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

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Reserved on: 2<sup>nd</sup> February, 2021.

Decided on: 26<sup>th</sup> March, 2021.

+ LPA 346/2018 & C.Ms.No.25515/2018 (stay), 10335/2020  
(modification of order dated 03.07.2018)

UNION OF INDIA & ANR

..... Appellants

Through: Mr. Tushar Mehta, Solicitor General  
of India with Mr. Amit Mahajan,  
CGSC & Ms. Kanu Aggarwal,  
Advocates for Union of India.

Versus

VEDANTA LTD & ORS

..... Respondents

Through: Mr. Harish Salve, Senior Advocate  
with Ms. Anuradha Dutt, Mr. Anish  
Kapur, Mr. Chetanya Kaushik &  
Ms. Priyanka M.P., Advocates for  
R-1 to 3.  
Mr. K.R. Sasiprabhu with Mr. Tushar  
Bhardwaj & Mr. Vinayak Maini,  
Advocates for R-4.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

**JUDGMENT**

: **Per D.N.PATEL, Chief Justice**

1. Being aggrieved and feeling dissatisfied by the judgment and order of the learned Single Judge dated 31<sup>st</sup> May, 2018 in W.P.(C) No.11599/2015, **the original respondent Nos. 1 and 2 have preferred the present Letters Patent Appeal.** Learned Single Judge has vide the impugned judgment allowed the writ petition and directed appellant No.1 herein/ Union of India to extend the tenure of the contract in question for a period of 10 years

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beyond its current term i.e. 14<sup>th</sup> May, 2030 on the same terms and conditions as existed on 15<sup>th</sup> May, 1995, when the contract was initially executed. The contention of the appellants herein, however, was that on extension of the tenure of the contract, the Government of India (hereinafter referred to as 'GoI') is entitled to 10% increase in the share in 'Profit Petroleum' under the Production Sharing Contract. As the learned Single Judge has not accepted the contention of the original respondent Nos. 1 & 2, the present appeal has been preferred.

2. Extension of the Production Sharing Contract (hereinafter referred to as 'PSC' for the sake of brevity) **dated 15<sup>th</sup> May, 1995** for Rajasthan Block (RJ-ON-90/1), and the terms of its extension including interpretation of its Clauses, especially **Article 2.1**, is the core issue for consideration before this Court. For the sake of convenience, original respondent nos. 1 and 2 are collectively referred to as appellants and Directorate General of Hydrocarbons (appellant No.2), wherever required to be separately referred is referred to as DGH. The original petitioners are referred to as petitioners. Petitioner No.1 in the writ petition was Cairn India Ltd. and is now known as Vedanta Ltd. and is respondent No.1 herein. Oil and Natural Gas Corporation Ltd. (respondent No.4) is referred to as ONGC.

### **BRIEF FACTUAL CONSPECTUS**

3. At the outset, it needs to be pointed out that the question involved in this appeal is an extension of a Production Sharing Contract between the original petitioner (Respondent herein) and the Government of India with regard to exploration, exploitation and sale of petroleum and natural gas. The Production Sharing Contract, by its very nature, is a different nature of contract where a private party shares the national wealth / natural mineral by

exploiting, excavating and selling the same and gives to the Government of India its share called “profit petroleum”. This contract, therefore, cannot be considered as mere regular commercial contract in view of the fact that all such natural resources are held by the Government of India for and on behalf of People of India and as a trustee. Undisputedly, the Hon’ble Supreme Court has read ‘public trust doctrine’ in case of natural resources which are ‘vested’ in the Government of India as a trustee.

The following conspectus of facts needs to be borne in mind, which are not in dispute-

- a) The question pertains to a Production Sharing Contract which is entered into by Union of India in discharge of its sovereign function and entered into and executed in the name of Hon’ble President of India as a trustee of the citizens of the country.
- b) The term of Production Sharing Contract having the initial period of 25 years between the Appellant-Union of India and the respondent company has expired in the year 2020 as the initial contractual period commenced from the year 1995.
- c) There is a provision for extension of tenure / period of this contract in the Production Sharing Contract.
- d) The said extension clause in the Production Sharing Contract viz. Article 2.1 of PSC makes it clear that any subsequent extension (after initial period of 25 years) shall be only “subject to applicable laws”.
- e) Union of India does not object to the request of the Respondent for 10 years extension.
- f) Government of India, has, however, as a trustee of national

wealth and natural resources made an all-India policy dated 7th April, 2017 in which it is stipulated that if a private party seeks extension of contract in all Production Sharing Contracts after initial contract period is over, such an extension would be granted on payment of additional 10% profit to the Government of India. As per the all-India policy of the Central Government, in case of an extension after the original contract, extension will be granted only if the Government gets 10% more of profit petroleum.

At this juncture, it needs to be noted that under the Production Sharing Contract, private party is required to pay a particular percentage to the Government of India which is called “profit petroleum”.

The Government of India, as a national policy applicable to all extensions of all such blocks in the country after 2017, has decided to extend the PSCs only if there is an increase in profit petroleum by 10%.

- g) This policy is applicable to all petroleum blocks in the country and not only to the Respondent herein.
- h) The said policy which is framed in exercise of statutory powers as well as Constitutional powers discussed hereunder, is not challenged by the original petitioner- respondent herein.
- i) Not only the policy is not under challenge, the quantification of addition in the profit petroleum viz. 10% increase is also not questioned, either as arbitrary or irrational or even excessive.
- j) The only argument canvassed by the original petitioner

(Respondent herein) and accepted by the learned Single Judge is that the Respondent herein is entitled to an extension as of right, without any condition.

In view of the aforesaid position, the question involved is how a contract involving Government of India, its right to put condition in larger national interest and as a trustee of natural resources in which the natural resources “vest” constitutionally needs to be interpreted by a Constitutional Court.

4. PSC was entered into between The President of India, Government of India, Oil and Natural Gas Corporation Limited and SHELL India Production Development B.V. (hereinafter referred to as SHELL) on 15th May, 1995 with respect to Rajasthan Block (RJ-ON-90/1). The duration of the PSC was 25 years from the Effective Date i.e. 15th May, 1995. At this point in time SHELL had 100% participating interest in the Rajasthan Block. However, vide an Addendum dated 7th June, 2000, SHELL assigned 50% of its participating interest in favour of Cairn Energy India Private Limited (CEIL). On 27th July, 2004 SHELL assigned remaining 50% of its participating interest in favour of CEHL and this was captured in Amendment No.2, to the PSC.

5. Since GoI decided to exercise its back-in-option under the PSC, ONGC was nominated to hold 30% of the participating interest in the Block and the participating interests underwent a change where CEHL and CEIL held 35% each of the participating interest with 30% with ONGC. The arrangement again underwent a change on 18th October, 2012, whereby Vedanta and CEHL held 35% participating interest and ONGC held 30%.

6. On 15th January, 2009, petitioners made a representation to DGH to

extend the PSC by 20 years i.e. up to 14th May, 2040 and in response thereto, DGH requested petitioners to submit long term production profiles of the Rajasthan Block to establish that the production line of the said Block would continue beyond the current tenure of the PSC and to furnish details of additional investments required to be made. After much correspondence between the parties with regard to various aspects, on 5th April, 2013, petitioners wrote to GoI that extension for a period of 10 years, beyond 2020, would suffice and reliance in that regard was placed on Article 2.1 of the PSC.

7. As per Article 2.1 of the PSC, after the completion of initial period of 25 years from the Effective Date, **the contract may be extended upon mutual agreement** between the parties for a period not exceeding 5 years, provided that in the event of commercial production of Natural Gas expected to continue beyond the end of the term of the contract, it shall be extended for such a period upto but not exceeding 35 years from the effective date, as may be mutually agreed between the parties to permit the Contractor to maximise production of Natural Gas in accordance with Good Petroleum Industry Practice.

8. Subsequent thereto several communications were exchanged between the parties herein, including meetings between the GoI, DGH, petitioners and the ONGC, as the consent of the ONGC was necessary before the proposal for extension of the PSC tenure could be accepted by GoI. Petitioners insisted that extension of the PSC be granted on the existing terms and conditions as also for an early decision in that regard. Without, however, waiting for a final decision in the matter, Petitioners filed the writ petition being W.P.(C) 11599/2015, seeking a mandamus to the appellants to

issue written confirmation of the extension of the PSC for 10 years beyond the current term in terms of Article 2.1, as the current term was to expire on 14<sup>th</sup> May, 2020.

9. Learned Single Judge vide order dated **14<sup>th</sup> December, 2015** directed the appellants to furnish to the petitioners a list of further particulars required by them to take a decision for extension of the PSC with a similar direction to the ONGC. Petitioners were directed to furnish to the ONGC within two weeks thereafter the particulars sought for and the ONGC was directed to take a decision thereon within six weeks. In case of a consensus between them, the documents were to be forwarded to the GoI and a direction was issued to the GoI to take a decision thereon within three months. On an application being filed by the ONGC, vide order dated 5<sup>th</sup> May, 2016 time was extended by the Court for taking a decision. After the decision taken by the ONGC was conveyed to the GoI, it filed an application being C.M. No. 41397/2016 seeking extension of time for taking a decision and vide order dated **7<sup>th</sup> November, 2016** (Annexure A-8 to the memo of this appeal), the learned Single Judge disposed of the application and granted further time of two months i.e. upto **6<sup>th</sup> January, 2017** for compliance with the order dated 14<sup>th</sup> December, 2015.

10. Thereafter, further time was given by the learned Single Judge to the GoI for taking a decision upto 28<sup>th</sup> February, 2017, vide order dated 31<sup>st</sup> January, 2017, in C.M. No.649/2017.

11. In the meantime, Ministry of Petroleum and Natural Gas/ appellant No.1 herein formulated a Policy for grant of extension of Pre-NELP PSCs and the same was notified in the Gazette on 7<sup>th</sup> April, 2017. As per the appellants, the said policy decision was taken in view of the fact that GoI

had entered into several PSCs, which were existing and a need was felt to finalise the terms, which could be uniformly applied to all the contracts with a Pan India application. GoI intimated DGH to inform ONGC and petitioners about the Policy and advised them to apply for extension under the Policy, which now occupied the field. On 3<sup>rd</sup> May, 2017, GoI filed an Affidavit placing on record the Policy, before the learned Single Judge. It was highlighted that GoI was ready and willing to extend the PSC with the petitioners, but with a condition that Government share of Profit Petroleum shall be 10% higher. **Thus, the prayer** of the petitioners to extend the period of contract for further period of 10 years **on the same terms and conditions** as were prevailing on the date of execution of the PSC, **was opposed by the Government.** Vedanta filed an Affidavit dated 26<sup>th</sup> July, 2017, taking a position that the new Policy could not take away its existing contractual rights.

12. Significantly, under the Policy dated 7<sup>th</sup> April, 2017, one of the fiscal parameters for extension of the PSC was that the Government's share of profit petroleum during the extended period of contract shall be 10% higher for the Blocks, compared to the earlier years. **This Policy decision according to appellant No.1 was taken to have a transparent and defined framework for granting extension as also help the operators in planning their investments and operations, which in turn would help in optimal exploitation of the reserves and was to have uniform application, with no discrimination amongst the stakeholders, in granting extension.**

13. Learned Single Judge vide the impugned judgment dated 31<sup>st</sup> May, 2018 in W.P.(C) No.11599/2015 has allowed the writ petition filed by the

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petitioners and has directed GoI to extend the PSC dated 15<sup>th</sup> May, 1995 for a period of 10 years i.e. upto 14<sup>th</sup> May, 2030, beyond its current term, as envisaged in Article 2.1, on the initial terms and conditions and assailing the said decision appellants have approached this Court, by filing the present appeal.

**ARGUMENTS CANVASSED BY MR. TUSHAR MEHTA, LEARNED SOLICITOR GENERAL OF INDIA**

14. Mr. Tushar Mehta, learned Solicitor General of India contended that the judgment of the learned Single Judge dated 31<sup>st</sup> May, 2018 (Annexure A-1 to the memo of this appeal) is against the terms of the PSC, as also in violation of the provisions of the Policy of the GoI dated 7<sup>th</sup> April, 2017. It was submitted that the appellants have no objection to the extension of the contract for 10 years, however, it was not open to the learned Single Judge to direct extension of the PSC on the earlier terms and conditions and the Mandamus issued is beyond the scope of judicial review of the Court, exercising jurisdiction under Article 226 of the Constitution of India.

15. Learned Solicitor General of India gave a detailed narrative of why and how the Production Sharing Contracts are entered into between the Government and the Contractors. It is explained that the Government is the sole owner of Petroleum and Mineral Resources underlying the contract area and shall remain the sole owner, except as regards that part of the Crude Oil or Gas, the title whereof passes to the Contractor under the provisions of the Contract. Under the PSC, the State as an owner of the mineral resources, engages a contractor to provide technical and financial services for exploration and development operations. The contractor acquires an entitlement to a stipulated share of the oil/ natural gas/ any other mineral

produced as a reward for the risk undertaken and for the services rendered. The State, however, it is emphasized by Mr. Mehta, remains the owner of the petroleum produced subject only to the contractor's share of production.

16. Learned Solicitor General of India has explained in detail the Legislative framework of the Production Sharing Contract. It is submitted that **exploration, discovery and production of petroleum is governed by the Oilfields (Regulation and Development) Act, 1948, the Petroleum and Natural Gas Rules, 1959 (hereinafter referred to as 'PNG Rules')**, made thereunder as well as by the Constitutional Executive Powers of the Central Government referable to List I of Schedule VII of the Constitution and the Territorial Waters and Continental Shelf, Exclusive Economic Zone and Other Maritime Zone Act, 1976. It was further submitted that under Rule 5 of the PNG Rules, the Central Government is entitled to notify in Official Gazette, from time to time particulars regarding the basis on which the Central Government may consider proposals for prospecting or mining operations in any specified areas. Thus, Production Sharing Contract by the Union of India is in discharge of its Sovereign functions and entered into and executed in the name of Hon'ble the President of India as a Trustee of the Citizens of the country. It is argued that ownership of natural resources, petroleum and natural gas vests in the Union of India and is held under the 'Public Trust Doctrine'.

17. Mr. Mehta has relied upon the decision rendered by Hon'ble Supreme Court of India in *Association of Natural Gas vs. Union of India* reported in **2004 (4) SCC 489** and the decision in *Reliance Natural Resources vs. Reliance Industries Limited* reported in **2010 (7) SCC 1**, wherein the Hon'ble Supreme Court held that the Constitutional mandate is that natural

resources belong to the people of this Country and the word “vest” must be seen in the context of “Public Trust Doctrine”. It was further held that it is the solemn duty of the State to protect the National interest and the Government owns the assets such as natural resources for the purposes of developing them in public interest. Attention is specifically drawn to paragraphs 114 to 116, 118, 122, 128, 237, 245, 246 and 249 of the decision in *Reliance Natural Resources (supra)*.

18. Mr. Mehta summarised the following points, which according to him emerge from a reading of the aforesaid judgments, which are binding under Article 141 of the Constitution of India: -

- i) It is the responsibility and Constitutional obligation of the GoI to provide complete protection to the natural resources and to explore / exploit the same as a trustee for benefit of the Nation and this is a special obligation over and above what is affixed with respect to resources which are exploited by virtue of provisions of Article 298 of the Constitution.
- ii) It is only due to shortage of funds and technical know-how, that the GoI has privatised such activities through the mechanism provided under the PSC.
- iii) Even though private parties are employed for exploration and development purposes of natural resources by GoI, they remain bound to act within the Constitutional set-up and its framework and the profit distribution inter-se Union of India and the private party, must yield to the optimum interest of the citizens of India instead of subserving private interests.

- iv) Exploitation activities of natural resources by the private parties under the PSC can only be premised on the sole criteria to unlock these resources for the purposes of the Union and people of India, only.
- v) The extension clause, i.e., Article 2.1 of PSC starts with “subject to applicable laws”. The “applicable law” would include the statutory provisions of Oil field (Regulation and Development) Act, 1948, the petroleum and Natural Gas Rules, 1959, Article 73 of the Constitution of India and the policy dated 7<sup>th</sup> April, 2017 made thereunder. The “applicable law” would also include the law declared by the Supreme Court of India as per Article 141 of the Constitution of India.
- vi) Even otherwise, Article 2.1 of PSC leaves room for putting conditions in Public interest.
- vii) Even if two interpretations are possible the interpretation which subserves public interest needs more particularly in a contract where the Government of India outsources a private party to discharge its sovereign function as a trustee of the citizens of India.

19. It is thus submitted that the interpretation of the terms of the PSC regarding extension thereof, ought to have been appreciated by the learned Single Judge keeping in mind the goal of revenue maximization, especially in the light of the **Policy decision** dated 7<sup>th</sup> April, 2017, which has been made uniformly applicable to all the Production Sharing Contracts, existing in the country, including the present PSC, with the petitioners. Conspectus

of the above mentioned judgments leads to only one conclusion that the prime aim of the Government in discharge of its sovereign functions to get natural resources its maximum advantage to the people of India and the same can only be achieved by maximum revenue generation. Mr. Mehta has also relied upon the decision rendered by the Supreme Court in *Union of India vs. Association of Unified Telecom Service Providers of India etc.* reported in **(2020) 3 SCC 525**, especially paragraph 86, wherein Supreme Court has held that GoI has to “make an effort to get the best price for its valuable assets and cannot throw them away”.

20. Arguing further the learned Solicitor General has taken this Court to various Articles of the PSC. It is pointed out that Article 2.1 of the PSC itself stipulates that duration and the terms of the Contract shall be subject to “**applicable laws**”. The entire Contract including Article 2.1 is subject to applicable laws which means and connotes “laws of India”. Therefore, the term “applicable laws” would include the Constitution of India, the Statutory provisions, law laid down by the Supreme Court and the policy dated 7<sup>th</sup> April, 2017. He also submitted that as per Article 2.1 of the PSC, the initial duration of the contract was 25 years, extendable “upon mutual agreement” and upon such terms as may be finalized, mutually. This clearly implies that once the initial term/duration of the Contract has come to an end on 14<sup>th</sup> May, 2020, the extension cannot be on terms and conditions unilaterally imposed by the petitioners.

21. Thus, the argument of the appellants is that for extension of the PSC, the provisions of the Policy, being the applicable law, would cover the field and the Government is clearly entitled to 10% higher share of the Profit Petroleum, during the extended period. In this light, the petitioners cannot

claim a vested right to seek extension on the terms and conditions that existed when the PSC was initially executed and the learned Single Judge has gravely erred in issuing a Mandamus to the GoI to extend the contract on the old terms.

22. It is further submitted that it is settled law that whenever the terms of the contract are explicitly clear and unambiguous or where there is no scope of any other interpretation, the Court ought not to interfere with the **“freedom of the parties to the contract”**. The Court cannot compel one of the parties to the contract, to extend the term of the contract and that too on the same terms and conditions as were prevailing, as on the date of execution of the initial contract. The Hon’ble Supreme Court in ***DLF Universal Ltd. v. Town & Country Planning Deptt.*** reported as **(2010) 14 SCC 1** has held that a contract is interpreted according to its purpose and comprises the joint intent of the parties. Every contract expresses the autonomy of the contractual parties’ private will and cannot be construed as an intent of a single party. Thus, the attempt of the petitioners to seek extension on the old terms and conditions is contrary to the contract law and the observations of the Supreme Court in ***DLF Universal (supra)*** and the impugned judgment directing extension of contract on the earlier terms overlooking the policy entitling the Government a 10% higher share in the profit deserves to be set aside.

23. It is further argued that the learned Single Judge has rewritten the contract between the parties, especially Article 2.1, which is impermissible in law. Government cannot be compelled to extend the contract by another 10 years without increase in the share in the Profit Petroleum. In case the terms of the Policy are not to the liking or advantage of the petitioners, they

have the freedom of not extending the contract, but surely they cannot enforce any right of extension on the earlier terms, which were entered into 25 years ago i.e. nearly a quarter of a Century.

24. Learned Solicitor General of India has read and re-read Article 2.1 and has taken pains to explain the important phrases incorporated therein, both grammatically and otherwise and has strenuously argued that the extension of the contract in question can only be on terms mutually agreed between the parties, applying the applicable laws and there cannot be extension on terms **unilaterally** sought to be imposed by the petitioners. This in effect would render Article 2.1 of the PSC, redundant and otiose.

**ARGUMENTS CANVASSED BY MR.HARISH SALVE, LEARNED SENIOR ADVOCATE APPEARING FOR THE PETITIONERS.**

25. Mr. Harish Salve, learned senior counsel appearing for the petitioners argued that no error has been committed by the learned Single Judge while deciding the writ petition and passing the impugned judgment dated 31<sup>st</sup> May, 2018. He contended that the learned Single Judge has rightly interpreted Article 2.1 of the PSC, the language of which does not admit of ambiguity. Taking the Court through the provisions of Article 2.1, it is submitted that the Article has 3 elements and the first element of the proviso is not in dispute i.e. parties do not dispute that there is Commercial Production of Natural Gas and this would continue beyond the end of the term of the PSC. The second element of the proviso again is in a language which is unambiguous that “the contract shall be extended for such a period upto but not exceeding” and uses the word “shall” and is in contrast to the language in the previous sentence, where there is no commercial production of Natural Gas and where the word “may” has been used for extension upon

mutual agreement between the parties for a period not exceeding 5 years.

26. It is submitted that when the PSC was entered into, the Rajasthan Block was an unexplored area and it was unknown whether any Hydrocarbon would be found in this area and if so, whether it would in liquid or gaseous form and thus a separate provision was made in case Natural Gas was discovered and went into Commercial Production. The third element i.e. the period of extension has to be “sufficient to permit the contractor to maximise the production of Natural Gas in accordance with good petroleum industry practice...” is a matter which is negotiable between the parties. Increasing the rate of production involves increase capital outlay and is at times in the interest of the contractor. However, on the other hand, it is necessary that the contractor produces the Natural Gas at a pace which does not damage the reservoir. Thus, arriving at a correct rate of production is a matter of agreement between the parties and in the present case there is no dispute that the extended period should be upto 2030. Mr. Salve argues that the appellants have been admittedly willing to extend the term of the PSC and the only bone of contention between the parties is the demand by GoI for additional 10% share of Profit Petroleum.

27. It is argued that the learned Single Judge has rightly come to a conclusion that under the PSC, the contractor had a right to demand extension of the PSC, until such time he is able to maximise the production, the maximum period, however, not exceeding 35 years from the effective date and that the PSC did not entitle the GoI to unilaterally change any of its terms and conditions. The learned Single Judge has rightly concluded that extraneous terms now sought to be imposed, based on the policy decision cannot override a binding contract and attempt to do so would be

inconsistent with rule of law. There is no law which authorizes the Government to frame an executive policy by which the contracts like Production Sharing Contracts can be nullified and more particularly when huge investments have been made by the petitioners.

28. It is further contended that the stand of the appellants that the terms of the PSC must give way to the purported New Policy of 7<sup>th</sup> April, 2017, are misconceived. The rights of the parties to the PSC are governed by a statutory contract, and contractual provisions cannot be overridden by the executive fiat. The Contractor has a right under the PSC to demand an extension, as clearly, the area of 'mutual agreement' covers the period of such extension. The purported New Policy does not relate to the 'period of extension' and on its plain language, proceeds on the premise that the government is conferring largesse or benefit upon the existing contractor by allowing the extension. This might be true for other PSC's where the contractor does not have a right to an extension, or where there may be no production of Natural Gas, but there may be remaining liquid hydrocarbon, which could be produced. However, where there is a contractual right in favour of the contractor, as in the present case, that right cannot be diluted, much less eviscerated by exercise of executive power.

29. Any executive action, it is argued, that seeks to take away rights or operates to the prejudice of any person must have the authority of law. It cannot be gainsaid that the PSC confers valuable rights upon the Contractor. There is no law which authorises the Government to frame an executive policy by which these contracts can be nullified. It is a settled law that a Policy cannot override executive contracts such as the Production Sharing Contract, which is governed by the provisions of Article 299 of the

Constitution. Therefore, any attempt by GoI to rely on the purported New Policy for extending the PSC is misplaced. Reliance in this regard has been placed on *DDA vs. Joint Action Committee, SFS flats* reported in **(2008) 2 SCC 672**, *Sime Darby Engg. SDN BHD. vs. Engineers India Ltd.* reported in **(2009) 7 SCC 545**, and *Government of NCT of Delhi vs. Bhushan Kumar* reported in **2008 SCC OnLine De1379**.

30. Furthermore, it is argued that Vedanta and CEHL are entitled to renewal as a matter of right and in this regard reliance is placed on the observations in the judgment in *Bal Sahyog vs. Union of India*, **2003 SCC OnLine Del 951**, especially paragraphs 14 & 15 thereof. Reliance is also placed on the judgment in the case of *Bennett Coleman Co. & Ors. vs. Union of India & Ors.* reported as **(1972) 2 SCC 788**.

31. The next contention of the petitioners is that reference by Mr. Mehta to the Oilfields (Regulation and Development) Act, 1948, is misconceived. The said Legislation confers upon the GoI the exclusive right to grant mining leases. A production sharing contract is not a mining lease – it is an overarching contract in terms of which the mining leases are granted. The production sharing contract obliges the contractor to conduct petroleum operations. In the present case, the Rajasthan Block being an exploration field, the PSC commenced with exploration operations to discover the existence of hydrocarbons. After commercial discoveries are made, declared and approved, a mining lease is separately granted for the Development Area. Under this mining lease, royalty is payable - and in the present case would be payable to the State Government, since these are onshore fields, which vest not in the Union Government, but in the State. The overarching contract is the Production Sharing Contract and the dispute relates to the rate

of Profit Petroleum payable under the PSC.

32. It is submitted that the PSC relates to an area in respect of which an exploration license under the Mines and Minerals (Development and Regulation) Act, 1957 and the Rules made thereunder had been granted to the ONGC, and in respect of this area, the last recital in the preamble of the PSC reads thus: " ... *As a result of discussions between the representatives of the government and SIP D on the proposal of SIP D, the government and ONGC have agreed to enter into this contract with SIP D with respect to the said area ...* ".

33. Mr. Salve argued that it is clear that the PSC is a lawful contract and is binding upon the Government of India. There is no statutory basis on which such a contract can be unilaterally altered by the GoI. Even otherwise, the Appellants cannot unilaterally alter the binding terms of the statutory PSC by way of the purported New Policy in view of Article 34.2 of the PSC, which provides that the terms of the PSC cannot be amended, modified, varied except by an instrument in writing, signed by all parties. That being the legal position, the learned Single Judge was right in holding that the insistence upon a policy which was inconsistent with the terms of the contract between the GoI and the Contractor, was a violation of the rule of law and thus unconstitutional.

34. Further, the learned Single Judge had specifically, *vide* Orders dated 07.11.2016 and 31.01.2017, directed the Appellants not to link the decision regarding extension of the PSC with formulation of any policy and the learned Single Judge was thus right in observing that the GoI has attempted to do exactly the opposite, without assailing the said orders.

35. Arguing on the challenge by the appellants to the maintainability of  
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the writ petition, Mr. Salve submits that the challenge is clearly untenable in law but, in any case, it has now lost its efficacy with the passage of time. When the writ petition was filed, it was to address on the inaction of the GoI in taking a decision on the request of the Contractor to extend the PSC. It cannot be gainsaid that a petition under Article 226 of the Constitution of India would lie to compel the GoI to take a decision, even if the decision was to be taken in relation to the contractual rights of a party. The GoI, however, came back with a purported New Policy decision to grant the extension only upon the altered terms relating, *inter alia*, to profit sharing. Even if this was a breach of the contract, considered in the context of the rubric rule of law, the attempt of the GoI to compel a contractor to agree to a term inconsistent with its contractual rights on account of a Policy decision of the GoI, was clearly a violation of the rule of law and therefore violative of Article 14 of the Constitution of India.

36. It is a settled law that the rule against interference in contractual disputes is a rule of discretion and not a limitation on the jurisdiction of a Constitutional Court. If in the facts of this case, the High Court has exercised its discretion under Article 226 of the Constitution of India and interfered, at this distance point of time to unsettle a judgment, which is otherwise sound in law, solely on the ground of alternative remedy, would be travesty of justice and the consequences would be to put a project which is of immense public importance in a state of uncertainty, which would be untenable in law.

37. On the basis of these submissions, it is submitted by Mr. Salve that no error has been committed by the learned Single Judge in deciding W.P.(C) No.11599/2015 vide judgment and order dated 31<sup>st</sup> May, 2018. Hence, this

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Letters Patent Appeal may not be entertained by this Court.

**ANALYSIS AND FINDINGS.**

**ISSUE INVOLVED IN THIS APPEAL**

38. The Appellants were the original respondent Nos.1 and 2 in W.P.(C) No.11599/2015 and have impugned the judgment dated 31<sup>st</sup> May, 2018, in the present appeal. The core issue that arises in the present appeal is the right of the petitioners to an extension of the PSC for a further period of 10 years on the same terms and conditions that existed when the PSC was initially executed on 15<sup>th</sup> May, 1995 as well as interpretation of the provisions of Article 2.1 in that context.

39. By the impugned judgment passed in the writ petition, provisions of Article 2.1 have been interpreted entitling the petitioners to extension for 10 years on the earlier terms and conditions. In this light, directions have been passed to the appellants to extend the PSC, without applying the new policy and on the terms as existed on 15<sup>th</sup> May, 1995.

40. While it is the contention of the appellants that the PSC can be extended only upon mutual agreement between the parties and the Government of India can always extend the term of the contract with a condition of 10% higher share in Profit Petroleum, in public interest, the petitioners contend that it is not open to impose any new condition to extend the PSC and the purported new policy cannot be construed to be “applicable law” as stipulated in Article 2.1 of the PSC. Thus, according to the petitioners, the PSC has to be extended for 10 years on the initial terms and conditions. Before examining the issue that arises for consideration, it would be significant and useful to understand the nature of the PSC and various Articles which are a part of the contract.

## **WHAT IS PRODUCTION SHARING CONTRACT?**

41. Under the Production Sharing Contract, the State as the owner of mineral resources, engages a Contractor, who provides technical and financial services for excavation, exploration and development operations. The Contractor acquires a stipulated share in the petroleum products as a reward for the risk taken and services rendered. The State, thus, continues to be the owner of the petroleum products and the Contractor is entitled to its share in the production.

42. **The Production Sharing Contracts, is evident, are distinguishable from other types of commercial contracts in the following two ways:-**

- a) The Government continues to be the owner of the petroleum products and holds them as a trustee for and on behalf of the people of India as '*custodia legis*';
- b) The Contractor carries the exploration risk and if no oil is found, he receives no compensation.

43. It is undisputed between the parties that petitioners are private oil companies and Respondent No.4 herein/ONGC is a national oil company. PSC is a contract entered into by the Government of India in discharge of its sovereign powers and the same is executed in the name of Hon'ble President of India. The preamble of the PSC unambiguously provides that it has been entered into for the purpose of "**...petroleum resources which may exist in India be discovered and exploited with utmost expedition in the overall interest of India....**".

44. As per the PSC, the exploration and development activities are carried out under the supervision of a "**Management Committee**", which monitors the proper performance of the PSC and the operations are carried out

through “Joint Operating Agreements”.

45. As rightly brought out by the learned Senior Counsels for the parties, a PSC has three basic features viz. a). Parties to the contract pay a royalty on gross production to the Government; b) After the royalty is deducted, the Private Oil Company is entitled to a pre-specified share (percentage of which is specified in the PSC subject to the terms of “applicable laws”) of production for cost recovery; c) The remainder of the production, called ‘Profit Petroleum’, is then shared between the Government and private oil company at a stipulated share provided in the PSC. The Production Sharing Contracts are entered into in exercise of the powers conferred under Rule 5 of the PNG Rules. Rule 5(3) of the PNG Rules provides as under:-

*“Rule 5 (3) The Central government, if it deems fit, may from time to time notify in the official Gazette particulars regarding the basis on which the Central Government may be prepared to consider proposals for prospecting or mining operations in any specified areas;”*

### **PUBLIC TRUST DOCTRINE**

46. As per the judgments of Hon’ble Supreme Court, Public Trust Doctrine has been invoked in several cases and it has been held that natural resources **do not merely ‘vest’ in the Union of India, but, Union of India ‘holds’ such natural resources, in trust for and on behalf of the people of the country and the people of the country** are the owners of the natural resources. In *Reliance Natural Resources (supra)*, it has been held as under:-

**“114. It must be noted that the constitutional mandate is that the natural resources belong to the people of this country. The nature of the word “vest” must be seen in**

*the context of the public trust doctrine (PTD).* Even though this doctrine has been applied in cases dealing with environmental jurisprudence, it has its broader application.

*115. The Constitution Bench of this Court in Special Reference No. 1 of 2001, In re (2004) 4 SCC 489, p. 507, para 42] , while quoting Cauvery Water Disputes Tribunal, In re [1993 Supp (1) SCC 96 (II) : AIR 1992 SC 522] held that: (Special Reference No. 1 of 2001, In re [Special Reference No. 1 of 2001, In re, (2004) 4 SCC 489, p.507, para 42] , SCC p. 507, para 42)*

*“42. In Cauvery Water Disputes Tribunal, In re [1993 Supp (1) SCC 96 (II) : AIR 1992 SC 522] the right to flowing water of rivers was described as a right ‘publici juris’ i.e. a right of the public. So also the people of the entire country have a stake in natural gas and its benefit has to be shared by the whole country. There should be just and reasonable use of natural gas for national development. If one State alone is allowed to extract and use natural gas, then other States will be deprived of its equitable share. This position goes on to fortify the stand adopted by the Union and will be a pointer to the conclusion that ‘natural gas’ is included in Entry 53, List I. Thus, the legislative history and the definition of ‘petroleum’, ‘petroleum products’ and ‘mineral oil resources’ contained in various legislations and books and the national interest involved in the equitable distribution of natural gas amongst the States—all these factors lead to the inescapable conclusion that ‘natural gas’ in raw and liquefied form is petroleum product and part of mineral oil resources, which needs to be regulated by the Union.”*

116. With relation to the public trust doctrine, this Court in *M.C. Mehta v. Kamal Nath* [(1997) 1 SCC 388] held: (SCC pp. 407 & 413, paras 25 & 34)

“25. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes.

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34. Our legal system—based on English common law—includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the seashore, running waters, air, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.”

**This doctrine is part of Indian law and finds application in the present case as well. It is thus the duty of the Government to provide complete protection to the natural resources as a trustee of the people at large.**

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118. **It is relevant to note that the Constitution envisages exploration, extraction and supply of gas to be within the domain of governmental functions. It is**

the duty of the Union to make sure that these resources are used for the benefit of the citizens of this country. Due to shortage of funds and technical know-how, the Government has privatised such activities through the mechanism provided under the PSC. It would have been ideal for the PSUs to handle such projects exclusively. It is commendable that private entrepreneurial efforts are available, but the nature of the profits gained from such activities can ideally belong to the State which is in a better position to distribute them for the best interests of the people. Nevertheless, even if private parties are employed for such purposes, they must be accountable to the constitutional set-up. The statutory scheme of control of natural resources is governed by a combined reading of the Oilfields (Regulation and Development) Act, 1948, the Petroleum and Natural Gas Rules, 1959 and the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act.

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128. In a constitutional democracy like ours, the national assets belong to the people. The Government holds such natural resources in trust. Legally, therefore, the Government owns such assets for the purposes of developing them in the interests of the people. In the present case, the Government owns the gas till it reaches its ultimate consumer. A mechanism is provided under the PSC between the Government and the contractor (RIL, in the present case). The PSC shall override any other contractual obligation between the contractor and any other party.

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237. While the word “vest” could normally partake of at least a portion of the full bundle of rights associated with ownership, the phrase “shall vest” as used in Article 297 of the Constitution implies a deliberate, and not an incidental, act by a body at the various constitutional moments that have informed our Constitution. That body

is the people as a nation. It is now a well-established principle of jurisprudence that the true owners of “natural wealth and resources” are the people as a nation.

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245. The statutory matrix dealing with natural gas and other petroleum resources also clearly indicates the importance of such permanence of sovereignty. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976; the Oilfields (Regulation and Development) Act, 1948 and the Petroleum and Natural Gas Rules, 1959, all emphasise the importance and duty of the GoI to conserve and develop mineral oils, including natural gas.

246. As we have noted above, Article 297 of the Constitution is a special provision which leads us to conclude that the powers granted to the Union to hold the resources for purposes of the Union cast special obligations over and above what are normally affixed with respect of all other resources that the Union may be permitted to act upon pursuant to Article 298. We hold that under Article 297 of the Constitution, the Union of India can indeed enter into contracts for the identification, development and extraction of resources in the geographic zones specified therein. However, such activities can only be premised on the key therein to unlock those resources: for the purposes of the Union.

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249. In light of the public trust elements so intrinsic to resources under the seabed, and the special nature of Article 297, the implications of natural gas for India's energy security, and the imperatives of national development—including the concepts of egalitarianism and promotion of interregional parity, we hold that the Union of India cannot enter into a contract that permits

extraction of resources in a manner that would abrogate its permanent sovereignty over such resources. It is not just a matter of mere textual provisions in a contract or a statute. It is a matter of constitutional necessity.”

(emphasis supplied)

47. In view of the aforesaid decision, the duty of the Government of India is to provide complete protection to the natural resources as a Trustee of the public at large and as observed by the Hon’ble Supreme Court, the Union of India cannot enter into a contract that permits extraction of resources in a manner that would abrogate its permanent sovereignty over such resources and this is not just a matter of mere textual provisions in a contract or a Statute but is a matter of Constitutional necessity.

48. The obligations of the Government as a Trustee of Natural Resources has been recognized by the Hon’ble Supreme Court of India in ***Union of India v. Association of Unified Telecom Service Providers of India Etc.(supra)*** in the following words:-

*“86. DOT has urged that the Central Government has exclusive privilege under section 4 of the Telegraph Act; thus, it is bound to get the best price for natural resources. To part with the exclusive privilege under the revenue sharing regime is extremely beneficial to the licensees. Thus, the State must get the price for its valuable right as mandated under Article 14. In our opinion, there is no doubt that the State is a trustee of the natural resources and is obliged to hold it for the benefit of the citizens but also to ensure equal distribution to sub-serve the common good as observed under Article 39 of the Constitution of India in Re: Natural Resources Allocation, (2012) 10 SCC 1. The Government being the sole repository of all the resources in the country, also has the exclusive power to determine the licence conditions at which it parts with the exclusive right to the*

*resources. Government has to make an effort to get the best price for its valuable rights and cannot throw them away, and there would be no arbitrariness in the same.*

*(Emphasis Supplied)*

49. In view of the aforesaid decisions of the Hon'ble Supreme Court which are binding dicta, there cannot be a doubt that the Government of India is mandated to make every possible effort to get the best price for the valuable mineral resources and maximize the revenue generation, as rightly contended by the appellants.

#### **INTERPRETATION OF ARTICLE 2.1 OF THE PRODUCTION SHARING CONTRACT**

50. Article 2.1 of the Production Sharing Contract reads as under:-

*“2.1. The term of this Contract, subject to the terms hereof and the applicable laws, shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated earlier in accordance with its terms, **but may be extended upon mutual agreement** between the Parties for a further Period not exceeding five (5) years; **provided that** in the event of Commercial Production of Natural Gas, which is expected to continue beyond the end of the term of the Contract, the Contract shall be extended for such a period up to but not exceeding thirty five (35) years from the Effective Date, **as may be mutually agreed between the Parties** to be sufficient to permit the Contractor to maximise the production of Natural Gas in accordance with good petroleum industry practice. If the production of Crude Oil or of Natural Gas is expected to continue beyond the end of the relevant period referred to above, the Parties may agree to extend this Contract for a further period upon such terms as may be mutually agreed.”*

*(emphasis supplied)*

51. The aforesaid Article has been read and re-read by the learned Senior Counsels for the parties herein and has also been interpreted by the learned Single Judge. In our considered view, interpretation of the provisions of Article 2.1 would have to take colour from the “Public Trust Doctrine”, implying that it cannot be overlooked that natural resources like petrol and petroleum products are owned by the State, who is their repository and holds the same in trust for and on behalf of the people of the country. As affirmed and re-affirmed by the Hon’ble Supreme Court in several judgments, the resources have to be utilized and the contracts with respect to them have to be entered, keeping in mind factors which subserve the National interest, which as a corollary, would have to outweigh the private interests. There is no gainsaying that applying the said Doctrine, the Government has to make efforts to optimise the revenue generated when it enters into the PSCs concerned with the natural resources.

52. Much has been argued on both sides with regard to the interpretation of the words “**...applicable laws...**” in Article 2.1. The provisions of the Article clearly provide that “**the terms of the Production Sharing Contract are subject to the terms and conditions mentioned in the contract and are further subject to the applicable laws....**”. The question that arises at this stage is on the meaning and interpretation of “**...applicable laws...**”.

53. In order to answer this question, it would be useful to allude to Article 32.1 of the PSC which provides that the Contract shall be governed and interpreted in accordance with laws of India. Article 32.1 reads as follows:-

**“32.1 This Contract shall be governed and interpreted in accordance with the laws of India,**

*together with applicable principles of international law, insofar as they are not inconsistent with the laws of India.”*

Article 2.1 itself stipulates that the duration and the term of the Contract would be subject to the “applicable laws”. This clearly implies that the entire contract including Article 2.1 of PSC is subject to the “laws of India”. Thus, read there cannot be a doubt that the PSC is subject to the applicable laws which would include:-

- a) the Constitution of India;
- b) the statutory provisions;
- c) the law propounded by the Hon’ble Supreme Court of India (As per Article 141 of the Constitution of India), and
- d) **The policy of the Government of India.**

54. The Central Government has formulated a Pan India extension policy for grant of extension to the existing PSCs in respect of all the “Pre-NELP Exploration Blocks” stipulating therein that during the extended period it shall have 10% higher share of Profit Petroleum. The policy has been issued under Rule 5(3) of the PNG Rules and thus, by virtue of Article 32.1 of the PSC would fall under the term “applicable laws”.

55. The executive power of the Government to regulate and distribute the manner of sale of Natural Resources has been upheld by the Hon’ble Supreme Court in several decisions. Under Entry No.53 of List-I of Schedule VII read with Article 39(b) of the Constitution of India, the Union has the power, jurisdiction and authority to take a policy decision as has been done in the present case by issuing the policy decision dated 7<sup>th</sup> April, 2017, to subserve the common good. Article 39(b) of the Constitution of

India is extracted hereinafter for ready reference:-

*“39. Certain principles of policy to be followed by the State. – The State shall, in particular, direct its policy towards securing –*

(a) xxx xxx xxx

(b) *That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;”*

56. It has been held by Hon’ble Supreme Court in ***Reliance Natural Resources Ltd. v. Reliance Industries Ltd. (supra)*** in paragraphs 77 and 78 as under:-

*“77. In the light of the above, the executive of the Union of India enjoys its constitutional powers under Article 73 and Article 77(3) in order to fulfil the objectives of the Directive Principles of State Policy relating to distribution of natural gas. This natural gas is a material resource under Article 39(b). In view of this, along with the contemplation of the Government's policy for the utilisation of natural gas under Article 21.1 and the decision of this Court referred to above, the executive decided that distribution would include within its ambit acquisition, including acquisition of privately owned material resources. The framing of the “gas utilisation policy” in identifying the priority sectors, and allocating the requisite quantities in accordance with the needs of the said sectors and subjecting marketing freedom to the order of priority and guidelines framed is very much in accordance with law. Consequently, Article 21.1 and Article 21.3 should be read in consonance with the gas utilisation policy and the latter is neither inconsistent with the provisions of the Constitution, nor the Oilfields (Regulation and Development) Act, 1948; the*

**Petroleum and Natural Gas Rules, 1959 and the articles of the Production Sharing Contract referred to above.**

**78. To put it clearly, both in terms of the gas utilisation policy and the Production Sharing Contract, the Government in the capacity as the executive of the Union can regulate and distribute the manner of sale of natural gas through allotments and allocation which would subserve the best interests of the country.”**

**(Emphasis supplied)**

57. Further, in *Energy Watchdog vs. CERC*, reported as **(2017) 14 SCC 80**, in paragraphs 48 and 57, Supreme Court held as under:-

**“Change in law**

**48. It has been submitted on behalf of the counsel for the respondents, that the guidelines of 19-1-2005, as amended by the 18-8-2006 Amendment, make it clear that any change in law, either abroad or in India, would result in the consequential rise in price of coal being given to the power generators. Since various provisions of the guidelines as well as the power purchase agreements are referred to, we set them out herein:**

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**57. Both the letter dated 31-7-2013 and the revised Tariff Policy are statutory documents being issued under Section 3 of the Act and have the force of law. This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sources is cut down, the PPA read with these documents provides in Clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law**

has not occurred. Further, for the operation period of the PPA, compensation for any increase/decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. This being the case, we are of the view that though change in Indonesian law would not qualify as a change in law under the guidelines read with the PPA, change in Indian law certainly would.”

(emphasis supplied)

58. We were informed by the Solicitor General that the policy which is applicable uniformly to all the PSCs entered into by the Government was framed after due consideration with the stakeholders, including the respondents herein. The policy has been framed under the Rules of Business under Article 166 of the Constitution of India and under the aegis of the Cabinet Committee of Economic Affairs. Thus, in view of the source of power to issue the policy and the aforesaid judgments, we find force in the contention of the appellants that the policy decision of the Union of India dated 7<sup>th</sup> April, 2017 has statutory force.

59. The next question that arises for consideration is if the petitioners are entitled to an extension of 10 years on the same terms and conditions that existed when the initial PSC was executed on 15<sup>th</sup> May, 1995 or are the appellants entitled to apply the provisions of the policy and claim an increase in the share of Profit Petroleum. Answer to this question would again lie in examining the provisions of Article 2.1 of the PSC. Article 2.1 of the PSC is in three parts:-

- a) Firstly, the period of PSC shall be 25 years from effective date unless the contract is terminated earlier, but, **may be extended**

upon mutual agreement between the parties for further period not exceeding 5 years.

- b) **Provided that** in the event of Commercial Production of natural gas, which is expected to continue beyond the end of the term of contract, **the contract shall be extended** for such a period up to but not exceeding 35 years from the “Effective Date”, **as may be mutually agreed between the parties** to be sufficient to permit the Contractor to maximize the production of Natural Gas in accordance with good petroleum industry practice.
- c) If the production of Crude Oil or of Natural Gas is expected to continue **beyond the end of the relevant period** referred to above, the Parties **may agree to extend this Contract for a further period upon such terms as may be mutually agreed.**

60. It is evident from a reading of the provisions of the Article that the term of the PSC was 25 years from the effective date and it is presumed that there shall be commercial discovery and exploitation of the Crude Oil or Natural Gas in the contract area and is rightly contended by the appellants the said interpretation is fortified by the words “unless the contract is terminated earlier in accordance with its terms”. By virtue of Article 2.1, in case of no discovery, the contract could come to an end before the expiry of 25 years. Further, whenever discovery of the Crude Oil takes place, Article 2.1 provides that contract can be extended for a further period, not exceeding five years, however, only by a mutual agreement between the parties. For Natural Gas, PSC has a different provision and the latter part of Article 2.1 provides that in the event of commercial production of Natural

Gas, which is expected to continue beyond the end of the term of the contract, the contract shall be extended for such period upto but not exceeding 35 years from the effective date as may be mutually agreed between the parties. In the present case we are concerned with the latter eventuality.

61. From the narrative of the facts of the present case, it is clear that there is no dispute that the PSC was entered into on 15<sup>th</sup> May, 1995 for a period of 25 years i.e. upto 14<sup>th</sup> May, 2020, during which period the Contractor has excavated petroleum and petroleum products and has enjoyed its share in the **“Profit Petroleum”** for 25 long years. The question whether the petitioners are entitled to extension need not detain this Court any further as the parties are ad-idem that the appellants have in principle no objection to grant of extension of the PSC for a further period of 10 years. Therefore, the issue that remains is in a narrow compass and relates to the terms and conditions during the extended period. As already noted above, the Central Government has already taken a Policy Decision that the extension of the PSCs shall be on a pre-condition that **Government shall be entitled for additional 10% share in Profit Petroleum**. Looking to the provisions of Article 2.1 of the PSC and the afore-mentioned judgments, at the cost of repetition, we reiterate our view that Article 2.1 would have to be interpreted in the backdrop of the Public Trust Doctrine and the Policy dated 7<sup>th</sup> April, 2017, as rightly contended by the appellants. So interpreted, no embargo can be placed on the right of the Government to extend the contract on terms which are at variance with the initial terms of the PSC, so long as they are in public interest and subserve the purpose of maximising revenue generation. If the Government has taken a policy decision, based on various

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considerations and taking into the views and suggestions of the stakeholders, including the respondents herein that the share of the State needs to be increased during the extended tenure of the PSC, in public interest, it deserves no interference, more particularly, when there is no challenge to the policy decision.

62. It also needs to be noticed in this context that by incorporating the words “**as may be mutually agreed between the parties**”, in Article 2.1 of the PSC, the parties had agreed that the Government could revisit the period of the Contract as well as the terms thereof. The interpretation sought to be given by the petitioners that the Government has no power or authority to change the terms of the PSC or its duration is not to be found in the provisions of Article 2.1 and per contra the use of words “mutually agreed” furthers the interpretation of the appellants. The terms of the PSC have to be read conjointly and reading of Articles 2.1 and 32.1 in the light of Article 39(b) of the Constitution of India leads us to hold that the Government has the power to impose a condition, in view of the policy decision, for a higher share in the Profit Petroleum, during the extended period.

63. It is also to be kept in mind that the demand of the Government for 10% higher share is after 25 years of the effective date and cannot by any stretch be termed as unreasonable or arbitrary and we also do not see how the same would hinder the contractor in maximising the production of Natural Gas during the extended period of contract. Rather, in our view, by upholding the decision of the Government for increase in the share of Profit Petroleum, we would only take forward the Constitutional mandate of achieving the maximum revenue in public interest.

64. We cannot lose sight of the fact that in contracts concerning natural

resources, which are held by the State in Trust on behalf of the people, the contractual provisions are to be interpreted in the backdrop of public interest and Constitutional goals. In this context, it would be useful to allude to the judgment of Hon'ble Supreme Court in ***Bharti Airtel Ltd. vs. Union of India*** reported as **(2015) 12 SCC 1**, wherein the Court held as under:-

*“26. TDSAT recorded that “the right to extension of the licence is undeniably a valuable right of the licensee” but held that such a right is not an absolute right. If the licensor (Union of India) does not deem it expedient to grant such licence, it is under no such obligation to grant such extension. The expression “expedient” in the context of the licences only means “public interest and for public good”. Therefore, the Tribunal opined that it is open to the Central Government to refuse the extension if it is of the opinion that the grant of extension would not be in public interest or subserve public good. The Tribunal also opined that:*

*“... for the purpose of grant of extension it is Central Government alone that is the judge of public interest and public good. The Central Government may frame a policy or revise an existing policy in larger public interest and in case the extension of the existing licences militates against the new policy it would be a valid and acceptable ground for refusing extension”.*

*The Tribunal also opined that the absence of the employment of the expression “if deemed expedient” in the relevant clause of the UAS licence, made no difference insofar as the authority of the Government of India for rejecting the extension of the licences*

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*35. If the licences in question are nothing but contracts, the next question would be, is there any right of extension*

*of licence created in favour of licensee under the contract?*

*36. From the language of the relevant clauses of the licences which are noted earlier, it is clear that the licensees have no automatic right of renewal/extension on the expiry of the original tenure of the licence. The contract only provided for extension of the period of licence at the sole discretion of the licensor subject to the condition that the licensee makes an application seeking an extension during the 19th year of the currency of the licence. It appears that all of the licensees did make such an application.*

*37. The question which requires examination is — What are the obligations of the licensor on receipt of such an application? The obligations of the licensor flow from two sources, (i) from the contract, (ii) from the Constitution of India and the relevant provisions of the statute (Indian Telegraph Act, 1885). In the event of any conflict between the said two sets of obligations, the further question would be which one of the conflicting obligations prevail?*

**38. Under the terms of the licence, the licensor is required to extend the licence only on “mutually agreed terms and conditions”, if such an extension is sought in the 19th year of the currency of the licence. To test the correctness of the submission that under the contract, the licensor is under an obligation to consider the extension of licence, we take an example of a case where the licensee does not make an application in the 19th year but makes it just a few days before the expiry of the 20th year. Does the licensee still have a right of consideration? In our opinion, the answer should be “No” for two reasons; (i) that such a claim is plainly unsupported by the text of the contract, (ii) the failure to seek extension in the 19th year, makes the continuance of the service to the public uncertain. The Government of India cannot afford to remain waiting**

without making alternative arrangements, because the disruption in the communication in the modern world may lead to many undesirable consequences apart from causing inconvenience to the public. Take the alternative possibility of the licensee not making an application for extension at all because he is not interested in the extension (a very unlikely scenario). Can the licensor insist that the licensee should continue to offer the service either on the same economic considerations or otherwise? The answer seems to be plain and “No”. The language of the contract—“mutually agreed terms”—clearly indicates so. Though it requires an examination whether the licensor i.e. the State can compel the licensee in a given case in exercise of its authority either legislative or executive. Therefore, under the contract neither the licensor nor has the licensee a right to insist that other party should continue with the contract even if such other party is not willing to continue except on such terms and conditions on which the other party may desire to continue. Such terms and conditions obviously include terms and conditions regarding the economic stipulations subject to which either of the parties is willing to be in the contract.

39. However, the licensor being the Union of India, its discretion to stipulate terms and conditions is regulated by certain constitutional mandates apart from stipulations of any law applicable.

40. Insofar as the constitutional mandates in the context of a licence under Section 4 of the Telegraph Act are concerned, this Court in 2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] at para 85 held as follows: (SCC p. 56)

“85. As natural resources are public goods, the doctrine of equality, which emerges from the concepts of justice and fairness, must guide the State in determining the actual mechanism for

*distribution of natural resources. In this regard, the doctrine of equality has two aspects: first, it regulates the rights and obligations of the State vis-à-vis its people and demands that the people be granted equitable access to natural resources and/or its products and that they are adequately compensated for the transfer of the resource to the private domain; and second, it regulates the rights and obligations of the State vis-à-vis private parties seeking to acquire/use the resource and demands that the procedure adopted for distribution is just, non-arbitrary and transparent and that it does not discriminate between similarly placed private parties.”*

**41. The licensor/Union of India does not have the freedom to act whimsically. As pointed out by this Court in 2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] in the above-extracted paragraph, the authority of the Union is fettered by two constitutional limitations: firstly, that any decision of the State to grant access to natural resources, which belong to the people, must ensure that the people are adequately compensated and, secondly, the process by which such access is granted must be just, non-arbitrary and transparent, vis-à-vis private parties seeking such access.**

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**43. In other words, such licences are in the nature of largesse from the State. No doubt, the authority of the State to distribute such largess is always subject to the condition that the State must comply with the conditions of Article 14 of the Constitution i.e. the distribution must be on the basis of some rational policy. Even the language of the proviso to Section 4 of the Telegraph Act, which stipulates that the grant of licence should be “on such conditions and in consideration of such payments as it thinks fit”, must necessarily be**

understood that the conditions must be rational and the payments forming the consideration for the grant of licence must be non-discriminatory. The conditions contained in the licences in question stipulate that the term of the licence could be extended on mutually agreed terms, if the Government of India deems it expedient. The obligations of the Government of India flowing from the Constitution as well as a statute necessarily require the Government of India to grant licences as rightly pointed by the Tribunal (TDSAT) only “in public interest and for public good”.

44. This Court in 2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] after elaborate discussion on the nature of the State's authority to deal with the natural resources held that: (SCC p. 54, para 77)

“77. Spectrum has been internationally accepted as a scarce, finite and renewable natural resource which is susceptible to degradation in case of inefficient utilisation. It has a high economic value in the light of the demand for it on account of the tremendous growth in the telecom sector. Although it does not belong to a particular State, right of use has been granted to the States as per international norms.”

45. While recognising the power of the State to distribute natural resources, this Court held that the State is bound to

“act in consonance with the principles of equality and public trust and ensure that no action is taken which may be detrimental to public interest”. (2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] , SCC p. 53, para 75)

46. In para 89, the Court concluded as follows: (2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] , SCC p. 58)

*“89. In conclusion, we hold that the State is the legal owner of the natural resources as a trustee of the people and although it is empowered to distribute the same, the process of distribution must be guided by the constitutional principles including the doctrine of equality and larger public good.”*

**47.** This Court further held: (SCC pp. 59-60, para 95)

*“95. ... the State and its agencies/instrumentalities must always adopt a rational method for disposal of public property ... it is the burden of the State to ensure that a non-discriminatory method is adopted for distribution and alienation, which would necessarily result in national/public interest.”*

*This Court opined that a “duly publicised auction conducted fairly and impartially is perhaps the best method for discharging the burden of the State to ensure protection of public interest”.*

**48. The conditions of licences/contracts in whatever language provided for consideration for the extension of a licence are necessarily required to be interpreted in consonance with the obligation of the licensor/Union of India under the Constitution and the laws. Otherwise, the contract would be rendered void for being inconsistent with public policy, the principle expressly incorporated under Section 23 of the Contract Act, 1872.**

**49.** The decision of the licensor to conduct an auction for granting access to spectrum, obviously, complies with the second of the requirements specified by this Court in para 85 of 2G Case [Centre for Public Interest Litigation v. Union of India, (2012) 3 SCC 1] judgment. The question whether such a decision also complies with the requirements of the first of the two facets mentioned therein is the issue in this batch of matters. In other words, the adequacy of compensation which the

*Government of India seeks to derive by holding an auction for allowing access to spectrum is just and fair in the circumstances.*

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*53. At this stage, we must also deal with certain submissions made by Shri K.K. Venugopal, learned Senior Counsel appearing for one of the appellants. The phrase “if deemed expedient” occurring in Clause 4.1 of the licence must be understood in the light of the interpretation of the expression “expedient” in Hotel Sea Gull v. State of W.B. [Hotel Sea Gull v. State of W.B., (2002) 4 SCC 1] wherein it was held by this Court to mean “whatever is suitable and appropriate for any reason for the accomplishment of the specified object” (SCC p. 13, para 25). It is argued that the question of extension of licence must be decided by the Government of India on the basis of objective and rational criteria by taking into account relevant materials and eschewing irrelevant material. The learned Senior Counsel in his written submission [ It is submitted that through the past 19 years and even now on a continuing basis, the writ petitioners have been faithfully operating their UAS licence and have, as of 30-6-2014, invested over Rs 19,545 crores setting up a state-of-the-art mobile network in these 6 circles; in three months' period between April and June of Financial Year 2014-2015 alone, the investments made by the petitioner was Rs 544 crores; the petitioners are providing world-class service to over 717 lakh subscribers as of June 2014; the petitioner has built an average subscriber market share of 23% (average for six circles—the shares range between 19% and 32% for various circles), the petition is offering affordable tariffs and innovative services to consumers; the petitioner is providing direct and indirect employment to thousands of people, in last 3.5 years alone the petitioner has contributed over Rs 11,035 crores to the government exchequer by way of licence fee, spectrum charges, direct and indirect taxes, etc.*

between Financial Year 2011-2012 and Financial Year 2014-2015 (up to June 2014). The petitioners have thus altered their position and invested thousands of crores based on government promise/contract.] gave certain facts and figures which according to him are relevant in coming to a conclusion whether it would be expedient to extend the period of licence. It is also submitted that the phrase “on terms mutually agreed” must also be understood to mean that the Government of India's decision for extension of the licences be based only on relevant and objective criteria such as

“the quality, affordability, reach of the services provided by the petitioner and the investments made by it during the initial 20 year period, being satisfactory, the licence would be extended by 10 years at one time”. (Written submission)

**54. We are of the opinion that the submissions of Shri Venugopal must carry a great weight if the licensor's (Government of India) obligations are regulated purely by the terms of the contract. But as already noticed by us, the licensor's obligations are not simply confined to the contract/licence. They also flow from the Constitution and the laws of the land. Obviously, the obligations flowing from the Constitution stand on a higher footing and it is the Government of India's duty to satisfy the obligations flowing from the Constitution and the laws of the land in preference to obligations flowing from a contract. It is a well-settled principle of law that where there is a conflict between obligations flowing from a contract and those flowing from the law, the obligations flowing from the contract must necessarily yield to obligations flowing from the Constitution and laws. We, therefore, reject the submission of Shri Venugopal.”**

(emphasis supplied)

65. In view of the aforesaid dicta of the Hon'ble Supreme Court, it can be safely held by us that **“right to extension of a contract is a valuable right of the Contractor but such a right is not an absolute right”**. The words **“as may be mutually agreed between the parties”** used in Article 2.1 of the PSC very obviously include the right of the State to grant extension of the period of contract with an additional/ varied condition/ economic stipulation, subject, however, to the other party willing to agree to the said condition and needless to state, if the other party does not wish to agree to the changed term, it has the freedom to refuse extension of the contract.

66. The terms of the PSC therefore clearly entail change of terms and conditions of the PSC during the extended period and it is not open to the Courts in a judicial review under Article 226 of the Constitution of India to rewrite the contract between the parties or revisit its terms and conditions. The Courts, as held by the Hon'ble Supreme Court, cannot substitute their own understanding or wisdom for the understanding of the commercial terms of the parties to the contract which is explicit in the provisions of the contract. The learned Single Judge has by the impugned judgment directed extension of the tenure of the PSC for a further period of 10 years, on same terms as existed earlier, overlooking the power of the State to vary the condition. This is impermissible in the eyes of law.

67. We find merit in the contention of the appellants that the Government may enter into various contracts, some may have public element and some may be purely in the realm of private contracts, but, while entering into a contract with respect to natural resources, the Constitutional imperative and the public interest will outweigh the contractual stipulations. The Policy dated 7<sup>th</sup> April, 2017 provides that it applies to “all existing PSCs” and also

provides a mechanism for their extension. The direction in the impugned judgment is, therefore, contrary to the policy, which is unchallenged. Likewise, there is also merit in the contention that the petitioners do not have an unfettered right to demand extension of the PSC on unilateral terms which suit their interest, overlooking the interest of the State, which is a Trustee of the natural resources under a Constitutional mandate.

68. It has been held by Hon'ble the Supreme Court of India in *Shin Satellite Public Co. Ltd. vs. Jain Studios Ltd.*, (2006) 2 SCC 628 as well as recently in the case of *Nabha Power Ltd. vs. Punjab SPCL*, (2018) 11 SCC 508, as under:-

***“Our view***

*49. We now proceed to apply the aforesaid principles which have evolved for interpreting the terms of a commercial contract in question. Parties indulging in commerce act in a commercial sense. ... Needless to say that the application of these principles would not be to substitute this Court's own view of the presumed understanding of commercial terms by the parties if the terms are explicit in their expression. The explicit terms of a contract are always the final word with regard to the intention of the parties. The multi-clause contract inter se the parties has, thus, to be understood and interpreted in a manner that any view, on a particular clause of the contract, should not do violence to another part of the contract.”*

*(emphasis supplied)*

69. In the case of *Adani Power (Mundra) Ltd. vs. Gujarat ERC*, (2019) 19 SCC 9, Hon'ble Supreme Court at paragraph 19 held as under:-

*“19. This Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. [Rajasthan State Industrial*

*Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] observed thus: (SCC pp. 483-84, paras 23-24)*

**“23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract.**

*Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. [Vide United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal [United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal, (2004) 8 SCC 644] and Polymat (India) (P) Ltd. v. National Insurance Co. Ltd. [Polymat (India) (P) Ltd. v. National Insurance Co. Ltd., (2005) 9 SCC 174] ]*

*24. In DLF Universal Ltd. v. Town & Country Planning Deptt. [DLF Universal Ltd. v. Town & Country Planning Deptt., (2010) 14 SCC 1 : (2011) 4 SCC (Civ) 391] , this Court held: (SCC pp. 14-15, paras 13-15)*

**“13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the**

interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time of the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.”

14. As is stated in Anson's Law of Contract:

“a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large”.

15. The Court assumes:

“that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge

*should interpret the contract accordingly”.*

*(emphasis supplied)*

70. It has been held by Hon’ble Supreme Court in ***Kuldeep Singh vs. Govt. of NCT of Delhi, (2006) 5 SCC 702***, especially in paragraph 15 as under:-

*“15. The appellants filed applications for grant of license pursuant to the policy decision adopted by the State. They might have invested a huge amount, but did not thereby derive any accrued or vested right. **The matter relating to grant of license for dealing in liquor is within the exclusive domain of the State. If the State had the right to adopt a policy decision, they indisputably had a right to vary, amend or rescind the same.** The effect of a policy decision taken by the State is to be considered having regard to the provisions contained in Article 47 of the Constitution of India as also its power of regulation and control in respect of the trade in terms of the provisions of the Excise Act.”*

*(emphasis supplied)*

71. The learned Solicitor General had also contended that indirectly and subtly the prayers of the petitioners in the writ petition were based upon principles of promissory estoppel and legitimate expectation, and were misconceived as **in Government contracts, wherein overwhelming public interest is involved, concerning the utilization of natural resources held in public trust, the said doctrines, viz, promissory estoppels and legitimate expectations cannot be invoked.** We are in complete agreement with the contentions raised by the learned Solicitor General, especially when the decision of Union of India for the extension of the period of PSC on the condition of 10% higher Government share in Profit Petroleum is by way of

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Policy Decision, uniformly applicable to all PSCs in the Country and has its genesis in public interest and Constitutional mandate.

72. The judgment in the case of *DDA vs. Joint Action Committee (supra)* relied upon by the petitioners is clearly distinguishable from the present case. In the said case, a self financing scheme was floated by the DDA and an estimated cost of the flats as well as the rights and the liabilities of the parties were laid down in the allotment letter. Subsequently, however, the DDA sought to levy certain additional amounts over and above the price in the allotment letter and which was challenged by the allottees. In this context, the Hon'ble Supreme Court held that the relationship of the parties arose out of the contract, whose terms and conditions were to be complied by both the parties. In case the DDA intended to alter or modify the terms of the contract, it was obligatory to bring the same to the notice of the allottee and having not done so, it could not have thrust new terms of the contract and, therefore, the policy under which the DDA sought to do so was not beyond the pale of judicial review. In the present case, the appellants have not taken any action which amounts to changing the terms of the PSC in as much as Article 2.1 gives an initial duration of the Contract and permits extension on terms mutually agreed between the parties. There is no term in the Contract which mandates the appellants to extend the same on the initial terms. Had that been the intent of the parties, the same would have been spelt in so many words in the PSC itself. Rather, the use of the words "on mutual agreement" shows the contra-intent of the parties that the terms of the extension of the PSC, if any, were to be formalised at the time of consideration for extension.

73. The judgment in the case of *Sime Darby (supra)* relied upon by the  
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petitioners also, in our view, does not further their case. The judgment was passed in a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the Arbitral Tribunal. The controversy involved in the said case was on the number of Arbitrators to be appointed to adjudicate the disputes between the parties. The Arbitration Clause between the parties was silent about the number of Arbitrators. While it was the contention of the petitioner that in terms of the Arbitration Clause, only a Sole Arbitrator could be appointed, it was contended by the respondent that the Arbitral Tribunal must comprise of three Arbitrators, one to be nominated by each party and the third to be chosen by the nominated Arbitrators. Respondent had placed reliance on a policy decision that in matters involving high stakes above Rs.10 crores, the arbitration would be referred to a Committee or a panel of Arbitrators. The Hon'ble Supreme Court referred to the Arbitration Clause between the parties which was silent as to the number of Arbitrators and placed reliance on Section 10(2) of the Arbitration and Conciliation Act, 1996 and held that the Arbitral Tribunal would consist of a Sole Arbitrator as the policy decision could not change the contractual clause. As noted above, there is no provision in the PSC which bars the GoI from extending the Contract on fresh terms and conditions and, therefore, the policy decision, which we have held to be the "applicable law" can be relied upon by the appellants to form the basis of the terms and conditions governing the parties during the extended period of the PSC.

74. For the reasons mentioned above by us, which we are not repeating, the judgment in *GNCTD v. Bhushan Kumar (supra)* is also of no avail to the petitioners. In the said case, the Government of NCTD had invited the

applications through industrial units situated in non-conforming areas, for allotment of plots for relocation in terms of a scheme formulated by it and a certain area of the plot was offered and applied for by the respondents therein. Subsequently, however, there was a dispute with regard to the measurement of the plots in question. The Government supported its action of downsizing the plot by alleging that there was scarcity of land and also that the decision was in consonance with a policy decision approved by the Cabinet. In these facts, the Hon'ble Supreme Court considered the issue involved as to whether the binding contract could be modified, novated or cancelled, once it stood concluded and the parties were bound and governed by its terms and conditions. It was held that a policy by itself is not law which has the effect of thrusting new terms and conditions upon a contracting party. We repeat and reiterate that the appellants herein are not imposing a condition which has the effect of novation of a contract as the parties had willingly incorporated a term in the PSC that the extension beyond the current term would be on mutually agreed terms. Despite strenuous arguments, learned Senior Counsel for the petitioners has been unable to show any provision in the PSC binding the contracting parties thereto into extension of the duration of the PSC, on the same terms and conditions of the share of Profit Petroleum, as existed on 15<sup>th</sup> May, 1995.

75. For all the aforesaid reasons, we hold that **there cannot be extension of the Production Sharing Contract unconditionally, on the same terms and conditions which were prevailing 25 years ago i.e. on 15<sup>th</sup> May, 1995, the effective date.** By issuing a mandamus to the contrary, the learned Single Judge has erred in law and the impugned judgment deserves to be set aside.

76. As a cumulative effect of the aforesaid facts, reasons, provisions of the PSC and the judicial pronouncements, we hereby set aside the impugned judgment of the learned Single Judge dated 31<sup>st</sup> May, 2018 in W.P.(C) No.11599/2015.

77. It needs to be recorded that the parties have addressed the arguments on merits and had categorically submitted that objections/grounds regarding maintainability of the petition were not pressed.

78. The Appeal is accordingly allowed.

79. All the pending applications also stand disposed of.

**CHIEF JUSTICE**

**JYOTI SINGH, J**

**MARCH 26, 2021**  
*'anb'*