of the exploration licence which had been held back only owing to the matter before the High Court of Bombay, at the instance of third parties. Thereafter, it is learnt that IBM was keen on executing the exploration licences, and though pursuant to the grant there was nothing further to discuss, had erroneously sought permission from the Secretary, Ministry of Mines in a meeting to consider the execution of the exploration license. The then Secretary, however in a meeting on 14.07.2015 directed IBM i.e. Respondent No. 2 to consider ways to re-allocate the blocks which were already granted. This direction was in the teeth of the OAMDR Act, and clearly indicates the intention of the Respondent No. 1 in trying to wriggle out of the grants already made. Copy of the minutes of the meeting dated 14.07.2015 along with letter dated 06.08.2015 of Under Secretary, Ministry of Mines forwarding aforesaid minutes for compliance which obtained under RTI by the Director of the petitioner herein is annexed herewith and marked as Annexure P-10. Thereafter, in a meeting dated 18.11.2015 reasons were manufactured to

achieve the objective decided on 14.07.2015, and Controller General, IBM was issued directions on the erroneous presumption that application for grants were pending. It was also alleged that there was allegedly prohibition on mining activities within 12 nautical miles, when in fact there was no such absolute prohibition as claimed. Subsequently, a direction was issued vide letter dated 15.12.2015 to the IBM to implement the said direction of the Secretary taken in the meeting. True copy of the minutes of the meeting dated 18.11.2015 along with covering letter dated 15.12.2015 is annexed herewith and marked as Annexure P-11, which have been received under RTI by the director of the Petitioner. Subsequently, the petitioner came to know from a letter dated 01.06.2016 received from Federation of Indian Placer Minerals, Chennai that the Indian Bureau of Mines is in the process of cancelling the exploration licenses already granted to the petitioner and other successful applicants. Around the same time a news article was published in the Financial Express on 03.06.2016 (Delhi Edition) which affirmed news. In the said article, the then Secretary (Mines) has been quoted saying that *“We have sought suggestions from the law ministry whether we can extend the auctioning provision of the MMDR Act for offshore minerals as well considering the provision of Section 29 of the*

Offshore Minerals Act. ”

12. Accordingly, M/s. U.A. Minerals Pvt. Ltd., a sister concern of the petitioner herein, filed a Writ Petition No. 5734 of 2016 on 07.06.2016 for seeking a writ of mandamus to direct the Respondent to execute the deed for exploration licence granted vide order dated 05.04.2011. Respondent No. 1 and 2 were duly served and represented when notice was issued on 24.06.2016. The Petitioner herein was aware that similar petitions were filed in June 2016 before High Court of Bombay, Nagpur Bench and the respondents were served in advance in all the said petitions. However, in the background of the said petitions the Respondent No. 2 hurriedly drew up a draft annulment order so as to comply with the illegal direction as recorded in minutes of meeting dated 14.07.2015 and 18.11.2015. Thereafter, IBM approached respondent No. 1 for vetting of the draft annulment order however, when the file was put up to the Hon'ble Minister of Mines, it was duly recorded in the file that *“cancellation of exploration licenses granted by IBM does not require approval of the Hon'ble Minister. IBM may take appropriate decision on the issue after following due process.”*

13. Thereafter without affording any opportunity of hearing or issuing any notice to the petitioner herein or any other affected party the

Administering Authority passed order dated 30.06.2016 thereby seeking to annul the notification dated 07.06.2010 and as a consequence treat all subsequent action also as annulled.

14. Learned senior counsel further submitted that the said order was thereafter notified on 06.07.2016. The said order is void having been passed by the Administering Authority, who has no power to review the order of grant. Vide the said order *inter alia* it was sought to be alleged that no purpose would be served in granting the exploration licence as subsequently no production lease could be issued on account of the alleged prohibition under the CRZ notification dated 06.01.2011.

15. Mr. Mehta submitted that the granting of exploration licence and the process thereof is governed by the provisions of OAMDR Act, 2002 which came into force w.e.f. 15.01.2010. Thereafter, in terms of Section 4(a), the Controller General, IBM was appointed as Administering Authority on 11.02.2010. In terms of Section 10 (1) of the said Act, the administering authority was required by law to notify the blocks within six months of commencement of the Act and accordingly, the notification dated 07.06.2010 was issued identifying the blocks and inviting applications for exploration licence. The making of exploration licence and the receipt

thereof is governed by Rules 13 and 14 of OAMCR, 2006.

16. The grant of the licence is governing by Section 12 OAMCR, 2006. In terms of Section 12, r/w Rule 16(1) the power to grant or refuse the licence is vested solely with the Administering Authority, which is a statutory authority under the Act. The applications were accordingly made on 04.09.2010 for all minerals included in First schedule of the OAMRD Act and receipt for same issued on 14.09.2010, which shows that licence had been sought for minerals like ilmenite, rutile, zircon, etc. Learned senior counsel further submits that it is not in dispute that the process of selection was enacted under Section 12 as is evident from the judgment of High Court of Bombay at Nagpur dated 17.09.2013 which was upheld by the Supreme Court. The selection process was under taken by the administering authority with the help of experts from the IBM, GSI and NIO and the said process of selection and grant has attained finality in so far as the respondents herein are concerned in WP(C) No. 1052/2011 titled as *M/s. Rare (H) Minerals Pvt. Ltd. Vs. Union of India* wherein a Division Bench of High Court of Bombay at Nagpur on 17.09.2013 dismissed the challenge to the selection process. Ultimately, the SLP (C) No. 5530/2014 which was filed to challenge aforesaid order of the High Court of Bombay was also dismissed

by the Hon'ble Supreme Court on 30.03.2014. Therefore, the said procedure adopted for evaluating the applications as well as the grant of the exploration licenses attained judicial acceptance and finality from the Hon'ble Supreme Court of India.

17. Mr. Mehta, learned senior counsel further submits that order dated 30.06.2016 suffer from lack of jurisdiction inasmuch as the Administering Authority, has indirectly sought to review its order dated 05.04.2011, despite it having no such power under the Act. Admittedly, the process of grant of the exploration licence under OAMDR Act was concluded on 05.04.2011, when the order was communicated to the successful parties.

18. The execution of the exploration licence was merely a ministerial Act and would make no difference to the process of grant, which stood completed on 05.07.2011. To strengthen his augmented on the aforesaid issue, counsel for the petitioner has relied upon the case in ***Gujarat Pottery works Pvt. Ltd. vs. B. P. Sood: AIR 1967 SC 964*** whereby the Supreme Court has held as under:-

“6. The correctness of the orders challenged in appeal is questioned on various grounds. The first is that the mining lease in favour of the appellant is dated November 3, 1951 and therefore is not an 'existing mining lease' as defined in Rule 2(c) of the 1956 rules. The lease was executed on November 3, 1951 in execution of the decree for specific

performance. An agreement to lease was however executed on December 2, 1939. The question is whether the lease can be said to be granted in 1939 or in 1951. If it was granted in 1951, the contention for the appellant is sound, but if it is held to be granted in 1939, the contention fails and the lease would be liable to modification under the 1956 rules as Rule 2(c) defines an 'existing mining lease' to be a lease which has been granted before October 25, 1949.

7. The granting of a lease is different from the formal execution of the lease deed. The Mineral Concession Rules, 1949, made under Section 5 of the 1948 Act and hereinafter referred to as "the 1949 rules", deal with the procedure for the grant of mining leases in respect of land in which the minerals belong to Government, under Chapter IV. Rule 27 deals with applications for mining leases. Rule 28A provides that when a mining lease is granted the formal lease shall be executed within six months of the order sanctioning the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. It is really the sanctioning of the lease which amounts to the granting of the lease. Execution of the formal lease is only compliance with the legal requirements to make the grant legally enforceable."

19. Mr.Dhruv Mehta, learned senior counsel submitted that once in terms of section 12(2) of the OAMDR Act, read with Rule 69 of OAMC Rules 2006, the order is issued by the statutory authority, i.e., Administering Authority, it only has power to enforce the conditions of grant and cannot review or recall the order. However, it can cancel the grant for failure to comply with the conditions mentioned as under:

“12.2 The Administering Authority may, if there is any reasonable cause to believe that any person, to whom an exploration licence has been granted, has violated any undertaking given under clause (d) of sub-section (1), terminate the exploration licence.”

Rule 69:

“69. Cancellation of permit, licence or lease: (1) If the permittee, licensee or lessee or his executor, administrator or assignee at any time during the term of the permit, licence or lease:

(a) Fails to fulfil or contravenes, any of the terms, covenants and conditions contained therein, or

(b) Fails to use the offshore area covered by it for bonafide purpose for which it has been granted, or

(c) Use such offshore area for a purpose other than for which it has been granted, or

(d) Fails to comply with Indian laws and regulations, international conventions or treaties to which Government is a party and the laws and customs governing the High Seas including those relevant to environmental protection, pollution control including hazardous wastes, or

(e) Fails to abide by the lawful directives of the administering authority and Security agencies,

The administering authority may, where it is satisfied that the failure, contravention or use is such as cannot be remedied, may cancel the permit, licence or lease with forfeiture of whole or any part of the security deposit made under sub rule (1) of rule 11, sub rule (1) of rule 21, or rule 34, after serving a thirty days notice to such person and after considering the representation, if any, made by him and such cancellation shall be conveyed to the permittee, licensee or lessee by a registered letter and shall be effective from the date of its receipt.

(2) if the failure, contravention or use referred to in sub-rule (1), is considered to be of a remediable nature, the

administering authority shall give notice to such person requiring him to remedy the same within sixty days from the date of receipt of the notice and informing him that penalty as aforesaid may be imposed if such remedy is not provided within such period. The administering authority may, after considering the representation, if any, made by such permittee, licensee or lessee, impose the aforesaid penalty if such person fails to provide remedy within such period.

Provided that the failure on the part of such a person to fulfil any of the terms, covenants and conditions of the permit, licence or lease shall not give the administering authority any power to impose the aforesaid penalty in so far as such failure arises from the force majeure and if through force majeure the fulfilment of any of the terms covenants and the conditions of the permit, licence or lease is delayed, the period of such delay shall be added to the period fixed by the permit, licence or lease for the performance of any act. Explanation: For the purpose of these rules "Force majeure" includes an act of God, war, storm, lightening, explosion, fire, earthquake and any other happening which the permittee, licensee or lessee could not reasonably prevent or control.

(3) If reconnaissance, exploration or production operations are not carried out as per the scheme of reconnaissance or work programme for exploration or work programme for production, as the case may be, the administering authority may order suspension of all or any of the operations and permit continuance of only such operations as may be necessary to restore conditions as envisaged in the scheme of reconnaissance or work programme for exploration or work programme for production.

(4) If during term of a permit, licence or lease any part of the offshore area covered by it, is required for any public purpose, the administering authority, may upon one month's notice and after considering the representation, if

any, made by the person concerned, cancel such permit, licence or lease in so far as it relates to the said part of the offshore area subject to such restrictions and conditions as it may impose, and such cancellation shall be effective from the date of receipt of written communication by the permittee, licensee or lessee.”

20. It is further submitted that admittedly there has been no failure on the part of the petitioner to comply with the conditions and neither is it the case of the respondents that power under section 12(2) was being exercised. It is settled law that power of review or revision has to be specifically conferred by statute which is absent under the OAMDR Act. In fact under the OAMDR Act even the Central Government does not have the power of revision. In the absence of power of review or revision being conferred by statute, the Administering Authority became *functus officio* insofar as issue of grant was concerned. The order dated 30.06.2016 is attempt to annul the order of grant dated 05.04.2011 and amounts to review/recall of the said order dated 05.04.2011. This was impermissible in absence of statutory power permitting such review or recall or revision.

21. To strengthen the arguments on the aforesaid issue, the petitioner has relied upon case of ***Kalabharti Advertising vs. Hemant Vimalnath Narichania: (2010) 9 SCC 437*** whereby the Supreme Court has observed as under:

“2. Facts and circumstances giving rise to these appeals are that the appellant who is carrying out a business of advertisement hoardings within the city of Bombay approached the Society in 2001 for grant of permission to erect a hoarding admeasuring 40'x20' in its compound. The Society passed a Resolution in the year 2001, permitting the appellant to erect a hoarding of the aforesaid measurement. The appellant applied to the Municipal Corporation (hereinafter called the "Corporation") for grant of necessary permission for erecting the same. The said application was allowed by the Corporation vide order dated 4.8.2001. Subsequent thereto an agreement dated 5.9.2001 was executed between the appellant and the Society for a period of three years on various terms and conditions mentioned therein, and was given effect to. The said agreement was renewed after expiry of the period of three years in the year 2004 by the Society and ultimately vide Resolution dated 12.8.2007 for a further period of three years.

7. Being aggrieved, some of the members of the Society (Respondent Nos.1 to 5) filed Writ Petition No.2366 of 2007 before the Bombay High Court against the Society and the appellant for cancellation of the permission granted in favour of the appellant. During the course of hearing of the said writ petition on 4.2.2008, the Joint Municipal Commissioner (Education), Shri S.S. Shinde filed an affidavit to withdraw the earlier order approving the erection and for permission to pass a fresh order in accordance with law. The court accepted the said affidavit and permitted the Corporation to withdraw its earlier order with further liberty to pass fresh orders without giving an opportunity of hearing to the appellant or the Society as it had already been done while passing the earlier order. In pursuance of the said order, a fresh order was passed by the respondent- Corporation on 11.2.2008, not approving the erection of hoarding which had earlier been approved. Hence, these appeals.

12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr. and Harbhajan Singh v. Karam Singh & Ors.

13. In Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghi, AIR 1970 SC 1273; Maj. Chandra Bhan Singh v. Latafat Ullah Khan & Ors., AIR 1978 SC 1814; Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors., AIR 1987 SC 2186; State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors., (1998) 7 SCC 162; and Sunita Jain v. Pawan Kumar Jain & Ors., (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.

29. The High Court could not have allowed the Corporation to recall its earlier order and pass a fresh order, that too, without giving an opportunity of hearing to the appellant and the Society. Review is a statutory remedy. In spite of several queries put by us to the

learned counsel for the respondents, no provision for review under the statute could be brought to our notice. The court cannot confer a jurisdiction upon any authority. Conferring jurisdiction upon a Court/Tribunal/Authority is a legislative function and the same cannot be conferred either by the court or by the consent of the parties. Such an order passed by the High Court is without jurisdiction and, therefore, a nullity. Any order passed in pursuance thereof, also remains unenforceable and inexecutable. More so, the High Court could not have permitted the Corporation to pass an order without giving an opportunity of hearing to the appellant and the society. More so, the Corporation could not pass an order recalling the order passed by it earlier and reviewing the same without assigning any reason. It was obligatory on the part of the Corporation to explain as to what was the material on record on the basis of which the earlier order has been changed. Thus, the order passed by the Corporation stood vitiated for not recording reasons and violating the principles of natural justice. It establishes the allegations of legal malice made by the appellant against the Corporation.”

22. He also relied upon the case of ***Kuntesh Gupta vs. Management of Hindu KanyaMahavidyalaya, Sitapur UP& Ors: (1987) 4 SCC 525***, whereby the Supreme Court has held as under:

“1. Both the parties have made elaborate submissions at the preliminary hearing of the special leave petition filed by the appellant Dr. Smt. Kuntesh Gupta. The special leave is granted and we proceed to dispose of the appeal on merit.

2. The appeal is directed against the judgment of the Allahabad High Court dismissing the writ petition of the appellant on the ground of existence of an alternative

remedy under section 68 of the U.P. State Universities Act, 1973.

3. The appellant, Dr. Smt. Kuntesh Gupta, was appointed the Principal of Hindu Kanya Mahavidyalaya, Sitapur, U.P., on June 4, 1984 and was confirmed in the said post on May 4, 1985. In view of existence of two unrecognised rival Committees of Management the State Government, in exercise of its power under section 58 of the U.P. State Universities Act, appointed one of the Additional District Magistrates of the District the Authorised Controller of the Institution. The Authorised Controller was entitled to exercise all the powers of the Committee of Management.

4. It appears that the appellant, as the Principal of the Institution, and the Authorised Controller could not see eye to eye with each other and there were disputes and differences between them in regard to the management of the Institution. The differences between them reached to such a degree that the Authorised Controller by his order dated January 27, 1986 suspended the appellant. The order of suspension was, however, stayed by the Vice-Chancellor of the University on January 29, 1986. After hearing the appellant and the Authorised Controller, the Vice-Chancellor maintained the stay order. Thereafter, the Authorised Controller held an ex parte enquiry and by his order dated April 21, 1986 dismissed the appellant from service in exercise of the powers of the Managing Committee vested in him by Statute 17.06 of the Statutes of the University. Statute 17.06 provides for the giving of an opportunity of being heard to the teacher concerned and prescribes a procedure for enquiry which, according to the appellant, was not followed by the Authorised Controller. A copy of the said order of dismissal was sent to the Director of Education and to the Vice-Chancellor for approval, as required under Statute 17.06(3).

5. The Vice-Chancellor after hearing the parties, by her order dated January 24, 1987 disapproved the order of

dismissal of the appellant on the ground that the charges against the appellant did not warrant her dismissal from service and directed that the appellant should be allowed to function as Principal of the College forthwith.

6. After the said order was passed by the Vice-Chancellor reinstating the appellant and granting liberty to the Authorised Controller to impose lesser punishment on the appellant, if deemed necessary, the Authorised Controller without passing any lesser punishment, by his order dated January 27, 1987 allowed the appellant to function as the Principal, but put various restraints and constraints on her powers and duties as Principal and directed her to vacate the quarters in which she was residing. Feeling aggrieved, the appellant moved the High Court under Article 226 of the Constitution of India against the imposition of such restraints and constraints on her powers and duties as the Principal of the College. The High Court, after considering the fact and circumstances of the case, by its judgment dated March 10, 1987 quashed the said order dated January 27, 1987 of the Authorised Controller and directed him to allow the appellant to function as the full-fledged Principal of the Institution in accordance with law. The High Court further granted liberty to the Authorised Controller to go ahead with the imposition of minor penalty on the appellant in accordance with law and as provided in the said order of the Vice-Chancellor.

7. It appears that while the matter was pending before the High Court, at the instance of the appellant, the Vice-Chancellor passed an order dated March 7, 1987, that is to say, three days before the date of the judgment of the High Court, reviewing her earlier order disapproving the dismissal of the appellant from service. By the order dated March 7, 1987 passed on review, the Vice-Chancellor approved the order of the Authorised Controller dismissing the appellant from service on the basis of two reports of the Joint Director of Higher

Education, U.P., one dated August 1, 1986 and the other dated July 18, 1986, alleging great financial irregularities committed by the appellant. Although the said order dated March 7, 1987 was passed by the Vice-Chancellor on review three days before the delivery of the judgment by the High Court, no steps were taken by the Authorised Controller, who was a party in the writ petition, to bring to the notice of the High Court the said order of the Vice-Chancellor dated March 7, 1987.

11. It is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction. The Vice-Chancellor in considering the question of approval of an order of dismissal of the Principal, acts as a quasi judicial authority. It is not disputed that the provisions of the U.P. State Universities Act, 1973 or of the Statutes of the University do not confer any power of review on the Vice-Chancellor. In the circumstances, it must be held that the Vice-Chancellor acted wholly without jurisdiction in reviewing her order dated January 24, 1987 by her order dated March 7, 1987. The R said order of the Vice-Chancellor dated March 7, 1987 was a nullity.”

23. Learned counsel submits that in view of the aforesaid settled law, the impugned order is illegal and nullity. In fact knowing fully well that the Administering Authority did not have power to review /recall order dated 05.04.2011 an attempt was made to achieve indirectly what could not be done directly by seeking to annul the notification dated 07.06.2010. This action of annulling the notification dated 07.06.2010 and recall order of grant dated 05.04.2011 is nullity in the teeth of law settled in a catena of

decisions including but not limited to *Manipal University vs. Union of*

India: (2017) 15 SCC 664, whereby the Supreme Court has held under:

“10. Determination of a quota for NRI seats is beyond the domain of the second Respondent. The direction given by the second Respondent by its letter dated 08.02.2005 directing the Appellant not to make admissions in the NRI quota to the extent of 103 seats during the years 2005 to 2008 amounts to interfering with the quota. We do not agree with the submission made by Mr. Vikas Singh that the second Respondent has power to issue such directions in the interest of merit based selection as provided by Regulation 5 of the 1997 Regulations. It is no doubt true that the second Respondent has a duty to ensure merit based selections. However, no direction can be issued by the second Respondent interfering with the regulation or supervision of sub categories. The direction issued by the second Respondent by its letter dated 08.02.2005 is ultra vires and is liable to be declared illegal. Exercise of power by an authority has to be within the contours conferred by the statute and for the purpose of promoting the objectives of the statute. There is no express power conferred on the second Respondent in the Medical Council of India Act to interfere in allocation of quotas for sub categories.

11. In the facts and circumstances of this case it is not possible to hold that the second Respondent has power to issue directions pertaining to NRI quota even by reasonable implication. It is relevant to refer to a judgment of the House of Lords in Elizabeth Dowager Baroness Wenlock v. River Dee Co. [Elizabeth Dowager Baroness Wenlock v. River Dee Co., (1885) LR 10 AC 354 (HL)] (AC pp.362-63):

“But I cannot assent to the doctrine which was contended for by Mr. Rigby. Whenever a corporation is created by an Act of Parliament, with reference to the purposes of

the Act, and solely with a view to carry on these purposes into execution, I am of opinion, not only that the objects which the Corporation may legitimately pursue must be ascertained from the Act itself, but that the powers which the corporation may lawfully use in furtherance of these objects must either be expressly conferred or derived by reasonable implication from its provisions.

That appears to me to be the principle recognized by this House in Ashbury Company Carriage and Iron Co. Ltd. v. Riche [Ashbury Company Carriage and Iron Co. Ltd. v. Riche: (1875) LR 7 HL 653 (DC)] and in Attorney-General v. Great Eastern Railway Company [Attorney-General v. Great Eastern Railway Company (1880) LR 5 AC 473 (HL)]".

13. The 1997 Regulations obligate the second Respondent to ensure merit based selection to admissions in medical colleges. However, the second Respondent cannot issue directions interfering with the quota in the guise of exercising power under Regulation 5 of the said Regulations. It is settled law that what cannot be done directly, cannot be done indirectly. See State of Tamil Nadu and Ors. v. K. Shyam Sunder and Ors. (2011) 8 SCC 737 (Para 43).(emphasis supplied)

24. It is further submitted that the impugned order is also vitiated on account of *colourable exercise of power*. The minutes of the of the meeting dated 14.07.2015 (page 166-168 Sl. No.6) shows that the Secretary was seeking to place reliance on the amendment to the provisions of the MMDR Act, 1957 in the year 2015 to suggest that the exploration licences granted under OAMDR Act should be cancelled and re-granted through auction. The said directions are vitiated as under the provisions of the OAMDR Act,

2002 there is no provision to provide for grant by auction and no amendment as carried out in the MMDR Act has been carried out in the OAMDR Act. Secondly even under the MMDR Act, 1957 as amended, under section 10A of the MMDR Act all existing grants and vested rights on the date of amendment have been protected. The order dated 30.06.2016 seen in the background of the minutes dated 14.07.2015 clearly suffers from colourable exercise of power as the purpose of exercise of power was to achieve an object not provided under the OAMDR Act.

25. To strengthen the argument on the aforementioned issue, learned counsel for the petitioners has relied upon the case of ***Dipak Babaria and Anr. vs. State of Gujarat: (2014) 3 SCC 502*** whereby the Supreme Court has held as under:

“60. We may refer to Lord Bingham’s work titled ‘Rule of Law’ where in the Chapter on exercise of power, he observes that:

‘Ministers and public officers at all level must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably’.

He quotes from R v. Tower Hamlets London Borough Council ex p Chetnik Developments Ltd., which states:

‘Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely, that is to

say, it can validly be used only in the right and proper way which the parliament, when conferring it, is presumed to have intended.’ (AC p.872C)

61. It is well settled that where the statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. This proposition of law laid down in Taylor Vs. Taylor: (1875) 1 Ch D 426,431 was first adopted by the Judicial Committee in Nazir Ahmed Vs. King Emperor reported in AIR 1936 PC 253 and then followed by a bench of three Judges of this Court in Rao Shiv Bahadur Singh Vs. State of Vindhya Pradesh reported in AIR 1954 SC 322. This proposition was further explained in paragraph 8 of State of U.P. Vs. Singhara Singh by a bench of three Judges reported in AIR 1964 SC 358 in the following words:-

“8. The rule adopted in Taylor v. Taylor is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted....” This proposition has been later on reiterated in Chandra Kishore Jha Vs. Mahavir Prasad, Dhananjaya Reddy Vs. State of Karnataka and Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited.

69. Besides, the present case is clearly a case of dictation by the State Government to the Collector. As observed by Wade and Forsyth in Tenth Edition of Administrative Law:-

“If the minister’s intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious

grounds of bad faith or abuse of power”.

The observations by the learned authors to the same effect in the Seventh Edition were relied upon by a bench of three judges of this Court in Anirudhsinhji Karansinhji Jadega and anr. vs. State of Gujarat. In this matter the appellant was produced before the Executive Magistrate, Gondal, on the allegation that certain weapons were recovered from him. The provisions of TADA had been invoked. The appellant’s application for bail was rejected. A specific point was taken that the DSP had not given prior approval and the invocation of TADA was non-est. The DSP, instead of granting prior approval, made a report to the Additional Chief Secretary, and asked for permission to proceed under TADA. The Court in para 13, 14, 15 has held this to be a clear case of ‘dictation’, and has referred to Wade and Forsyth on ‘Surrender Abdications and Dictation’.

70. The respondent No.5 had the courage to state that the notings of the Secretaries were inconsequential. As a beneficiary of the largesse of the Government, respondent No.5 could say that, but it is not possible for us to accept the same. In Trilochan Dev Sharma vs. State of Punjab what is observed by this Court is relevant for our purpose: (SCC p.273, para 16)

“In the system of Indian Democratic Governance, as contemplated by the constitution, senior officials occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians, for carrying out commands having no sanctity in law.” A higher civil servant normally has had a varied experience and the ministers ought not to treat his opinion with scant respect. If Ministers want to take a different view, there must be compelling reasons, and the same must be reflected on the record. In the present case,

the Secretaries had given advice in accordance with the statute and yet the Minister has given a direction to act contrary thereto and permitted the sale which is clearly in breach of the statute.

26. It is further submitted that the intent to auction is also evident from respondent no.1's affidavit dated 26.09.2017 in W.P.(C) No. 5734/2016 at page 174, 184-185 (para 12 & 14) and news item dated 03.06.2016 (page 471-473).

27. It is submitted that the Administering Authority is the statutory authority under the provisions of the OAMDR Act and such authority having acted on the dictates of the Secretary (Mines), as evident from the minutes of the meeting dated 14.07.2015 and 18.11.2015 at page 167 of the petition. The order dated 30.06.2016 is vitiated in terms of law settled in a catena of decisions included in ***Dipak Babaria (supra)*** wherein the Supreme Court in para 69 observed as under:

“If the Minister's intervention is in fact the effective cause, and if the power to act belongs to a body which ought to act independently, the action taken is invalid on the ground of external dictation as well as on the obvious grounds of bad faith or abuse of power.”

28. It is further submitted that the impugned order is also a nullity on account of the fact that the Administering Authority under the OAMDR Act has acted beyond the power delegated to the said Authority by Parliament

under section 12 of the OAMDR Act. A statutory authority can only act within four corners of the statute.

29. On the aforesaid issue, counsel for the petitioner has relied upon the case of ***DDA vs. Joint Action Committee, Allotment of SFS Flats: (2008) 2 SCC 672,***

“65. Broadly, a policy decision is subject to judicial review on the following grounds :

(a) if it is unconstitutional;

(b) if it is de hors the provisions of the Act and the Regulations;

(c) if the delegatee has acted beyond its power of delegation;

(d) if the executive policy is contrary to the statutory or a larger policy.

75. Again, by reason of the office order dated 31.3.1999, the delegation of power in favour of various authorities was redefined. The Vice-Chairman could deal with delay or default even if it exceeds one year and six months. 22.8.1996 was prescribed as the cut off date for the purpose thereof. Price of the flat was to be calculated on the basis of either current price or old price whichever is higher. It was sought to be applied irrespective of the extent of delay. On what basis 22.8.1996 was taken to be the cut off date has not been disclosed. We would, however, assume that the said date was taken into consideration in view of the Resolution dated 27.8.1996.

76. An executive officer, in absence of any provision of a statute, cannot apply his own decision with a

retrospective effect. A delegatee is bound to act within the four corners of the delegation and not beyond the same.

77. Delegation of power in favour of an authority under a statute must also be tested in terms of the statutory provisions. No provision under the Act or the Regulations has been brought to our notice which empowers the delegatee to alter the terms and conditions of the contract with retrospective effect. The purported policy decision must, therefore, be tested not only having regard to the provisions of the statute but also having regard to clause 4 of the offer.

78. Current cost has been calculated upon computing 20% over and above the actual cost. A provision for surcharge had also been made in terms whereof a premium of 20% over the disposal cost was worked out on current cost for the SFS flats in South Delhi. Imposition of surcharge is subject to the condition that the real value in the market of DDA flats would be much more than it had been charging as per the cost formula. Parameters of computation of disposal price have been laid down which we have noticed supra. The authority having itself adopted a formula for computing the disposal cost, the same was binding upon the delegates. A delegatee cannot take any action contrary to or inconsistent with the factors laid down for computation of disposal cost as defined in Section 2(30) of the Act. Regulations 5 and 6 do not authorize the delegatee to apply a formula which was not contemplated by the Authority itself. If an Executive Authority in absence of any statutory provision cannot apply a decision with retrospective effect, the same would be ultra vires.

79. In Vice Chancellor, M.D. University, Rohtak v. Jahan Singh, this Court observed:

“The Act does not confer any power on the Executive Council to make a regulation with retrospective effect. The purported regulations, thus, could not have been

given retrospective effect or retro-active operation as it is now well- settled that in absence of any provision contained in the legislative Act, a delegatee cannot make a delegated legislation with retrospective effect.” [See also Ashok Lanka and Another v. Rishi Dixit and Others]

30. Learned senior counsel submitted that the power of pre-maturely terminate the exploration licence is provided under section 7 of the OAMDR Act and such power is vested only with the Central Government and not the Administering Authority, who has issued the order dated 30.06.2016. Further, section 7 power can be exercised only on the grounds mentioned therein and only after providing an opportunity of hearing. Admittedly, the said power was not exercised in the present case where law requires a thing to be done in a particular manner it should be done in that manner alone and in no other manner.

31. On the aforesaid issue, counsel for the petitioner has relied upon the case of ***Babu Vargese vs. Bar Council of Kerala: (1999) 3 SCC 422***, it has been held as under:

“31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any Statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor vs. Taylor which was followed by Lord Roche in Nazir Ahmad vs. King Emperor who stated as under :

"Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh & Anr. vs. State of Vindhya Pradesh and again in Deep Chand vs. State of Rajasthan. These cases were considered by a Three-Judge Bench of this Court in State of Uttar Pradesh vs. Singhara Singh & Ors. and the rule laid down in Nazir Ahmad's case (supra) was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a salutary principle of administrative law.

32. Learned counsel submits that Administering Authority in terms of section 12(2) read with Rule 69 of the OAMC Rules, 2006 has power to terminate the exploration licence only in case of failure to comply with the terms of the licence would arise only after execution of the licence deed which has not been done in the present case.

33. Mr.Mehta further submitted that arguments advanced by the petitioners on the issue of “no power to review” and “colourable exercise of power”, the order dated 30.06.2016 also stands vitiated on account of ‘legal malice’. The Hon’ble Supreme Court in ***Kalabharti Advertising (supra)*** has explained Malice as under:

“25. The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act

done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts. (Vide Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, Smt. S.R. Venkataraman v. Union of India, State of A.P. v. Goverdhanlal Pitti, Chairman and M.D., B.P.L. Ltd. V. S.P. Gururaja&Ors. and West Bengal State Electricity Board v. Dilip Kumar Ray.)

26. Passing an order for an unauthorized purpose constitutes malice in law. (Vide Punjab State Electricity Board Ltd. v. Zora Singh &Ors. and Union of India Through Government of Pondicherry & Anr. v. V. Rama krishnan &Ors.)

27. The instant case is required to be examined in the light of the aforesaid settled legal propositions.

28. Admittedly, Writ Petition No. 1132 of 2002, wherein the issue of examining the violation of guidelines issued by the Corporation had been raised and the High Court had passed certain directions which had been complied with and in pursuance of the same the Corporation passed an order dated 6.4.2004 that an order passed by it would be subject to the decision in the said Writ Petition No. 1132 of 2002 is still pending before the High Court. In such a fact-situation, if the respondent Nos. 1 to 5 were aggrieved by the order passed by the Corporation they ought to have filed an application for intervention and appropriate directions in the said writ petition. Undoubtedly, there could be no prohibition for filing a

fresh writ petition, but it would have been more appropriate for them to file an application in the said pending writ petition as it is necessary that contradictory orders must not be passed in similar circumstances.

29. The High Court could not have allowed the Corporation to recall its earlier order and pass a fresh order, that too, without giving an opportunity of hearing to the appellant and the Society. Review is a statutory remedy. In spite of several queries put by us to the learned counsel for the respondents, no provision for review under the statute could be brought to our notice. The court cannot confer a jurisdiction upon any authority. Conferring jurisdiction upon a Court/Tribunal/Authority is a legislative function and the same cannot be conferred either by the court or by the consent of the parties. Such an order passed by the High Court is without jurisdiction and, therefore, a nullity. Any order passed in pursuance thereof, also remains unenforceable and inexecutable. More so, the High Court could not have permitted the Corporation to pass an order without giving an opportunity of hearing to the appellant and the society.”

34. Learned senior counsel further argued that admittedly no notice or opportunity of hearing was provide to the grantees before passing of the impugned order dated 30.06.2016. A grant/vested right as conferred on 05.04.2011 in favour of the petitioners was being taken away by the order dated 30.06.2016 and without giving hearing of being heard. The statute under section 7(2) of OAMDR Act and Rules 69(1) & (2) of OAMC Rules provides for giving an opportunity of hearing before taking any action which

would prejudicially affect the rights of a person in whose favour there is a grant. In fact under the OAMC Rules, a right of hearing has also been conferred on a person who has merely made an application for grant under Rule 16(2) of OAMC Rules. In the present case, however, admittedly no hearing was provided to the petitioners in whose favour a vested right existed as the application has been allowed and the order of grant issued.

35. To strengthen the arguments on the aforesaid issue, counsel for the petitioner has relied upon the case of ***Baraka Overseas Traders vs. Director General of Foreign Trade: (2006) 8 SCC 103***, wherein Supreme Court has held as under:

“15. The DGFT was of the view that the license was granted to the appellant contrary to the Circular dated 31.3.1997 whereby the Licensing Authority was advised to issue advance licenses strictly as per the standard input output norms (SION) in respect of fish and marine products.

16. In our opinion, the view taken by the High Court as well as the DGFT was clearly erroneous in law and liable to be set aside. There is no dispute that the appellant was granted the advance licenses which were applied for. If there was any complaint that the licenses were not validly granted, then a show cause notice should have been issued to the appellant to show cause why the said licenses should not be cancelled, and thereafter cancellation order could have been passed. However, in the present case, neither was any show cause notice issued to the appellant nor the licenses were actually

cancelled.

17. If a license is granted to someone certain rights accrue to the licence holder, and deprivation of such right without a hearing is violation of natural justice. Before withdrawal of such right opportunity of hearing has to be given. In the present case, no such opportunity was given at all. The stand of the respondents is that grant of a licence does not confer any vested right in favour of the licensee if the licence has been obtained by misrepresentation. We do not agree. The grant of a licence certainly creates certain rights in favour of the licensee, and if the Licensing Authority was of the opinion that the licence was obtained by misrepresentation, then a show cause notice should have been given to the appellant, as well as an opportunity of hearing. In the present case neither an opportunity of hearing was given to the appellant nor was the licence cancelled.”

36. Learned senior counsel further submitted that the allegations pertaining to overlapping is nothing but an eyewash. In fact, the size of the blocks for exploration licenses are statutorily provided under section 10(3) of the OAMDR Act, 2002 as 5 minute longitude by 5 minute latitude, as no physical boundaries can be provided over sea/ocean waters. Admittedly, as the shoreline of the country does not run parallel to the longitudes, and in view of the physical features of indentations, etc., there is bound to be a certain degree of overlap regarding those blocks which are next to the shore. This however, does not mean that the licensee has any right over the onshore

areas. Even IBM was aware of this fact which is evident from the report dated 11.12.2017 of the Controller General, IBM and Administering Authority wherein it is admitted that the said reasoning in order dated 30.06.2016 was absolutely erroneous. The relevant extract of paras 8 & 9 of the said report dated 11.12.2017 are reproduced below:

“8. Regarding the issue of overlapping of some of the onshore areas, it is stated that in some instances there is an overlap with onshore areas and that too because the OAMC Rules, 2006 mandate that all blocks have to be of 5 min X 5 min and since the coastline is not in a straight line, it is imperative that for blocks adjoining the coast, some overlap will be there.

9. However, the OAMDAR Act only gives operating rights to any licensee/lessee over areas covered in the territorial waters only whereas any right over onshore areas can only be won under the MMDR Act and it is for this reason that while executing the deed for exploration license with M/s UA Minerals Pvt. Ltd., it has been specifically clarified in the accompanying letter dated 30.11.2017 (copy enclosed as Annexure-IV) that the granted under exploration license excludes all areas lying onshore to which OAMDR Act, 2002 does not apply. Relevant extracts of point 3 of the accompanying letter are reproduced hereinbelow:

“The area granted under reference in Schedule A of the exploration license deed excludes all areas lying in onshore to which the Offshore Area Mineral Development and Regulation Act, 2002 does not apply.””

37. It is further submitted that the order of grant dated 05.04.2011 itself provides that it shall be subject to such further terms as may be imposed.

Administering Authority under Rule 18(2) of OAMC Rules, 2006 has power to impose additional conditions while executing the exploration licence. Accordingly, even while granting the exploration licenses to M/s UA Minerals Pvt. Ltd., a condition was imposed that no rights would be accrued by the allottees over any onshore area covered under the exploration license which is at page 203-204. The relevant portion of condition no.3 of the deed for exploration license dated 30.11.2017 is reproduced herein below:

“The area granted under reference in Schedule A of the exploration license deed excludes all areas lying in onshore to which the Offshore Area Mineral Development and Regulation Act, 2002 does not apply”.

38. The aforesaid fact further removes any ambiguity over the said issue as a specific condition has been additionally imposed by the Administering Authority to restrict the areas that are granted under exploration licenses. And the same condition can also be imposed upon the petitioner. In fact, the parties while submitting their applications were *ad idem*, that if successful they would derive rights only in the offshore areas. The grants orders were also for offshore areas and the petitioner has never claimed any right over the onshore area.

39. On the other hand, Mrs. Maninder Acharya, learned Additional Solicitor General submitted that mining is governed by the provisions

envisaged under MMDR Act, 1957 and OAMDR Act, 2002. Onshore mining is governed by MMDR Act whereas Offshore Mining is governed by OAMDR Act and the rules framed thereunder. Genesis of the present matter lies in the fact that under Section 10(1) of OAMDR Act, the Administering Authority, i.e., the Controller General, IBM (appointed for the purposes of the OAMDR governed by the Ministry of Mines) notified 63 mineral bearing offshore blocks for grant of exploration licenses vide notification dated 07.06.2010. Pursuant thereto, 377 applications were received from 53 applicants out of which 16 applicants were shortlisted for grant of 62 exploration blocks. It is for the first time in the Country that Offshore blocks were notified for allocation of exploration licences. While evaluating the applications, Screening Committee (constituting members from NIO, Geological Survey of India and IBM) pointed out that many of the blocks notified overlapped with the onshore areas. However, the Administering Authority proceeded and issued order dated 05.04.2011 for grant of exploration licences. Therefore, the identification of blocks by then Administering Authority is itself vitiated and *void ab initio*. Learned ASG further submitted that Section 4(o) defines “operating right”. It means the right of holder of a reconnaissance permit, or an exploration licence, or a

production lease. So besides these instruments, Operating Rights cannot be granted vide other provisions under the Act. The act provides for only the operating right as defined above. In the present case, no Exploration Licence was granted to the party, and only a letter showing the intention to grant an Exploration Licence was issued.

40. Learned ASG further submitted that Section 5(4) of the OAMDR Act, 2002 says as under:

“(4) No operating right shall be granted or renewed otherwise than in accordance with the provisions of this Act and the rules made thereunder and any reconnaissance permit, exploration licence or production lease granted, renewed or acquired in contravention of the provisions of this Act or any rules made thereunder, shall be void.”

41. Further Section 10 (3) of the OAMDR Act says as under:

“(3) operating rights shall be granted in standard block of five minutes longitude by five minutes latitude and such grant may cover more than one standard block which shall be contiguous.”

42. Accordingly, the exploration blocks notified for grant of exploration licences vide notification 07.06.2010 overlap with areas other than offshore areas, to which OAMDR Act does not apply. Conjoint reading of these provisions clearly sets out that in case of overlapping of areas, if the areas which are under onshore is removed then the size of the block will be less

than 5 x5 and the same shall be in contravention of the provisions set out above and VOID and no operating rights can be granted in that case.

43. Section 6 of the OAMDR Act sets out the eligibility conditions for grant of operating rights. It says as under:

“The Central Government shall not grant an operating right to any person unless such person—

(a) Is an Indian national, or a company as defined in section 3 of the Companies Act, 1956 (1 of 1956); and

(b) Satisfies such conditions as may be prescribed:

Provided that no production lease for atomic minerals or prescribed substances may be granted without consultation with the Department of the Government of India dealing with the Atomic Energy.”

44. Section 12 of OAMDR Act deals with the Grant of exploration licence.

“(1) The administering authority may grant an exploration licence to any person who –

(a) is eligible under section 6 for grant of operating right;

(b) produces, to the satisfaction of the administering authority, evidence that such person possesses the requisite technical ability and financial resources to undertake exploration based on such scientific parameters, as may be prescribed;”

45. Learned ASG submits that a person has to fulfil the eligibility criteria under Section 6 for having an operating right in its favour. Further, the

applicant has to satisfy the technical capability to undertake the Exploration. The notification dated 07.06.2010 initially called for applications for exploration of all minerals but now on account of CRZ Notifications 2011 and 2017, mining of atomic minerals only can be undertaken in these blocks. In view of this, there is no possibility of exploration of other minerals as every exploration leads to Production Lease. Now the technical capability and statutory clearances required for atomic minerals is entirely different. Moreover, since applications for all minerals were invited, and with the coming of the CRZ notifications, the whole game has changed and hence the notification dated 07.06.2010 is of no relevance. Section 9 of the Act deals with power to close areas:

“(1) The Central Government may, in the public interest, by order in writing and communicated to the permittee, licensee or lessee, as the case may be, close any area either in part or whole, covered under any operating right, for the preservation of natural environment and prevention of pollution, or to avoid danger to public health, or communication, or to ensure safety of any offshore structure of platform, or for the conservation of offshore mineral, or for national security or for any other strategic consideration.

(2) Any area, either in part or whole closed under sub-section (1) and included in any operating right, shall, from the date of such order, be deemed to be excluded for the purposes of the operating right and the holder of the operating right shall not undertake any operation in the

area covered under such order from the date specified therein.”

46. Learned ASG further submitted that it is well within the powers of the Central Government, in public interest, close any areas covered under any operating right. Since Atomic minerals hold strategic importance especially monazite which is extracted along with other associated atomic minerals, the issue requires to be addressed in detail in both the offshore Act and Rules otherwise it may lead towards loss of strategic national mineral wealth from the offshore areas.

*“Section 20 of the OAMDR Act states:
Prevention and control of pollution and protection of
marine environment
(1) Every holder of the operating rights shall carry out
the operations authorised under this Act subject to the
provisions of this Act and the rules made thereunder and
any other law and the rules made thereunder, for the time
being in force for the prevention and control of pollution
and protection of marine environment.”*

47. It is further submitted that not only the provisions of OAMDR Act and the rules made thereunder but any other Act and Rules for protecting the environment also has to be abided by the licence holder. Atomic Minerals are valuable natural resources and also they release radioactivity which may affect the environment. In this case, hence the CRZ Notifications are relevant as those notifications aim to protect the marine environment and

these notifications prohibit mining except mining of atomic minerals. Thus, the restrictions under CRZ notifications, Act and Rules dealing with Atomic Minerals, their handling and storage etc. cannot be overlooked and have to be in conformity. So, even the MMDR and the rules framed thereunder i.e. Atomic Mineral Concession Rules, 2016 shall apply and operating rights of the holder shall be subject to the provisions of those acts and rules.

48. Learned ASG further submitted that Rule 18 of the OAMCR, 2006 stipulates the conditions to be fulfilled for grant of exploration licences. Proviso to Rule 18 (1) (iv) (b) of OAMC Rules, 2006 states that in case of discovery of atomic mineral during exploration activities in the offshore area, such minerals shall be included in the exploration license only with the approval of DAE. There is no mechanism available in the OAMC Rules, 2006 with respect to modalities of preparation of prospecting report nor Method of cross verification of prospecting report and data transfer to DAE as mentioned in Mineral (Conservation and Development) Rules, 1988/2017 for onshore minerals.

CRZ Notifications and mining in offshore areas

CRZ Notifications	Expansion of Area	Restrictions of Mining	Impact on the offshore blocks on the notified on 07.06.2010

CRZ, 1991	As per the CRZ, 1991 notification the coastal regulation zone was upto 500 meters landside from the High Tide Line (HTL) and land between High Tide Line and Low Tide Line (LTL).	At the time of the notification of the offshore blocks for exploration, the CRZ restrictions were mainly towards the landward side of the coast.	
CRZ, 2011	As per the CRZ notification, 2011 the coastal regulation zone extended from the existing area upto 12 Nautical Miles towards the sea side.	The CRZ Notification now includes 500 mts. Towards the land side and 12 NM towards the sea side.	All the notified blocks now come under the restriction of CRZ Area. Now only rare earth minerals can be mined in the blocks now coming into the CRZ area.
CRZ, 2017	CRZ, 2017 does not have any change in area as mentioned in the CRZ, 2011.	All the blocks notified continued to be under restrictions imposed on mining in CRZ area.	Mining of the only atomic minerals used for strategic purpose can be carried out in CRZ. The statutory clearances and technical capabilities required for mining of atomic minerals are different from that the requirement for other minerals.

49. Learned ASG submitted that it is clear from the aforesaid table that prohibitions on mining were there since 1991 Notification but under the CRZ Notifications 2011 and 2017, in order to protect the marine environment and eco system, limited mining only is permitted. However, the expanse of the CRZ areas has changed since the Notification of 2010 inviting applications. In 2010, CRZ 1991 was applicable and CRZ area was minuscule part of the blocks and major part of the blocks were open for mining as they did not attract CRZ restrictions as it can be seen from the Maps shown to this Court during the arguments. On perusal of the map, it is established at that time only visible ribbon line was covered under the CRZ. However, with the coming of CRZ 2011, most of the blocks fell under the CRZ areas thereby attracting restrictions but the Screening Committee did point out these overlaps.

50. Learned ASG states that the process for allocation of 62 offshore blocks was challenged in various High Courts of the Country and the Licence Deed in FORM K could not be executed within 90 days as prescribed under Rule 19 of OAMCR. Thereafter, the Administering Authority vide its order dated 30.06.2016 annulled/cancelled the notification dated 07.06.2010 with effect all the subsequent actions undertaken for grant

of the 62 exploration licenses vide order dated 05.04.2011 stood rescinded.

51. Mrs.Acharya, learned ASG submitted that the respondent has filed a review of the order dated 09.11.2017 passed by this Hon'ble Court in Writ Petition No. 5734/2016 in the case titled as '***M/s U.A. Minerals Pvt. Ltd v. Union of India and Anr.***' whereby the annulment order dated 30.06.2016 passed by the then Administering Authority was set aside solely on the basis of the statement of the then learned Additional Solicitor General and the answering respondent was directed to process the grant of exploration License pursuant to the order dated 05.04.2011 in accordance with law. The said review petition is pending for adjudication.

52. Learned ASG further submitted that annulment order dated 30.06.2016 was passed mainly on two grounds: (a) Overlapping (b) CRZ restrictions. The maps clearly indicate that the blocks overlap with the onshore areas which is outside the purview of the OAMDR Act. And the blocks cannot be cut or divided as it shall attract the provision of Section 10(3) and thus be void as it will not correspond to 5 x 5 specifications. At that time of inviting applications by way of notification dated 07.06.2010, most of the areas were not falling under the CRZ. And now with coming into effect of CRZ, 2017, Atomic Mineral mining only is permissible.

Mining of 'Atomic mineral' was not envisaged at that time and the test was never of Atomic minerals. Applications were called and processed for all minerals. Now for 'atomic minerals', as per CRZ 2017, the qualifications in terms of technical capabilities to explore atomic minerals would be different. The applicants were evaluated on the basis of this criteria. Also the approvals required for atomic minerals is different. Hence the rule of game itself is changed and in the present scenario, the whole process has to be evaluated afresh.

53. Learned ASG submitted that learned counsel appearing on behalf of the petitioner argued that order for grant dated 05.04.2011 has created vested right in their favour. As already elaborated above, under Section 4(o) of the OAMDR Act, 'operating rights' means holder of 3 instruments only and in the present case none has been issued in favour of the petitioners and thus, no vested rights has accrued. Order for grant is only an in-principle approval, subject to the conditions to be fulfilled under the notification dated 07.09.2010. The same are reproduced hereunder:

"9. The grant of exploration licence in the offshore blocks as contained in the schedule annexed to any selected applicant shall be subject to the following conditions:

I) Prior clearance from the Ministry of Environment and Forest under Environment Impact Assessment, 2006, and coastal Zone regulations notified under the Environment

(Protection) Act, 1986 if applicable shall be obtained by the selected applicants;

II) The areas already granted under petroleum exploration license for oil and gas shall not be available for grant of exploration licence under this notification (applicants are advised to obtain details of the area already under Petroleum Exploration Licence from Directorate General of Hydrocarbons);

III) Prior approval of the Ministry of Home Affairs shall be obtained before the employment by a selected applicant;

IV) Prior approval of Ministry of Defence and Ministries of Agriculture, Dairy and Fisheries, and Ministry of Shipping, Road Transport and Highways shall be obtained by the selected applicant;

V) Applications shall be made for a minimum standard block of five minutes longitude by five minutes latitudes or multiples thereof, which shall be contiguous.

Further the order for grant in its concluding para stated that:

This order is being issued without prejudice to any other act, rules, notifications, honourable court orders/directions applicable in this regard.”

54. Learned ASG Submitted that the language of the order itself states that it is subject to the other acts rules etc. and in the light of CRZ notifications and restrictions thereunder, it could not have been processed. The order for grant only qualifies the petitioner to have the deed executed as it is only a stage in the execution of licence deed, which is granted only after fulfilling the terms and conditions stipulated. Admittedly, no clearance has

been obtained by the petitioners. Even otherwise, there is no concluded contract between the parties.

55. To strengthen the above argument, learned ASG has relied upon the case of ***Rishi Kiran Logistics Pvt. Ltd. Vs. Board of Trustees of Kandla Port Trust and Ors. (21.04.2014 – SC): MANU/SC/0370/2014 held;***

“34. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of the 'Rules and Procedure for Allotment of Plots' in question issued by Kandla Port Trust. As per clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with, specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of the bidder for allotment of land. Such a right to reject the bid could be exercised 'at any time without assigning any reasons thereto'. Clause 13 relates to 'approvals from statutory authorities', with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/ Competent Authority. In view of this material on record and factual position noted in earlier paras we are of the opinion that observations in the case of Dresser Rand S. A. v. M/s. Bindal Agro Chem. Ltd. & Anr.; MANU/SC/0151/2006: AIR 2006 SC 871, would be squarely available in the present case, wherein the court held that a letter of intent merely indicates a parties intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract.

It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from

its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. When the LOI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.”

56. In ***Commissioner of Municipal Corporation, Shimla v. Prem***

Lata: (2007) 11 SCC 40, it has been observed by their Lordships:

“39. It is now well-settled that where a statute provides for a right, but enforcement thereof is in several stages, unless and until the conditions precedent laid down therein are satisfied, no right can be said to have been vested in the person concerned. The law operating in this behalf, in our opinion is no longer res integra.”

37. In ***Savita Rawat and Ors. vs. State of M.P. and Ors. (11.03.2016 –***

MPHC): MANU/MP/0227/2016, it has been held that:

*57. Proviso under Section 5(1) as it stood prior to its substitution w.e.f. 12.1.2015 provided for “that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government”, which when read with **Rule 31 of the Rules 1960**, contemplates passing of an order for grant of such lease. Thus, an order of grant of lease is a condition imperative as would protect such applicants. [Rule 31 of MCR 60 uses wordings as Rule 19 OAMCR]*

58. The second part of clause (c) of sub-section (2) of Section 10A of Amendment Act, 2015, would govern the cases pertaining to non-scheduled major minerals wherein the grant of previous approval is not a condition imperative. Such cases, as is evident, were governed by unamended Section 11 of MMDR Act which provided for that “where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person”. However, evident it is from unamended sub-section (1) of Section 11 of MMDR Act that fulfilment of four conditions were still necessary before the preferential right is considered and these are those very conditions which are brought under clause (b) of sub-section (2) of Section 10A of Amendment Act, 2015: Thus, even with the issuance of letter of intent, unless the four condition under sub-section (1) of Section 11 of unamended Section of MMDR Act are fulfilled, there is no accrual of right as could be protected under clause (c) of subsection (2) of Section 10A.

In the case on hand, as already observed, unless a deed is executed for reconnaissance permit/ prospecting license/mining lease as contemplated under Rules 7A, 15

and 31 of 1960 Rules respectively, neither the possession nor the permission of operating reconnaissance permit/prospecting license /mining lease is granted. Thus, the execution of deed for reconnaissance permit/prospecting license/mining lease is a condition precedent to avail the grant and treated as eligible as per the amended provision.”

57. In ***Dresser Rand S.A. vs. BINDAL Agro Chem Ltd. and Ors.***

(12.01.2006 – SC): MANU/SC/0151/2006, it has been held that:

34. It is now well-settled that a Letter of Intent merely indicates a party's intention to enter into a contract with the other party in future. A Letter of Intent is not intended to bind either party ultimately to enter into any contract. This Court while considering the nature of a Letter of Intent, observed thus in Rajasthan Co-operative Dairy Federation Ltd. V. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. AIR1997SC66

.. The Letter of Intent merely expressed an intention to enter into a contract. There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."

58. Learned ASG further argued that the petitioners have relied upon the judgment of the Hon'ble Supreme Court in ***Bhushan Power and Steel Limited v. S.L. Seal and Ors.***: (2017) 2 SCC 125 citing that the judgment in Savita Rawat's case (supra) stands overruled. In this regard, she submitted

that in that case all the clearances had been obtained and only the contract was to be executed which is not so in the case at hand.

59. Learned ASG further submitted that the execution action cannot be hampered as has been held in ***Pallava Granite Industries (India) Pvt. Ltd.***

V. Union of India: 2006 (11)SCALE 511 wherein the Hon'ble Court has observed as under:-

“The Apex Court dismissed the Special Leave Appeals on the ground that no mining lease was granted to the appellants and there was no crystallization of any rights in favour of the appellants and therefore, there was no bar for reserving the land for exploration to public sector corporation and undertaking. In the above case, even the decision to grant mining lease in favour of the appellant was taken and the Apex Court held that such a grant cannot fetter or hamper future executive action/decision to revoke the grant in public interest. It was further held that when the State Government detected an important source of revenue in the form of granite reserve and even at one point of time the State Government decided to exploit the granite through private parties, later on with globalization the State Government decided to go for global tenders since the above course of action was open to the Government, but ultimately it was decided to exploit the granite through State of Andhra Pradesh Mineral Development Corporation, it was found that earlier decision of exploitation of granite through private parties cannot come in the way of decision of the State Government to exploit and develop reserved area of granite through APMDC.”

60. She submitted that since no vested rights have accrued to the

petitioner(s), therefore, there is no violation of principles of natural justice. Notification dated 07.06.2010 itself has been annulled/cancelled thereby cancelling the whole process of grant of exploration licences. Rule 16(2) of OAMCR, providing for opportunity of being heard in case of refusal to grant or renewal of an exploration licence does not apply to the present case as it was not that individual applications were refused as envisaged in Rule 16.

61. On the argument of the petitioner that the annulment was malice in law. Learned ASG argued that the whole process considering the CRZ restrictions and Overlapping issue was cancelled and no Licence has been given to anyone else. (except for UA Minerals and the same is pending adjudication under review).

62. Learned ASG further submitted that notifications can be withdrawn in public interest/change of policy. In *MP Mathur and Ors. (supra)* the Hon'ble Supreme Court held that once the public interest is accepted as the superior equity which can override individual equity, the principle would be applicable. If there is a supervening public equity, the Government would be allowed to change its stand and has the power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such

withdrawal. Merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification, it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

63. In *Sales Tax Officer and Ors. vs. Shree Durga Oil Mills and Ors.* (15.12.1997 – SC) : MANU/SC/0879/1998, it has been held that:

“18. The question of applicability of the doctrine of promissory estoppel against the Government has been considered in a number of cases by this Court.

19. In the case of Kasinka Trading and Another v. Union of India and Another, 1994ECR637(SC), a notification was issued by the Customs Department under Section 25(1) of the Customs Act in public interest exempting certain goods from basic import duty and specified the date upto which it will remain in force. Prior to expiry of that date another notification was issued withdrawing the exception and imposing customs duty on import of such goods. A challenge was made to withdrawal of the notification by some importers who claimed that they had entered into agreements on the basis of the earlier notifications. It was held by this Court that the Government had issued the first notification in public interest for a certain period. But it was felt later that in public interest, exemption should not be continued even though that period had not expired. Therefore the Government withdrew it. It was held that when exemption was granted under statutory power, it was implicit that it

could also be rescinded or modified in exercise of the same power.

20. In the instant case, Section 6 of the Orissa Sales Tax Act specifically lays down that the exemption notification issued under that Section can be withdrawn at any point of time.

21. Moreover withdrawal of notification was done in public interest. The Court will not interfere with any action taken by the Government in public interest.

Public interest must override any consideration of private loss or gain.

22. The view taken by its Court in Kasinka's case was reiterated by a Bench of three-judges in the case of Shrijee Sales Corporation & Anr. Vs. Union of India (1997) (89)ELT452(SC). It was laid down in that case that the determination of applicability of promissory estoppel against the Government hinges upon balance of equity or public interest. In case there is a supervening public equity, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Once public interest was accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period had been indicated for operation of the promise. In that case, a notification was issued exempting customs duty on PVC. By a second notification the exemption was withdrawn. The Court held that the facts of the case revealed that there was a supervening public interest and the Government was competent to withdraw the first notification without giving any prior notice to the respondent.

23. In the instant case, it has been stated on behalf of the

State that Various notifications granting sales tax exemptions to the dealers resulted in severe resource crunch. On reconsideration of the financial position, it was decided to limit the scope of the earlier exemption notifications issued under Section 6 of the Orissa Sales Tax Act. Because of this new perception of the economic scenario of the State, the scope of the earlier notifications had to be restricted. They were first abrogated altogether on 20.5.1977. Thereafter, it was decided to grant exemption at a limited scale.

24. In our opinion, the plea of change of policy trade on the basis of resource crunch should have been sufficient for dismissing the respondent's case based on the doctrine of promissory estoppel."

64. In ***B. Kumaragowda and Sons vs. Union of India and Ors.***

(01.11.2012 – DELHC): MANU/DE/5342/2012, it has been held that:

"19. We are fortified in our views by the observations of the Supreme Court in Pallava Granite Industries (India) (P) Ltd."s case (supra). In the said case, the matter pertained to grant of mining lease and it was observed that in scrutiny of administrative or executive function, there has to be flexibility and play given for exercise of power / discretionary power as long as it is in public interest. Thus, the right of the Government to employ its own agency by cancelling its decision to grant contract to private parties was upheld and, in fact, it was observed that a grant cannot fetter or hamper future executive action / decision to revoke grant in public interest. In the context of Section 17A(2) of the said Act, while examining the reserving and demarcating mining areas for development through State Government agencies requiring approval of the Central Government, it was observed that the approval in that case was not a conditional approval. The Supreme Court relied upon the

observations made in Antonio Buttigieg v. Stephen H. Cross, AIR 1947 PC 29, which held that a Government cannot, by contract, hamper its freedom of executive action in matters which concern the welfare of the State. Similarly, the Supreme Court referred to, with approval, the observations made in Edward Keventers (Successors) (P) Ltd. v. Union of India, AIR 1983 Del 376 that every grant has to be subject to any future executive action, which must be decided by the needs of the community and that the Government cannot, by contract, hamper its freedom of action in matters concerning the welfare of the State. Distinction was, thus, drawn between creation of a right or interest in the property as against transfer of such right or interest.”

65. Further the Hon'ble Supreme Court in the matter of ***Threesiamma Jacob and Ors. vs. Geologist, Dptt. of Mining and Geology and Ors.***: AIR 2013 SC 3251 has observed that even with regard to the minerals which are greatly important and highly sensitive in the context of the national security and also the security of humanity like uranium – the Atomic Energy Act, 1962 only provides under Section 5 for prohibition or Regulation of mining activity in such mineral. Under Section 10 of the Act, it is provided that the Government of India may provide for compulsory vesting in the Central Government of exclusive rights to work those minerals.

66. Learned ASG submitted that in the mining and mineral separation of beach sand, the heavy minerals are separated and monazite rich tailings are stockpiled as per Atomic Energy Regulation Board (AERB) guidelines for

future processing and/or acquisition by DAE, as prescribed in Rule-7 of the AMCR, 2016. At present, IREL is the only company engaged in mining and processing of monazite to recover rare earths, thorium and uranium. Beach Sand Minerals has been notified on 21.08.2018 by DGFT as a canalized item to be exported only by Indian Rare Earths Limited (IREL), a Government of India undertaking. Mining leases were granted to Parties in Onshore areas under MMDR Act. Several complaints were received by the State Governments about the illegal mining. Consequently, the State Government of Tamil Nadu constituted a Special Team to look into the matter and the Team submitted its report to the State Government pointing out various violations in mining i.e. illegal mining of BSM. All applications of mining leases in Tamil Nadu have been suspended subsequent to various investigations.

67. Learned ASG argued that there were problems from the very beginning with respect to the whole procedure of Offshore Mining which got further complicated after coming into effect of CRZ 2017. Even the CBI, on the matter of alleged irregularities in award of order for grant of Exploration Licences further enquired the matter in relation to grant of exploration

licences based on the selection process adopted for short listing the companies. The CBI, in its concluding para observed that:

*“It was found that no clear cut guidelines were formulated for shortlisting of the applicants and that the criteria for selection of the applicants for issuance of exploration licences was fixed after receipt of the applications, **which is a serious procedural irregularity.** It was also found that the Administering Authority carried out the entire process without doing adequate preparation before issuance of notification calling applications for the exploration licences. They also did not resort to get the DPR through an international consultant. This exercise was being done for the first time in India, and the above mentioned measures would have resulted in more systematic and transparent process in the selection of applicants for exploration licences.”*

68. Accordingly, during the enquiry it was also surfaced that Ministry of Mines had kept the entire process in abeyance and that the Ministry was considering the re-evaluation of the applications in accordance with the criteria which is to be fixed by a committee consisting experts from various fields. From the remarks of the CBI report, it is evident that the evaluation of the applications were not proper and the Ministry had kept the entire process in abeyance. Hence, the grant order issued to the applicants on the basis of recommendation of the Screening Committee vide order dated 05.04.2011 cannot be considered valid.

69. It is also argued that the petitioners companies were not in existence

at the time of issuance of notification 07.06.2010. Five Companies which applied for grant of exploration licence had the common Director, having same address but registered under the Companies Act under different names being the group companies and were allotted 28 blocks out of 62. They had not submitted proper supporting documents on the basis of which the marking was done in the evaluation sheet. Further, no document indicating the sanctioned line of credit from any financial institutions/Banks had been provided specific to the company.

70. Learned ASG further submitted that as per the notification available in the website of Ministry of Corporate Affairs, the net worth is negative for each of the companies during the last financial year, i.e. on 2016-17; the companies as on date are not financially capable of undertaking any activities/business operations. The petitioners neither had any previous experience of Exploration in Offshore Mining Blocks nor any technical capability to carry out such work. This is in utter disregard and violation of the condition prescribed under Section 12 of the OAMDR Act that preference would be given to those companies who either required mineral for use in an industry owned by them or have taken sufficient steps to set up such an industry. Further, according to Rule 18(1) (xii) of the OAMCR in

case foreign companies are to be deployed to undertake exploration operations prior approval from the Ministry of Defence has to be obtained to ensure appropriate security safeguards. While applying for the grant of Exploration licence under FORM G, the petitioner(s) have stated in para 2 that it has signed an MOU with Williamson & Associates Inc., a USA based company for technical tie-up. It has not sought approval from the Ministry of Defence. Further of U.A. Minerals and Williamson & Associates has been annexed in all the applications filed by the petitioners, MOU of U.A. Minerals and Williamson & Associates has been annexed.

71. Learned ASG argued that the Government is competent and has power to take any decision in the public interest. Therefore, this Court may not interfere in the decision taken by the respondents. Accordingly, the writ petitions are deserve to be dismissed.

72. I have heard learned counsel for the parties in length and perused the material on record.

73. In case of *State of Orissa vs. Binapani Dei: AIR 1967 SC 1269* whereby Supreme Court has held that any order is likely to cause prejudice to any person, such person is entitled to a hearing. Accordingly, learned counsel submitted that the petitioner in whose favour a grant order had been

issued has been prejudiced by order dated 30.06.2016 by the respondents by not providing hearing before passing the impugned order. The impugned order is also vitiated as the objective to cancel was predetermined as evident from minutes dated 14.07.2015 when IBM was asked to try and cancel the grants so that the exploration licence would be available for re-grant. Such an act of pre-mediation is also violative of the principles of natural justice.

74. In addition of above, only reasons mentioned in the impugned order dated 30.06.2016 to annul the notification dated 07.06.2010 and all subsequent actions thereto including the order of grant dated 05.04.2011 are as under:

- a) Alleged overlap of the exploration blocks as identified with certain onshore areas; and
- b) The alleged prohibition of all mining activities within CRZ areas in terms of CRZ notification dated 06.01.2011.

75. The issue of overlapping of some blocks is nothing but an afterthought and the reasons have been manufactured to somehow cancel the grants so that the same can be re-allocated/re-granted. The same is evident from the following facts:

- i. The notification inviting applications was issued on 07.06.2010 with prior approval and consent of Controller General and various competent authorities and departments of Government of India. The issue of overlapping was never raised by any such authority.
- ii. In fact, a committee of experts had been constituted for the purpose of selection of successful applicants and such committee had members from IBM, GSI and NIO who also recommended the granting of such blocks without finding any fault therein including of the alleged overlapping.
- iii. The order of grant was issued on 05.04.2011 and the said authorities defended the action of grant before various High Courts viz. Chennai, Andhra Pradesh (Counter of UOI and IBM page 285-293) and Bombay (Nagpur Bench) (counter of IBM page 435-452) and rather vehemently defended the issue of overlapping raised by the writ petitioners before the Andhra Pradesh High Court. They never found any such illegality for a period of over 5 years since the issue of notification dated 07.06.2010.

iv. The fact that the said reason is manufactured one is also evident from the minutes dated 14.07.2015 at pages 167-168 wherein though IBM itself was asking for proceeding with execution of the exploration licenses without finding any fault, however, the then Secretary, Ministry of Mines directed that IBM should consider some process by which the present grants could be cancelled and the blocks put up for re-grant. In pursuant to such directions, reasons were manufactured. In fact, writ petitions had been filed before this Court in W.P.(C) No. 5734/2016 as well as before the High Court of Bombay in W.P.(C) No. 3282//2016 and W.P.(C) No. 3625/2016. Notice by this Court was issued in the month of June 2016 and the Bombay High Court issued notice on 15.06.2016 wherein petitioners were seeking a mandamus/direction to IBM to execute the exploration licenses pursuant to grant. After waiving notice by IBM and Union of India on 15.06.2016, the impugned order dated 30.06.2016 was issued in a hurried manner with a predetermined approach.

76. The very fact that issue of overlap is an afterthought and a malafide, reason is also evident from the counter affidavit filed by IBM before the

High Court of Andhra Pradesh in W.P.(C) No. 12835/2011 wherein while defending the issue of overlap as alleged in the writ petitions mentioned above, IBM in its counter affidavit specifically stated that under Rule 43(3) of the OAMC Rules, 2006, no mining activity in any way is permissible within one nautical mile of the shoreline and therefore, even if there was an overlap, no rights would be vested and thereby the allocation of blocks, with some overlap cannot be held to be beyond the jurisdiction of the Administering Authority or in violation of the provisions of the OAMDR Act.

77. On the stand of the respondents that the order is silent on the number of blocks that actually overlap the onshore areas and 99% of the blocks were overlapping. However, on perusal of the impugned order itself shows that only some of the blocks overlap with onshore areas wherein it is mentioned as under:

“Whereas it has come to the notice of the Administering Authority that some of the exploration blocks notified for grant of offshore exploration licences vide notification dated 07.06.2010 overlap with areas other than offshore areas.....”

78. Thus, the case of the respondents is absolutely false and said issue is without affidavit with an attempt to mislead this Court.

79. During the arguments, learned ASG contended that due to the overlap, the grants allegedly stand vitiated as under section 10(3) read with section 5(4) of the OAMDR Act, blocks of only 5 x 5 minutes can be granted and as such if area of overlap is excluded, the block will not be of 5 x 5 minutes. Learned counsel for the petitioner submitted that the said contention is absolutely erroneous and absurd. Section 10(3) merely fixes the size of the blocks. Merely being granted a block does not mean that the licensee can work all the areas in the said block. For example, under section 9, the Central Government has power to close any area in part or whole from being worked. Similarly, under Rule 43(3) of the OAMC Rules, when undertaking mining a distance of one nautical mile has to be maintained from the sea shore, though the block may be abutting the sea shore. Therefore, if for the reasons stated in section 9, the Central Government closes only a portion of one block, or obligation under section 43(3) of OAMC Rules is complied with, it would not mean that the size of the block is affected in any manner or that the block is no longer 5 x 5 minutes. Any such interpretation as is being sought by the respondents would make the entire act unworkable as every time power under section 9 or a condition under Rule 18 or 43(3) is enforced, the same would then make the grant

invalid, if the argument of the learned ASG is to be accepted. Such a construction would result in absurdity. Learned counsel for the petitioner submitted that the OAMDR Act, under section 10 introduces standard block sizes and measurements as there are no physical boundaries on the sea surface and as such area can only be identified by longitudes and latitudes. It is settled law that an Act should be interpreted as a whole and interpretation which leads to absurdity is to be avoided at all costs.

80. On the issue of prohibition on mining in CRZ areas and CRZ notifications, learned senior counsel for the petitioner submitted that the petitioner has applied and was granted 'exploration licence' on which admittedly there is no prohibition under the CRZ notification and exploration for all minerals can be carried out. The impugned order however seeks to allege that there is a prohibition on all mining activity in CRZ areas and, therefore, no purpose would be served in granting the exploration licenses as subsequently no production leases can allegedly be granted. The issue of prohibition on mining does not arise at the present stage as the petitioner would, at its own cost, only be exploring for the kind of minerals that are available and which can be commercially exploited, whereafter it would submit a report to the Government of its findings. Admittedly,

exploration operations under section 4(e) are different and distinct from mining which is defined as “production operation” under Section 4(s) of the OAMDR Act. As the issue pertaining to mining would arise only after exploration is completed and when the petitioner applies for a production lease, but at this stage the respondents cannot pass order by pre-empting what may or may not transpire in future. The respondents, have throughout their arguments as well as on affidavits admitted that they would regrant the blocks, preferably through auction. This itself amounts to an admission that there is no prohibition in law on the issue of mining within the CRZ or else then how can they grant the blocks when on the one hand they have cancelled the blocks on the ground that no mining can be undertaken. The entire case of the respondent’s is full of contradictions and the pleas taken are mutually destructive. Even otherwise the said reasoning is in the teeth of the CRZ notification dated 6.1.2011 which actually, does not impose an absolute prohibition on mining. The said notification specifically carves out an exception **permitting the mining of rare minerals** not found elsewhere outside the CRZ area. Further clause 4(ii)(g) which provides for permissible activities within CRZ also reflects that mining of rare mineral is allowed. In the same manner para 8 III (iii) (c) and para 8.IV (b) which are at page 242

specifically provide for mining of rare mineral in CRZ III and CRZ IV. The grants of the petitioner herein fall within CRZ IV and page 242 reflects that mining would be permitted within the said region.

81. Admittedly, the applications for grant of exploration licenses were made for seeking permission to explore the availability of, amongst other minerals, **all the minerals as mentioned in the First Schedule of the OAMDR Act, 2002** including atomic minerals. The First Schedule of the aforementioned Act specifically mentions minerals such as ilmenite, rutile, zircon, leucoxene, which are admittedly, rare minerals / atomic minerals not found outside the CRZ, as has already been certified by GSI in its report titled “Factsheet Offshore Mineral Exploration and Exploitation within CRZ”. The Geological Survey of India / Respondent no.3 is an expert agency under the Ministry of Mines and has been in existence for more than 155 years. GSI under reply to questions under RTI, has once again affirmed vide reply dated 26.09.2016” (which is at age 251-253) that the aforesaid minerals are not available outside the CRZ. Therefore, the entire basis of the impugned order dated 30.06.2016 viz. that allegedly mining within CRZ is not permissible, is erroneous. The said reasoning also suffers for non-application of mind in as much as at present, the stage is only of exploration

and no mining operations can be undertaken under an exploration license as stated above. Unless exploration is undertaken, the category, kind, quantity etc of minerals available cannot be known. The purpose of exploration is therefore, to scientifically prove the existence of minerals and its availability in quantities which can be commercially exploited, if economically viable. The order dated 30.06.2016 therefore, amounts to putting the cart before the horse in as much as unless and until exploration is undertaken and the exploration reports disclose that there were no rare materials within the blocks granted, the alleged reasoning pertaining to prohibition on mining could not have been arrived at. In any event, exploration is not prohibited even in CRZ areas.

82. In addition to above, the respondent no.1 i.e., Ministry of Mines in its affidavit dated 26.09.2016 filed before this Court in WP No. 5734 of 2016 has admitted on oath that “limited mining was permitted in offshore areas falling within CRZ limits as per CRZ notification dated 26.09.2017 (page 174 @ 175 / para 3.1 – 3.2). Relevant extract of the said affidavit is reproduced herein below:

*“3.2 From the above it emerges that in the CRZ area only **limited mining is permitted** and that too for such “rare materials” which are not available outside the CRZ area.....”*

83. Moreover the Adminstrating Authority itself vide report dated 11.12.2017 (pages 192 @ 194/ paras 1-5) has also admitted that the reasoning in order dated 30.06.2016 was both misconceived and contrary to law. The relevant extracts of the same are reproduced below:

“1. Notification dated 07.06.2010 and subsequent grant of exploration licenses were annulled by the then Controller General and Administering Authority vide orders dated 30.06.2016 for the reason that mining is prohibited in offshore areas of 12 nautical miles within CRZ.

2. The said reasoning to annul the grant orders was both misconceived and contrary to law since the mining of rare minerals which were not found on onshore areas was very much permissible in offshore areas of 12 nautical miles within CRZ even under CRZ notification dated 06.01.2011.

3. On being asked to give comments, this office also issued a clarification to Ministry of Mines vide email dated 28.07.2017 (copy enclosed herewith for ready reference). Relevant extracts of the said email are reproduced herein below:

“However, CRZ notification dated 06.01.2011 has not barred mining activities in CRZ area. As per this notification, mining of only those rare mineral of CRZ area are permitted which are not found/available outside CRZ limit,”

4. A similar view was also taken by Ministry of Mines in its additional affidavit dated 26.09.2017 filed with the approval of the competent authority in Ministry of mines in the matter of W.P. No. 5734 of 2016 filed by M/s. UA Minerals Pvt. Ltd. In which both Secretary (Mines) and

Controller General of IBM were parties. Relevant extracts of para 3 of the additional affidavit are reproduced herein below:

“From the above, it emerges that in the CRZ area, only limited mining is permitted and that too for such “rare minerals” which are not available outside the CRZ area, besides exploration and exploration pf Oil and Natural Gas”.

5. It is therefore clear that there was no blanket ban on mining. The notification dated 06.01.2011 allowed mining of rare minerals not found onshore and the same permission has now been amended in the CRZ notification dated 06.10.2017 to include mining of minerals in Part B of the First Schedule to the MMDR Act.”

84. It is pertinent to mention here that the CRZ notification dated 6.1.2011 has been amended by notification dated 6.10.2017 (page 266-276). The said amendment brings about further clarity on the rare materials which can be mined within the CRZ. The said amendment, now provides that atomic minerals as notified under Part B of the First Schedule of the MMDR Act, 1957 are permitted to be mined within CRZ. The minerals mentioned hereinabove, namely ilmenite, rutile, zircon etc. also are identified as atomic minerals in Part-B of the First schedule of the MMDR Act. If the aforesaid materials are found during exploration, there will be no impediment in granting of production lease for the said minerals as the mining of the said materials is expressly permitted by the CRZ notification. The policy as

reflected in notification dated 6.1.2011 stood modified by the notification dated 6.10.2017 as under:

CRZ Notification dated 6.1.2011	CRZ Notification pursuant to amendment on 6.10.2017
3. Prohibited activities within CRZ, - The following are declared as prohibited activities with the CRZ,- (x) Mining of sand, rocks and other substrata materials except,- (a) those rare minerals not available outside the CRZ area, (b) exploration and exploitation of Oil and Natural Gas.	3. Prohibited activities within CRZ,- The following are declared as prohibited activities within the CRZ,- (x) Mining of sand, rocks and other sub-strata materials except,- (a) mining of Atomic Minerals notified under Part-B of the First Schedule of the Mining and Minerals (Development) Act, 1957 (67 of 1957) occurring as such or in association with one or other minerals, (b) exploration and exploitation of Oil and Natural Gas.

85. It is pertinent to mention here that the Controller General, Indian Bureau of Mines & Administering Authority in its report / email dated 24.10.2017 had informed the Ministry of Mines that in the light of the CRZ notification dated 6.10.2017, exploration licenses can be granted for atomic minerals. (page 268 @ 269). In fact, the pick and choose policy of the respondents is evident from the fact that more than 50 mining leases (pages

258-263) for atomic minerals such as ilmenite, rutile, zircon etc. have been granted to private companies, and **all such leases within CRZ areas** and despite the new CRZ notification dated 6.10.2017, they are still being allowed to operate. The aforesaid fact clearly demonstrates that firstly mining of atomic minerals is permissible within the CRZ, irrespective of whether the atomic minerals are above or below the prescribed threshold value and secondly such mining is also permissible by private companies and mining of said minerals is not restricted to being done by a state agency or Department of Atomic Energy. During arguments, learned ASG in reply alleged that leases in the State of Tamil Nadu had been suspended. However, a perusal of page 258 shows such leases in Maharashtra, Kerala, Andhra Pradesh and Odhisa, the suspension of leases in Tamil Nadu was due to violation of certain terms but there is no allegation against the petitioners in the present case.

86. The CRZ notification is in the nature of subordinate legislation issued under the Environment Protection Act by the Ministry of Environment, Forests and Climate Change. The very same Ministry viz., MoEF vide clarification dated 9.2.2018 issued to M/s. UA Minerals Pvt. Ltd. have clarified that mining of rare minerals was a permitted activity under CRZ

notification dated 6.1.2011 also and mining of atomic minerals as specified in part B of the First Schedule of MMDR Act, 1957 is also a permitted activity under CRZ notification dated 6.10.2017.

87. It is relevant to note here that the respondents though initially agreed that pursuant to the amendment to CRZ notification on 16.10.2017 there would be no impediment in executing the exploration licences, are now seeking to allege in the counter affidavit that the production lease cannot be executed allegedly on the ground viz.,

(a) *That no production lease can be granted without the prior permission of the Department of Atomic Energy (DAE).*

(b) *Only those atomic minerals are permitted to be mined in the CRZ, which are above the threshold value prescribed by the DAE.*

(c) *That the notification dated 07.06.2010 was not meant for atomic minerals.*

(d) *That the applications made by the petitioners were not for atomic minerals.*

(e) *That private companies cannot be granted exploration licenses for atomic minerals.*

88. The OAMDR Act, 2002 governs the grant of mining concessions over the Offshore Areas (Preamble and Section 4(n) which admittedly includes CRZ IV i.e. territorial waters of the country (12 nautical miles). The said Act governs grant of mines including “atomic minerals” (Section 3 read with Section 4(1) and (b)). There is no restriction on the grant of exploration of

licence for any minerals under the OAMDR Act, 2002, neither is there such a restriction under the CRZ notification. The limited restriction is at the stage of production lease which stage has not been reached yet. In terms of the proviso to Section 6 of the OAMDR Act, consultation is required with Department of Atomic Energy before granting a 'production lease'. In the present case the issue pertains to "exploration license" which is governed by Section 12 whereas production lease is governed by Section 13 of the Act and there is no requirement of consultation with DAE for grant of exploration license. The reliance by the respondents on proviso to Rule 18(1)(iv)(a) of OAMC, 2006 is also misplaced as the proviso has been inserted only as an exception to rights provided under sub clause (a) of clause (1)(iv) of Rule 18 viz., that if any additional minerals which had not been applied in the first place are discovered during exploration, in that event except atomic minerals, such newly discovered minerals by legal fiction would be part of the license. For atomic minerals which were not part of the exploration license, prior approval of Department of Atomic Energy would be required. In the present case, application was specifically made for named atomic minerals and, therefore, the aforesaid Rule would not be applicable to the present case.

89. It is further pertinent to mention that notification dated 7.6.2010 was for all minerals including atomic minerals. The Offshore Areas Mineral Development & Regulation Act, 2002 under Section 3(1) clearly states that the said Act shall apply to all minerals in the offshore areas including any mineral prescribed by notification under clause (g) of Sub Section (1) of Section 2 of the Atomic Energy Act, 1962 (33 of 1962) except mineral oils and hydrocarbons related thereto. The First Schedule of the OAMDAR Act, 2002 specifies the royalties for various minerals to be found in offshore areas and includes minerals such as asilmenite, rutile, zircon, sillimanite and leucoxene which also form part of the list of atomic minerals in part B of the First Schedule of MMDR Act, 1957. Therefore, it is evident that the OAMDR Act, 2002 always envisaged mining and exploitation of rare minerals / atomic minerals such as ilmenite, rutile, zircon, sillimanite and leucoxene by private companies and to this effect, specific provisions have been laid down in the OAMDR Act, 2002 and OAMC Rules, 2006 wherein it is contemplated that in case atomic minerals are found in the offshore areas, what actions have to be undertaken by the authorities as well as the permittee/licensee/lessee. This shows that exploration of atomic minerals was always contemplated in the offshore mining Act / Rules. Admittedly,

Atomic Mineral Concession Rules, 2016, are not applicable to Offshore Areas, having been framed under MMDR Act for onshore mining concessions. Even otherwise, Atomic Mineral Concession Rules, 2016 also does not provide any restriction as is being alleged and Rule 3 of the said Rules merely provides the manner in which the mining concessions for atomic minerals above and below the threshold value would be governed.

90. It is pertinent to mention that the learned ASG sought to allege that the MMDR Act and Rules would be applicable in light of Section 20 of the OAMDR Act. The submission of learned ASG is contrary to Section 20 which clearly shows that only Acts pertaining to environment have been made applicable in addition and not the provisions of the MMDR Act as alleged which is not an Environmental Act. If the contention of the learned ASG is to be accepted it would amount to annulling a Parliamentary Act by a side wind inasmuch as there are various provisions in the OAMDR Act which are in complete contrast to the MMDR Act.

91. In addition to above, the grant of prospecting licences or mining leases for atomic minerals on land is governed by the provisions of the MMDR Act, 1957. Similarly, the grant of exploration licence or production leases for atomic minerals from the sea bed is governed by the provisions of

the OAMDR Act, 2002.

92. It is also pertinent to mention here that the Government of India introduced the Beach Sand Mining Policy on 16.10.1998 to encourage the exploitation of the said minerals including ilmenite, rutile, zircon, leucozircon, garnet and silimanite through a mix of public and private sector participation (including foreign investment). The primary objectives of the policy was maximization of value addition to the raw minerals and for this purpose participation of wholly Indian owned companies was permitted mining, exploitation and value addition of the said resources with or without joint venture with the Central or State Government(s) concerned or any existing or new Central / State PSUs. In fact, even foreign direct investment was also allowed where advance technology was brought in for value addition to the aforesaid minerals. Therefore, atomic minerals such as i.e. ilmenite, rutile, zircon could always be mined by private companies even when they were part of the list of prescribed substances of Department of Atomic Energy, however, prior to their delisting licence / permission from Department of Atomic Energy under the Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substance) Rules, 1984 was required. And subsequent to their de-listing from list of prescribed substances, vide

notification dated 20.01.2006, no such license / permission is required. In this light, more than 50 + mining leases have been granted to private companies by Ministry of Mines i.e. Respondent No.1 under the MMDR Act within CRZ limits on the beaches all over the country for mining of atomic minerals namely ilmenite, rutile, leucoxene and zircon. Such mining leases have been granted to private companies for atomic minerals by Government of India within the onshore limits of CRZ at various points of time under all three CRZ notifications i.e. of 1999, 2011 and 2017. Fact remains that the export of such atomic minerals is very much permissible as is evident from the Government's own export policy. As per the notification of the DGFT dated 21.08.2018, atomic minerals such as ilmenite, rutile, zircon and leucoxene are freely exportable.

93. In their attempt to justify the cancellation, the respondents have also sought to allege that in preliminary enquiry conducted by CBI, had found serious irregularities with the process of grant of exploration licenses. The respondent no.1 has suppressed the crucial fact that the said Preliminary Enquiry had been closed by CBI in early 2013 wherein it was concluded that no misconduct was found on the part of any public servant of IBM in the case. The relevant extracts of the answers given by the then Minister of

Mines, Sh. Dinsha Patel while answering to a unstarred question in the Parliament on 21.2.2014 (page 480) is reproduced herein below.

“The Central Bureau of Investigation has conducted a Preliminary Enquiry to investigate alleged irregularities in grant of Exploration Licenses in the offshore waters of Bay of Bengal and Arabian Sea and concluded that no misconduct was found on the part of any public servant of IBM in the case.”

94. In addition to above after the said Preliminary Enquiry, the Ministry of Mines and IBM both defended the selection process before Hon’ble High Court of Bombay and vide its judgement dated 17.09.2013 in writ petition 1502 of 2011 upheld the process finding that the same was in accordance with law and that there was no infirmity with the allocation process.

95. The learned Additional Solicitor General had vehemently argued that entire exercise was undertaken in public interest and if it is not in public interest the Government of India has power to take decision even after granting executing the exploration deed with the parties.

96. On perusal of impugned order dated 30.06.2016 or the counter affidavit filed by the respondents, no where stated regarding the public interest. Thus, such contentions are not supported either by the submissions on affidavit or in absence of any contention mentioned in the impugned order. It is alleged that CRZ being an issue of environment, it would be in

public interest to cancel the grant. However, the said contention is then contradicted by the respondents own admission that blocks would be re-granted through auction. Therefore, it proves that mining ultimately would be allowed in CRZ, which is in consonance with the various CRZ notifications wherein mining of rare/atomic minerals is very much permissible.

97. The issue of grant of production lease would arise only if the said minerals are discovered in the exploration. More importantly again the said contention is contradicted by the respondents admission that the blocks would be auctioned, in which case again it would be private parties that would be granted the blocks. Thus, it proves that no public interest has been made out. Moreover, the respondents cannot act contrary to statutory provisions and then claim the action to be in public interest. Moreover, it is settled law that the respondents being State are estopped from pleading anything to the contrary after successfully defending the grants before the High Court of Bombay and order dated 17.9.2013 was not interfered with by the Hon'ble Supreme Court and SLP against the same was dismissed.

98. The learned ASG also sought to rely judgements in the case of ***Sales Tax Officer v. Shree Durga Mills: (1998) 1 SCC 572; Rishi Kiran***

Logistics v. Board of Trustees of Kandla Port: (2015) 13 SCC 233 to contend that the Government can revoke any notification issued by it. However, all these cited judgments are on the issue of promissory estoppel, where based on some policy decision or certain acts were undertaken by the affected persons.

99. It is pertinent to mention here that the petitioner has not based its right on the doctrine of promissory estoppel but on the basis of statutory right. Even assuming, the government has power to recall the notification, in the present case it is not the government but the administering authority (a statutory authority) who has issued the impugned order. In addition to above, the learned ASG failed to show any power under provisions of OAMDR Act which allowed the administering authority to recall a notification. The administering authority is a statutory authority and can act only within the four corners of the statute and does not have powers of the Government to withdraw notifications.

100. In view of the above discussion and legal position, order dated 05.04.2011 created a vested right with the petitioner and the impugned order dated 30.06.2016 was passed without jurisdiction and was ultra vires the Act as there is no power of review with the Administering Authority. The

respondents in order to the achieve their goal of reallocating the offshore blocks have manufactured the reasons cited in the impugned annulment order dated 30.06.2016 clearly suffers from colourable exercise of power and legal malice. The purpose of exercise of power was to achieve an object, not provided under the OAMDR Act and more over without affording any opportunity to the allottees, the impugned order dated 30.06.2016 was only passed to cancel the already granted exploration licences and re-allocate the same through auction. Therefore, no public interest was involved. Thus respondents have acted contrary to statutory provisions and now claim their action to be in public interest as an afterthought as is evident from the impugned order where there is no mention of any public interest. The main ground in the annulment order dated 30.06.2016 taken by the respondents herein that there was a blanket on mining under CRZ notification dated 6.1.2011 was absolutely incorrect and contrary to law as mining of rare minerals not found on onshore areas was always permitted within CRZ areas. This fact has been admitted by Controller General, IBM and Administering Authority in his report dated 11.12.2017 as well as Union of India, respondent herein in its affidavit dated 26.09.2017 filed before this Court as also by MoEFCC in its clarification dated 9.2.2018.

101. Moreover, the issue of overlapping was first raised in the petition before Andhra Pradesh High Court in 2011 wherein the respondents defended the same by stating that as per Rule 43(3) of OAMC Rules, 2006, no mining activity can be undertaken till 12 nautical mile from low tide line. Therefore, it is clear that the respondents were also well aware of the said issue since 2011 and themselves defended it before the High Court of Andhra Pradesh, however, this issue was never taken up before High Court of Bombay at Nagpur in 2013 nor before the Supreme Court in 2014 and is only manufactured in 2016 to provide a basis for issuing the annulment order as it proves from the minutes of meetings chaired by Secretary, Ministry of Mines on 14.07.2015 and 18.11.2015. As per the provisions of the OAMDR Act mineral concessions can be granted to private parties for all minerals found in offshore areas including atomic minerals. For the aforesaid purpose no permission of the Department of Atomic Energy is required for grant of exploration licences to the petitioner, however, only 'consultation' with Department of Atomic Energy is required at the time of grant of production permits. However, that stage yet to come.

102. It is pertinent to mention here that the present petitions were heard on 20.12.2018 and reserved for the judgment. Thereafter, the petitioner in

W.P.(C) 7537/2018 moved C.M.APPLN. 3711/2019 whereby CRZ notification dated 18.01.2019 has been placed on record and same was allowed vide order dated 25.01.2019. On the date, Ms. Maninder Acharya, ASG submitted that CRZ notification dated 18.01.2019 does not make any difference to the case of the parties. Learned ASG further submitted that the annulment order dated 30.06.2016 was passed mainly in view of the CRZ restrictions and overlapping of identified blocks. The recent CRZ 2019 supersedes the earlier CRZ 2011 saving the things done or omitted to be done before such supersession. It is reproduced as under:-

*“Now, therefore in exercise of the powers conferred by sub-section (1) and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in supersession of the Coastal Regulation Zone Notification 2011, number S.O. 19(E), dated the 6th January, 2011, **except as respects things done or omitted to be done before such supersession**, the Central Government, with view to conserve and protect the unique environment of coastal stretches and marine areas,*
(emphasis added)”

103. Accordingly, the action of respondent(s) in annulling the whole process of grant of Exploration licenses in the Offshore areas is saved under the notification itself. It is further submitted that the then CG, IBM (Administering Authority) signed the licence deed with M/s UA Minerals for six blocks on 30.11.2017 in haste without following the due procedure of

law justifying his action in compliance of the order dated 09.11.2017. The answering respondent has preferred a review of the order dated 09.11.2017 and the same is pending adjudication. Learned ASG submitted that by any stretch of imagination, seek any advantage by virtue of recent CRZ 2019 as the position of the petitioners remain same and there is no change brought about by the recent CRZ 2019 as regards the petitioners since restrictions/regulations/clearances etc. as envisaged in the statute as well as the notifications cannot be overlooked and still have to be complied with. The earlier CRZ notifications were silent on the aspect of exploration in Offshore areas and mining of only atomic minerals was permitted and regulated to be done in CRZ but the recent CRZ 2019 has clarified that now exploration of atomic minerals is also regulated in CRZ areas in addition to mining of atomic minerals as prescribed on part B Schedule I of MMDR Act, 1957. Accordingly, CRZ 2019 has made the procedure more stringent as now exploration of atomic minerals regulated in CRZ areas are to be done in accordance with the rules prescribed under Atomic Minerals Concession Rules, 2016 and AMCR does not provide for issuance of prospecting licence to private parties whereas clear guidelines have been specified for granting Prospecting licence to a government company /corporation /entity notified

by the Central Government. As per CRZ 2017 and further CRZ 2019, the mining activities in the Offshore areas are prohibited and exploration and mining of atomic minerals is a regulated activity. Therefore, the eligibility conditions for undertaking these activities are changed.

104. It is evident from CRZ notification dated 18.01.2019 that the territorial waters of the country i.e. upto 12 nautical miles is classified as CRZ IVA under para 2 of the notification as under:-

“2.0 Classification of CRZ. – For the purpose of conserving and protecting the coastal areas and marine waters, the CRZ area shall be classified as follows, namely:-

2.4 CRZ- IV:

The CRZ- IV shall constitute the water area and shall be further classified as under:-

2.4.1 CRZ- IVA:

The water area and the sea bed area between the Low Tide Line up to twelve nautical miles on the seaward side shall constitute CRZ-IVA.

2.4.2 CRZ- IVB:

Xxx xxx xxxx”

105. As per the said notification, in para 4 lists of prohibited activities are there whereas in para 5 all permitted and regulated activities in CRZ areas are mentioned. It is under sub-para 5.4, which covers CRZ IV i.e. the

territorial waters, it is once again clarified that exploration and mining are allowed within CRZ IV and states as under:-

**5. Regulation of permissible activities in CRZ:
5.4 CRZ-IV:**

Activities shall be permitted and regulated in the CRZ IV areas as under:-

(i)-(x) xxxxx xxxxxx xxxxx

(xi) Exploration and mining of atomic minerals notified under Part-B of the First Schedule of the Mining and Minerals (Development and Regulation) Act, 1957 (67 of 1957), occurring as such or in association with other mineral(s) and of such associated minerals(s).

(xii)-(xv)

106. Thus, it is evident from para 5 which details out all permissible activities within CRZ IV areas that exploration and mining of the named minerals including all atomic minerals as well as exploration and mining of all associated minerals is very much permissible.

107. It is pertinent to mention here that the Administering Authority i.e. Controller General, Indian Bureau of Mines had already considered the above issues pertaining to implication of CRZ notification dated 6.10.2017, overlapping of certain blocks with onshore areas and grant of mineral concessions to private parties for atomic minerals and the same is evident

from its report dated 11.12.2017. It is only after considering of the aforesaid issues, the respondent no.2 herein has executed the deed for exploration licences with one M/s. U.A. Minerals Pvt. Ltd. on 30.11.2017 and till date there is no stay on the said order.

108. In view of above discussion and the legal position, I hereby set aside the order dated 30.06.2016 passed by respondent No. 2 and consequent proceedings thereto. Consequently, the respondents are directed to execute the exploration licences in favour of the petitioners as per the procedures within four weeks from the receipt of this order.

109. Accordingly, the petitions are allowed.

CM APPLN. 28828/2018 in W.P.(C) 7537/2018

CM APPLN. 28875-76/2018 in W.P.(C) 7553/2018

CM APPLN. 28879-80/2018 in W.P.(C) 7555/2018

CM APPLN. 29004-05/2018 in W.P.(C) 7591/2018

In view of the order passed in the present writ petitions, these applications have been rendered infructuous and are accordingly, disposed of such.

**(SURESH KUMAR KAIT)
JUDGE**

**FEBRUARY 06, 2019
rd/ab/gb**