Court No. 2

01.10.2021

(Sl. 39)

(sp)

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Constitutional Writ Jurisdiction

WPA 1540 of 2021

Pranob Ghosh
Vs.
The State of West Bengal & Ors.

(Via Video Conference)

Mr. Jagriti Mishra
Mr. Subham Gupta
Mr. Debayan Goswami
… for the petitioner

Mr. Bikramaditya Ghosh
Mr. Pretom Das
… for the State

The writ petitioner is aggrieved by the Notification dated 30th July 2021 issued by the Govt. of West Bengal, Department of Industry Commerce and Enterprises, Mines branch. By the said notification the State introduced a new Sand Mining Policy that was decided in a cabinet meeting held on 22nd July 2021.

Along with the policy documents the Govt. also published a notice inviting Expressions of Interest.

The stated object of the policy was to prevent damage to riverine ecology and to prevent black marketing and hoarding of sand. Haphazard and indiscriminate mining under the current regime under the WB Minor Minerals Concession Rules of 2016, was found to have lead to environmental and ecological degradation. The new policy is aimed at preventing indiscriminate mining, black marketing , artificial supply shortage and hoarding of sand. The new policy aims at ensuring compliance of environmental regulations and bring about an affordable pricing regime for the end user.

The principal changes proposed to be brought about in the policy are inter alia as follows :-

a) The existing nodal agency for auction and award of license /lease for exploitation under the WB Minor Mineral Concession Rules 2016 being the District Committee headed by the District Magistrate was to be replaced by the West Bengal Mineral Development and Trading Corporation Ltd (WBMDTCL).

b) The existing Sand mining leases are not to be extended any further and all sand mining leases were to be given to the WBMDTCL or to any agency to be nominated by it. The state would enter into , resume and or take over all the mining areas upon expiry of the existing leases.

c) The excavation of sand shall be done only by the WBMDTCL by appointing a Mining Developer and Operator through a transparent bidding process.

d) A centralised portal and or a centralised challan system was to be introduced for Transportation of sand.

e) Two categories of operators would be allowed to deal in the excavation and transportation of sand ie Category A (Storage /capacity area of less than or upto 20 Hectares and Category B (Storage / Capacity above 20 hectares)

The writ petitioner is an existing sand mining lessee / concessionaire / Quarry permit holder from river beds. Such lease was granted to the petitioner upon prior payment of royalty to the state. The petitioner's lease is valid for 2 more years as on date.

The principal arguments advanced in challenge to the said new policy are, inter alia, as follows:-

a) Section 15 read with Section 4 (*1*) (*1A*) of the The Mines and Mineral (Development and Regulation) Act 1957 provides that no person shall transport or store or cause to be transported or store any minerals except in accordance with the provisions of the act or the rules framed thereunder.

Section 28 (3) requires all rules framed under the 1957 Act to be passed and approved by the State legislature. The new mining policy does not have statutory authority or force as it has only been adopted by the State Cabinet and has not been approved by the State Legislature.

b) The State has already framed the WB Minor Mineral (Auction) Rules 2016, the WB Minor Mineral (Concession) Rules 2016 and Rules for regulation of illegal mining and Transportation in terms of Section 23 C of the MMRDA 1957. There is no therefore no other rule making power under which the impugned policy could be introduced.

c) The new policy shall completely eliminate small players like the petitioners from the sand mining business and create monopolies in favour of large players and Corporations thereby promoting crony capitalism. Hence it is in violation of Article 19(1) (g) of the Constitution of India.

Mr. Jagriti Mishra, Ld Counsel for the petitioner arguing for the petitioner placed reliance on a decision of the Supreme Court in the case of **State of Gujarat and Ors. –Vs-**

Jayeshbhai Kanjibhai Kalathia and Ors reported in **(2019) 16 SCC 513**. It was held in the said decision that the power to regulate transportation and storage extends only extends to illegally mined minerals and not after legal excavation of the same.

This Court is unable to accept the argument based on the **Kalathia decision (Supra)** since the regulations of the Gujarat under challenge, were seeking to regulate the sale of minor mineral outside the State. It is essentially in that context the Hon'ble Supreme Court and the High Court held that the same was outside the scope of section 23 C of the 1957 Act.

While dealing with the Rule making power of the States the Supreme Court referred to its decision in the case of **D.K. Trivedi & Sons and Ors. –Vs- State of Gujarat and Ors.** reported in **(1986) Suppl Supreme Court Cases 20.** At Paragraphs 32 33 and 34 it was held as follows :-

"**32.** There is no substance in the contention that no guidelines are provided in the 1957 Act for the exercise of the rule-making power of the State Governments under Section 15(1). As mentioned earlier, Section 15(1) is in *pari materia* with Section 13(1). Section 13, however, contains sub-section (2) which sets out the particular matters with respect to which the Central Government may make rules "In particular, and without prejudice to the generality of the foregoing power", that is, the rule-making power conferred by sub-section (1). It is well settled that where a statute confers particular powers without prejudice to the generality of a general power already conferred, the particular powers are only illustrative of the general power and do not in any way restrict the general power. Section 2 of the Defence of India Act, 1939, as amended by Section 2 of the Defence of India (Amendment) Act, 1940, conferred upon the Central Government the power to make such rules as appeared to it "to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community". Sub-section (2) of Section 2 conferred upon the Central Government the power to provide by rules or to empower any authority to make orders providing for various matters set out in the said sub-section. This power was expressed by the opening words of the said sub-section (2) to be "Without prejudice to the generality of the powers conferred by sub-section (1)". In *King Emperor* v. *Sibnath Banerji* [AIR 1945 PC 156, 160 : (1944-1945) 72 IA 241] the Judicial Committee of the Privy Council held (at pp. 258-59):

"In the opinion of Their Lordships, the function of sub-section (2) is merely an illustrative one; the rule-making power is conferred by subsection (1), and 'the rules' which are referred to in the opening sentence of sub-section (2) are the rules which are authorized by, and made under, sub-section (1); the provisions of sub-section (2) are not restrictive of sub-section (1), as, indeed, is expressly stated by the words 'without prejudice to the generality of the powers conferred by sub-section (1)."

The above proposition of law has been approved and accepted by this Court in *Om Prakash* v. *Union of India* [(1970) 3 SCC 942, 944-5] and *Shiv Kirpal Singh* v. *V.V. Giri*. [(1970) 2 SCC 567 : AIR 1970 SC 2097 : (1971) 2 SCR 197, 224-5]

33. A provision similar to sub-section (2) of Section 13, however, does not find place in Section 15. In our opinion, this makes no difference. What sub-section (2) of Section 13 does is to give illustrations of the matters in respect of which the Central Government can make rules for "regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith". The opening clause of sub-section (2) of Section 13, namely, "In particular, and without prejudice to the generality of the foregoing power", makes it clear that the topics set out in that sub-section are already included in the general power conferred by sub-section (1) but are being listed to particularize them and to focus attention on them. The particular matters in respect of which the Central Government can make rules under sub-section (2) of Section 13 are, therefore, also matters with respect to which under sub-section (1) of Section 15 the State Governments can make rules for "regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith". When Section 14 directs that "The provisions of Sections 4 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals", what is intended is that the matters containedin those sections, so far as they concern minor minerals, will not be controlled by the Central Government but by the concerned State Government by exercising its rule-making power as a delegate of the Central Government. Sections 4 to 12 form a group of sections under the heading "General restrictions on undertaking prospecting and mining operations". The exclusion of the application of these sections to minor minerals means that these restrictions will not apply to minor minerals but that it is left to the State Governments to prescribe such restrictions as they think fit by rules made under Section 15(1). The reason for treating minor minerals differently from minerals other than minor minerals is obvious. As seen from the definition of minor minerals given in clause (*e*) of Section 3, they are minerals which are mostly used in local areas and for local purposes while minerals other than minor minerals are those which are necessary for industrial development on a national scale and for the economy of the country. That is why matters relating to minor minerals have been left by Parliament to the State Governments while reserving matters relating to minerals other than minor minerals to the Central Government. Sections 13, 14 and 15 fall in the group of sections which is headed "Rules for regulating the grant of prospecting licences and mining leases". These three sections have to be read together. In providing that Section 13 will not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals what was done was to take away from the Central Government the power to make rules in respect of minor minerals and to confer that power by Section 15(1) upon the State Governments. The ambit of the power under Section 13 and under Section 15 is, however, the same, the only difference being that in one case it is the Central Government which exercises the power in respect of minerals other than minor minerals while in the other case it is the State Governments which do so in respect of minor minerals. Sub-section (2) of Section 13 which is illustrative of the general power conferred by Section 13(1) contains sufficient guidelines for the State Governments to follow in framing the rules under Section 15(1), and in the same way, the State Governments have before them the restrictions and other matters provided for in Sections 4 to 12 while framing their own rules under Section 15(1).

34. The guidelines for the exercise of the rule-making power under Section 15(1) are, thus, to be found in the object for which such power is conferred (namely, "for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith"), the meaning of the word "regulating", the scope of the phrase "for purposes connected therewith", the illustrative matters set out in sub-section (2) of Section 13, and in the restrictions and other matters contained in Sections 4 to 12."

The aforesaid decision was cited with approval in the case of **Jayeshbhai Kanjibhai Kalathia (supra)**. The only reason why the aforesaid decision was not applied in the **Jayeshbhai Kanjibhai Kalathia (supra)** case was that the State had prohibited sale of sand from Gujarat to other states in India. While striking down the said Gujarat Rules, the Court was more guided by the said provision being violative of Article 301 of the Constitution. The said Article expressly bars interference with inter-State, Trade and Commerce. The Court referred to 23C(2)(g) of the 1957 Act as an ancillary aid to the finding that the restrictions on transportation of sand, mine legally could not be thereafter regulated.

The issue assumes a completely different dimension when in the context of the subject of the new policy of State of West Bengal which seeks to regulate story and transportation simultaneously along with the basic sand mining regime. The transpiration and story essentially bring within the State of West Bengal.

Useful reference may also be made to the decision of **Monnet Ispat & Energy Ltd. –Vs- Union of India & Ors.** reported in **(2012) 11 SCC 1.** At paragraph 129-130, it has been held as follows :-

"Constitutional philosophy about law-making in relation to mines and minerals

129. List I Entry 36 (Federal Legislative List) and List II Entry 23 (Provincial Legislative List) in Schedule VII of the Government of India Act, 1935 correspond to List I Entry 54 (Union List) and List II Entry 23 (State List) in our Constitution. It is interesting to note that in the course of debate in respect of the above entries in the Government of India Bill, the Solicitor General in the House of Commons stated that the rationale of including only the "regulation of mines" and "development of minerals" and that too only to the extent it was considered expedient in the public interest by a federal law was to ensure that the provinces were not completely cut out from the law relating to mines and minerals and if there was inaction at the Centre, then the provinces could make their own laws. Thus, powers in relation to mines and minerals were accorded to both the Centre and the States.

> **130.** The same philosophy is reflected in our Constitution. The management of the mineral resources has been left with both the Central Government and the State Governments in terms of List I Entry 54 and List II Entry 23. In the scheme of our Constitution, the State Legislatures enjoy the power to enact legislation on the topics of "mines and minerals development". The only fetter imposed on the State Legislatures under Entry 23 is by the latter part of the said entry which says, "subject to the provisions of List I with respect to regulation and development under the control of the Union". In other words, the State Legislature loses its jurisdiction to the extent to which the Union Government had taken over control, the regulation of mines and development of minerals as manifested by legislation incorporating the declaration and no more. If Parliament by its law has declared that regulation of mines and development of minerals should in the public interest be under the control of the Union, which it did by making declaration in Section 2 of the 1957 Act, to the extent of such legislation incorporating the declaration, the power of the State Legislature is excluded. The requisite declaration has the effect of taking out regulation of mines and development of minerals from List II Entry 23 to that extent. It needs no elaboration that to the extent to which the Central Government had taken under "its control" "the regulation of mines and development of minerals" under the 1957 Act, the States had lost their legislative competence. By the presence of the expression "to the extent hereinafter provided" in Section 2, the Union has assumed control to the extent provided in the 1957 Act. The 1957 Act prescribes the extent of control and specifies it. We must bear in mind that as the declaration made in Section 2 trenches upon the State legislative power, it has to be construed strictly. Any legislation by the State after such declaration, trespassing the field occupied in the declaration cannot constitutionally stand. To find out what is left within the competence of the State Legislature on the declaration having been made in Section 2 of the 1957 Act, one does not have to look outside the provisions of the 1957 Act but as observed in *Baijnath Kadio* [(1969) 3 SCC 838] , "have to work it out from the terms of that Act". In order that the declaration made by Parliament should be effective, the making of rules or enforcement of rules so made is not decisive."

It clearly follows from the above that a conjoint reading of Section 13 and 15 make it abundantly clear that the States have the power to frame Rules for the purpose of Regulation of the granting quarry leases and mining leases and all purposes connected therewith. Therefore it cannot be said that the said policy and the proposed changes in the grant and regulation of quarry leases is outside the scope of the legislative power of the State. The restriction under Section 23 C of the said Act, as invoked by the Supreme Court in the **Jayeshbhai Kanjibhai Kalathia (supra)** case, cannot, therefore, be applied in the context of the New Sanding Mining Policy.

An unreported decision of a Single Bench of the Delhi High Court, **Jindal Stainless Steel Ltd Vs Union of India W.P.4452 of 2008 dated 31st May 2011** was cited by Mr. Mishra, Counsel for the writ petitioner. It was held that any notification issued by the Central or State Government is valid unless it is made within the scope of the authority conferred by the parent statute and or is in terms of the procedure prescribed by the latter. The said decision is not relevant in view of the findings hereinabove, the State is not lacking in the legislative competence to make such new rules or enact such a policy.

Counsel for the state has placed the National Mineral policy 2019 where the central government has itself asked to the states to come up with a policy to better regulate the trade and movement of minor minerals to prevent impropriety and ensure equitable distribution thereof. The impugned policy is more in the nature of “White Paper” presented by the State.

The opening lines of the policy are as follows:-

> “No. 284-ICE/O/MIN/GEN-MIS/02/2021.- 30th July, 2021.- Whereas, the Government of West Bengal has been considering the importance of framing a Sand Mining Policy for the State of West Bengal to improve the effectiveness of monitoring of mining and transportation of sand and to ensure the extraction is carried out in scientific, environmentally sustainable and socially responsible manner;
>
> Whereas, to prevent damage to the riverine ecology and to protect black marketing and hoarding of sand, the Government of West Bengal through its Cabinet Meeting held on 22nd July, 2021 has decided to bring a new Sand Mining Policy, 2021 for the State of West Bengal;
>
> Now, therefore, the Governor in the interest of public service, is pleased to hereby publish the Sand Mining Policy, 2021 for the State of West Bengal as given in the Schedule hereto annexed for information of all persons in good faith.”

The notification appears to be a while paper presented by the State to test waters and invite objections. The object and purpose of the policy is indeed laudable as damage to environment, hoarding and black marketing of Sand and its mining. The new policy cannot be categorised as a “post lawful mining” control regime. This Court is not therefore satisfied that the policy falls short of any of the provisions of the MMRDA 1957.Similar policies have been adopted by at least 7 States in the Country as informed by Counsel for the State.

It also appears that along with the policy statement the State has published a invitation of Expression of Interest. Such invitation is a precursor to a Notice Inviting Tenders. Objections and comments have also been invited in respect of the policy statement.

Reference in this regard is made to the decision of the decision of the Supreme Court in the case of **Secretary Ministry of Chemicals & Fertilizers, Govt. of India –Vs- CIPLA Ltd. and Ors.** reported in **(2003) 7 SCC 1. At Paragraph 4.1** it is held as follows:-

> **"4.1.** It is axiomatic that the contents of a policy document cannot be read and interpreted as statutory provisions. Too much of legalism cannot be imported in understanding the scope and meaning of the clauses contained in policy formulations. At the same time, the Central Government which combines the dual role of policy-maker and the delegate of legislative power, cannot at its sweet will and pleasure give a go-by to the policy guidelines evolved by itself in the matter of selection of drugs for price control. The Government itself stressed on the need to evolve and adopt transparent criteria to be applied across the board so as to minimize the scope for subjective approach and therefore came forward with specific criteria. It is nobody's case that for any good reasons, the policy or norms have been changed or have become impracticable of compliance. That being the case, the Government exercising its delegated legislative power should make a real and earnest attempt to apply the criteria laid down by itself. The delegated legislation that follows the policy formulation should be broadly and substantially in conformity with that policy, otherwise it would be vulnerable to attack on the ground of arbitrariness resulting in violation of Article 14."

However as submitted by counsel for the State the writ petition may be far too premature as the petitioner's existing quarry lease is valid for 2 more years from date and the allotment of leases under the new regime has not commenced as yet. The State has only invited expression of interest, to bring to the notice of the public at large.

Useful reference in this regard may be made to the case of **Union of India Vs Abdul Sattar** reported in **1984 SCC Online Cal 91 at Paragraph 11 ,** a Division Bench this Court has held as follows:-

"**11.** Mr. Sen appearing on behalf of the *writ* petitioner has strongly contended that the petitioner has a constitutional right to move this Court in the *writ* jurisdiction when he had made out a case of threatened infringement of fundamental right of free movement. According to Mr. Sen, it is not necessary that the petitioner must wait to have the order served upon him and then only challenge the order as violating his fundamental right Strong reliance is placed by Mr. Sen on the decision of the Supreme Court in the cases of *D.A.V. College Bhatinda* v. *State of Punjab* AIR 1971 SC 1731, *State of Madhya Pradesh* v. *Bhailal Bhai* AIR 1964 SC 1006 and the decision of the Bombay High Court in the case of *Jayantilal Bhagwandas Shah* v. *State of Maharastra* 1981 Cr. LJ 167. The two decisions of the Supreme Court relied on by Mr. Sen are authorities for a principle which is now settled, *viz.*, a citizen is entitled to move this court in *writ* jurisdiction not only when his right is infringed but also when it is threatened to be infringed. Bombay High Court follows the same principle when it held that a person against whom an order of detention has been made can challenge the order even before its execution. But in all these cases threat of infringement was real and based on concrete materials. In none of these cases, the threat was an apprehended threat based on speculation as in the case now before us. Here in the present case, this court has been moved merely on an apprehension—such an apprehension is that an order of detention may have been made against the petitioner and further that such an order may not have been made *bona fide* and in accordance with law. The principle laid down by the Supreme Court is based on the basic assumption that there must be some reasonable grounds to support the alleged threat and the court can satisfy itself about the impending threat with reference to the facts constituting the grounds. That principle cannot be extended to cover a case where on a mere apprehension in the mind of a citizen, he can invoke the *writ* jurisdiction of this court and obtain an anticipatory relief. It is not a case where any law having been promulgated or any particular statutory order having been made there is imminent likelihood of such law or order infringing or affecting the citizen's right. All that the petitioner makes out in his application under Article 226 of the Constitute on is an apprehension which may as well turn out to be mis-apprehension. He is apprehending an Older of which he is not sure. He is further apprehending that such an order would not be *bona fide* and in accordance with law. All this is really speculation. On such speculation the court cannot act. If the court acts on such a case then it will be difficult for the authorities vested with the powers under the statute to exercise such powers even lawfully. This view of ours is well supported by earlier decisions of this court in the cases of *Union of India* v. *D.G.*

Vohra 80 CWN 312, *D.S. Surana* v. *Union of India* 80 CWN 605 and *Dayalal N. Shah* v. *Union of India* 1976 (1) CHN 551."

The decision of a Coordinate bench of this Court in the case of **Auroma Coke Ltd. –Vs- Steel Authority of India Ltd** reported in **(2007) 3 Calcutta LT 174** cited by the Counsel for the petitioner has no matter of application in the instant case. The facts of the case reveal that the writ petitioner had approached Court after the Techno Commercial Bid was opened and before the Financial Bid.

A broad criteria has been stipulated to categorize the mining activity into two classes of persons i.e. for leases upto and within 20 years and the other above 20 years. As already stated the objects and purpose sought to be achieved are salutary and the new regime sought to be introduced bears a very rational nexus with the said objects and purposes.

One cannot also not accept the argument of the petitioner that small players are going to be eliminated. A plain reading of the policy does not indicate the same. The petitioners even otherwise do not have any vested right to carry on any business without appropriate regulation. All businesses especially in natural resources of the state require a dynamic regulatory mechanism to cater to the new and ingenious methods adopted to bypass the regulator and to factor in environmental concerns. It also cannot be accepted that the new regime ignores the Northern parts of the State which has smaller scale of sand mining. The new policy may recategorise the players permitted to exploit sand. That by itself cannot mean that it is meant to promote crony capitalism and favour a few.

In **Michigan Rubber (India) Limited –Vs- State of Karnataka & Ors.** reported in **(2012) 8 SCC 216** at Paragraph 35 it is stated thus:-

> **"35.** As observed earlier, the Court would not normally interfere with the policy decision and in matters challenging the award of contract by the State or public authorities. In view of the above, the appellant has failed to establish that the same was contrary to public interest and beyond the pale of discrimination or unreasonable. We are satisfied that to have the best of the equipment for the vehicles, which ply on road carrying passengers, the 2nd respondent thought it fit that the criteria for applying for tender for procuring tyres should be at a high standard and thought it fit that only those manufacturers who satisfy the eligibility criteria should be permitted to participate in the tender. As noted in various decisions, the Government and their undertakings must have a free hand in setting terms of the tender and only if it is arbitrary, discriminatory, mala fide or actuated by bias, the courts would interfere. The courts cannot interfere with the terms of the tender prescribed by the Government because it feels that some other terms in the tender would have been fair, wiser or logical. In the case on hand, we have already noted that taking into account various aspects including the safety of the passengers and public interest, CMG consisting of experienced persons, revised the tender conditions. We are satisfied that the said Committee had discussed the subject in detail and for specifying these two conditions regarding pre-qualification criteria and the evaluation criteria. On perusal of all the materials, we are satisfied that the impugned conditions do not, in any way, could be classified as arbitrary, discriminatory or mala fide."

In **Directorate of Education & Ors. –Vs- Educomp Datamatics Ltd. & Ors.** reported in

(2004) 4 SCC 19, it was held at Paragraph 13 as follows;-

> **"13.** Directorate of Education, Government of NCT of Delhi had invited open tender with prescribed eligibility criteria in general terms and conditions under tender document for leasing of supply, installation and commissioning of computer systems, peripherals and provision of computer education services in various government/government-aided senior secondary, secondary and middle schools under the Directorate of Education, Delhi. In the year 2002-03, 748 schools were to be covered. Since the expenditure involved per annum was to the tune of Rs. 100 crores, the competent authority took a decision after consulting the Technical Advisory Committee for finalisation of the terms and conditions of the tender documents providing therein that tenders be invited from firms having a turnover of more than Rs. 20 crores over the last three years. The hardware cost itself was to be Rs. 40-45 crores. The Government introduced the criterion of turnover of Rs. 20 crores to enable the companies with real competence having financial stability and capacity to participate in the tender, particularly in view of the past experience. We do not agree with the view taken by the High Court that the term providing a turnover of at least Rs. 20 crores did not have a nexus with either the increase in the number of schools or the quality of education to be provided. Because of the increase in the number of schools the hardware cost itself went up to Rs. 40-50 crores. The total cost of the project was more than Rs. 100 crores. A company having a turnover of Rs. 2 crores may not have the financial viability to implement such a project. As a matter of policy the Government took a conscious decision to deal with one firm having financial capacity to take up such a big project instead of dealing with multiple small companies which is a relevant consideration while awarding such a big project. Moreover, it was for the authority to set the terms of the tender. The courts would not interfere with the terms of the tender notice unless it was shown to be either arbitrary or discriminatory or actuated by malice. While exercising the power of judicial review of the terms of the tender notice the court cannot say that the terms of the earlier tender notice would serve the purpose sought to be achieved better than the terms of tender notice under consideration and order change in them, unless it is of the opinion that the terms were either arbitrary or discriminatory or actuated by malice. The provision of the terms inviting tenders from firms having a turnover of more than Rs. 20 crores has not been shown to be either arbitrary or discriminatory or actuated by malice."

In **Master Marine Services (P) Ltd. –Vs- Metcalfe Hodgkinson (P) Ltd. & Anr.** reported in **(2005) 6 SCC 138** at Paragraph 15 is set out below.

> **"15.** The law relating to award of contract by the State and public sector corporations was reviewed in *Air*

India Ltd. v. *Cochin International Airport Ltd.* [(2000) 2 SCC 617] and it was held that the award of a contract, whether by a private party or by a State, is essentially a commercial transaction. It can choose its own method to arrive at a decision and it is free to grant any relaxation for bona fide reasons, if the tender conditions permit such a relaxation. It was further held that the State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process, the court must exercise its discretionary powers under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the court should interfere.

The new regime, therefore, cannot be faulted on any of the grounds canvassed by the petitioner. There is legislative competence to introduce the new policy and as and when the policy is placed before the State Legislative, it would mature into a Rule. Smaller players like the petitioner are not, in fact, excluded and cannot claim prejudice. A more realistic and faithful disclosure of income by the so-called smaller players would make them clearly eligible under the aforesaid schemes.

Hence the writ petition fails and is hereby dismissed.

There shall be no orders as to costs.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)