

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2093 OF 2021

Metallurgical Products (India) Pvt. Ltd.)
CIN : U28910MH2001PTC133767)
A company incorporated under the Companies)
Act, 1956 and having its registered office at)
T-27, MIDC, Talaja, District Raigad – 410 208,)
Maharashtra)Petitioner

V/s.

1. Government of India)
through the Secretary, Department of Atomic)
Energy, having its office at Anushakti Bhavan,)
Chhatrapati Shivaji Maharaj Marg, Mumbai –)
400 001)
2. Atomic Energy Regulatory Board)
through the Head, Operating Plants Safety)
Division (OPSD), having its office at Niyamak)
Bhavan, Anushakti Nagar, Mumbai – 400 094)
3. IREL (India) Ltd.)
(Formerly Indian Rare Earths Ltd.))
A Government of India Undertaking Department)
of Atomic Energy having its registered address)
at ECIL Building, Plot No.1207, Veer Savarkar)
Marg, Off. Siddhivinayak Temple, Prabhadevi,)
Mumbai – 400 028)Respondents

Mr. Sharan Jagtiani, Senior Advocate a/w. Ms. Gulnar Mistry, Mr. Priyank Kapadia, Ms. Anuja Jhunjhunwala, Ms. Rukshin Ghiara and Mr. Aditya Marwal i/b. M. Mulla Associates for petitioner.

Mr. Anil C. Singh, ASG a/w. Mr. Aditya Thakker, Mr. Y.R. Mishra and Mr. Anil D. Yadav for respondent nos.1 and 2.

Mr. Nitin Thakker, Senior Advocate a/w. Mr. Pratish P. and Mr. Sameer Shaikh i/b. M/s. Consulta Juris for respondent no.3.

Mr. A.I. Patel, AGP a/w. Ms. Kavita N. Solunke, AGP for State.

**CORAM : K. R. SHRIRAM & RAJESH S. PATIL, JJ.
RESERVED ON : 31st MARCH 2023
PRONOUNCED ON : 11th APRIL 2023**

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 Petitioner is engaged in the production/conversion/ processing of Columbite and Tantalite Ores into high quality Niobium and Tantalum products. As a result of the said conversion process, a radioactive Leach Residue/Slag (hereinafter referred to as “Leach Residue”) in the nature of a bi-product is generated. The import of the Columbite and Tantalite Ores is regulated by respondent no.1 and respondent no.2 under the Atomic Energy Act 1962 (hereinafter referred to as “the Act”). The Leach Residue generated by petitioner containing Uranium and other Rare Earth Oxides (hereinafter referred to as “REO”) are required to be disposed in accordance with the provisions of the Act, Rules and Guidelines framed thereunder by respondent no.2. It is common knowledge that Uranium is a radioactive metal and as Uranium decays, it releases radiation and forms decay products thereby causing radiation in the environment.

2 The Leach Residue also contains Uranium and Thorium and other radioactive material. Therefore, the Leach Residue should either be handed over to facilities for further recovery of Uranium/Thorium values or stored for 200 years as per the directions of respondent no.1.

3 The radioactive Leach Residue is disposed through Government companies under the administrative control of respondent no.1.

4 Way back in 2002, petitioner informed respondent no.1 about its proposal of setting up a plant to generate Niobium and Tantalum by processing/converting Columbite and Tantalite Ores. Petitioner also informed respondent no.1 that it will generate Uranium bearing residue which respondent no.1 could process for usable Uranium products. It is petitioner's case that respondent no.1 assured petitioner that it will make arrangements for the process and disposal of the Leach Residue as per the Atomic Energy Regulatory Board (hereinafter referred to as "AERB") Guidelines. By a letter dated 4th April 2003, respondent no.3 informed petitioner that the responsibility of periodically recovering REO from Leach Residue has been entrusted by respondent no.1 to respondent no.3. This was followed by an Offtake Agreement dated 10th August 2004 being entered into between petitioner and respondent no.3 under which petitioner agreed to supply the residue to Rare Earths Division of respondent no.3 at Alwaye, Kerala and respondent no.3 agreed to purchase on the terms and conditions agreed upon thereunder. The agreement provides for what kind of residue will be generated, respondent no.3 shall pick up and transport the same to Alwaye at the cost of petitioner and the cost which respondent no.3 would pay to petitioner. The agreement also provides, if REO contained is less than 1% in the residue, then no charge and if it is between 1% to 5%, then respondent no.3 will pay to petitioner Rs.1000/- per kg. The

agreement was for a period of two years only to be renewed by mutual consent. The price structure also was to be negotiated after one year. The same agreement was renewed periodically by entering into fresh agreements and the last such agreement was dated 8th July 2015. This last agreement was also valid only for two years upto 27th March 2017. Clause 10 in the first agreement dated 10th August 2004 and Clause 11 in the subsequent agreements are identically worded and read as under :

“10. This agreement shall be intially valid for two years and shall be renewed by mutual consent. The price structure however may be negotiated after one year.

11. This agreement shall be initially valid for two years upto [.....] and shall be renewed by mutual consent. The price structure however may be negotiated after one year.”

5 When petitioner sent the agreement for renewal for a further period of two years from 2017 to 2019, respondent no.3, by a letter dated 12th January 2018, informed petitioner that respondent no.1 has directed respondent no.3 not to renew the agreement with petitioner which has already expired on 27th March 2017. This resulted in communication back and forth including respondent no.1 calling upon petitioner to submit purchase orders for Leach Residue while applying for renewal of the import licenses but ultimately, after allegations and counter allegations and exchange of various correspondences, this petition came to be filed. The details of those correspondences need not be gone into for the purpose of this petition. Therefore, there was no open ended agreement or any

agreement was terminated before its expiry.

6 It is petitioner's case that petitioner set up Columbite and Tantalite processing plant in 2002-2003 on the basis of assurances by respondent no.1, otherwise it would not have been feasible in India. There is no change in the Government policy pertaining to processing of Columbite and Tantalite Ores in India in last 20 years despite which respondent no.1 has decided to prohibit respondent no.3 from entering into renewal of the Offtake Agreement. It is petitioner's case that a non-speaking directive has been issued by respondent no.1 to respondent no.3 (5th January 2018) pursuant to which respondent no.3, by a letter dated 12th January 2018, decided not to renew the agreement with petitioner for collection, processing and safe disposal of the Leach Residue. It is petitioner's case that the non issuance of license to petitioner to import Columbite and Tantalite Ores amounts to imposing unreasonable conditions.

7 According to petitioner, since it set up the Columbite and Tantalite processing plant on the basis of arrangements and assurances by respondent no.1, if respondent no.3 is unable to pick up the Leach Residue, respondent no.1 should appoint a suitable alternate to respondent no.3. Even if respondent no.3 could not renew the Offtake Agreement, respondent no.1 was nonetheless required to propose an alternate disposal plan and/or an alternate agency to assist in the disposal of the said Leach Residue, as

respondent no.1 retains a monopoly of the disposal of radioactive substances under the Act and Guidelines. Any problem faced by respondent no.3 cannot be sufficient reason for respondent no.1 to close petitioner's plant. The stand of respondent no.1 or respondent no.3 that there exists no environmentally sustainable method and/or disposal plan to extract the Uranium and dispose of the said Leach Residue is an after thought because in the earlier correspondence only shortage of space was cited. Respondent no.3 has developed suitable processing technology with the approval of respondent no.2 and, therefore, the Court should issue a writ of mandamus directing respondents to renew the Offtake Agreement by either directing respondent no.1 by itself or through any other public sector undertaking or Government company under its control to provide a periodical disposal plan to dispose the Leach Residue. Petitioner is also seeking the Court to issue a writ of mandamus to direct respondents to consider issuance of import licenses to petitioner for importing Columbite and Tantalite Ores in a time bound manner without insisting on a disposal plan, etc. This prayer for issuance of import licenses would arise only if petitioner succeeds in the first relief.

8 Petitioner has sought the following final reliefs in the petition :

“(a) that this Court be pleased to issue a writ of mandamus directing respondents to renew the Offtake Agreements on same or similar terms as has been executed in the preceding 15 years within such time as this Court deems fit;

(a-1) that this Court be pleased to issue a writ of mandamus or any other writ/order/direction in the nature of mandamus directing respondent no.1 by itself or through any other public sector undertaking, government company, corporation, association of persons or any other instrumentality under its control to provide for a disposal plan to periodically collect and dispose of the Leach Residue from petitioner's plant at Taloja;

(b) that this Court be pleased to issue a writ of mandamus directing respondents to consider issuance of Import Licenses to petitioner for importing Columbite and Tantalite Ores in accordance with law in a time bound manner and without insisting on a disposal plan;

(c) alternatively, that this Court be pleased to issue a writ of mandamus directing respondent no.1 to designate any authorized person to enter into an Offtake Agreement with petitioner for processing and/or disposing of the Leach Residue within such time and on such terms as this Court deems fit;

(d) that this Court be pleased to issue a writ of certiorari calling forth the records and proceedings from respondents and quashing and setting aside the order dated 16th May 2019 which directs petitioner to stop processing the said Ores immediately till further orders.”

Petitioner is seeking these reliefs, as we will note later, purely on the ground of legitimate expectation, directly affecting its rights under Article 14 of the Constitution of India.

9 The grounds raised in the petition are :

(a) the activity of disposal of radioactive substances is within the exclusive domain of respondents, respondents refusal to dispose the Leach Residue generated during the manufacturing process undertaken by petitioner is arbitrary, unfair and violative of Article 14 of the Constitution of India;

(b) the refusal to renew the Offtake Agreement without designating an alternate authority to substitute respondent no.3 is an arbitrary and unreasonable exercise of discretion and abuse of respondents' status as a monopoly in the field of radioactive substance disposal;

(c) respondents direction placing the onus upon petitioner to formulate a disposal plan for disposal of radioactive substances is *ex-facie* arbitrary given that only respondent no.1, government companies and authorities and corporations established by it are empowered to undertake such activity as expressly stated in respondents' affidavit dated 29th November 2019;

(d) the disposal plan does not contemplate petitioner taking any steps either to set up any infrastructure or acquire any technology as would normally be the case in any ordinary factory or effluent treatment and disposal obligation under other laws. Under the strict regulatory regime governing disposal of radioactive substances, it is only respondents who are authorized to undertake disposal activities, for obvious reasons. Respondents insistence that petitioner devise a disposal plan is entirely untenable against the regulatory regime within which respondents and petitioner operate, which fact is known to respondents as is evident from their affidavit. The requirement imposed upon petitioner to formulate a disposal plan is ultra vires the Atomic Energy Act and is, therefore, arbitrary,

unreasonable and unconstitutional;

(e) in the event respondent no.1 is of the view that respondent no.3 is not to undertake disposal activities for the Leach Residue generated by petitioner, respondent no.1 is bound to designate any other authorized entity that will undertake this task since petitioner has set up its factory and plant on the basis of a solemn representation made by respondents that it will periodically dispose of the Leach Residue;

(f) the conduct of respondents is discriminatory since petitioner verily believes that other government facilities such as NFC are involved in the same activity, i.e., processing the said Ores which results in the generation of Leach Residue, which is disposed of by or under directions of respondent no.1. Despite repeated requests, respondents refuse to disclose the authorities who are empowered to dispose of Leach Residue generated by petitioner. The combined effect is that petitioner is left with no practical option to enter into discussions with any authorized person who can undertake the process of radioactive substances disposal. The disparate treatment of petitioner and other entities which are engaged in similar activities is arbitrary, unreasonable and violative of Article 14 of the Constitution of India;

(g) the insistence on having a disposal plan to be submitted by petitioner is patently arbitrary, high handed and the refusal to issue Import

Licenses for this reason is equally arbitrary, unreasonable and violative of Article 14 of the Constitution of India. Additionally, it has the effect of bringing the operations of petitioner to a virtual standstill;

(h) the order of closure of operations on the grounds that petitioner does not have a disposal plan is arbitrary and unreasonable since it is the effect of bringing the operations of petitioner to a virtual standstill for no fault of petitioner purely as a result of the discontinuance of the original disposal plan vide letter/direction of respondent no.1 dated 5th January 2018. Petitioner has always been a fully compliant organization and the fact that there is presently no disposal plan is a circumstance created entirely due to respondent no.1's failure to designate an authorized person who may undertake the disposal of Leach Residue on same or similar terms;

(i) respondent no.1's direction vide letter dated 16th May 2019 to stop processing Columbite and Tantalite Ores is arbitrary, unjust and highly discriminatory as restricting the processing of these Ores at petitioner's plant leads to virtual monopoly of NFC. Not only has this grossly hampered the operations of petitioner causing grave harm and loss to petitioner but also made the Registration Certificate issued by respondent no.2 on 27th April 2018 valid for a period of 5 years till 30th April 2023 infructuous as petitioner was unable to conduct processing of the Columbine

and Tantalite Ores".

10 Mr. Jagtiani for petitioner submitted :

(a) the decision to discontinue the disposal plan in the form of an Offtake Agreement or otherwise is an administrative decision and constitutes an exercise of discretion that is amenable to challenge on the principles of legitimate expectations of petitioner.

The doctrine of legitimate expectation, as held by the Apex Court in *State of Jharkhand and Ors. V/s. Brahmputra Metalics Ltd., Ranchi and Ors.*¹, is a facet of Article 14 of the Constitution of India and it emanates from the principles of fairness and non-arbitrariness that must inform the conduct of public authorities.

Article 14 of the Constitution of India mandates that in all its actions, the State is bound to act fairly, reasonably and in a transparent manner and even in contractual sphere it is applicable.

Where the circumstances of the case establish a valid basis of a legitimate expectation before an adverse decision is taken, to satisfy this requirement of non-arbitrariness in a State action, it is necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bonafides of the decision in a given case.

1. (2020) SCC Online SC 968

(b) The Apex Court in ***Ganesh Bank of Kurundwad Ltd. V/s. Union of India and Ors.***², has held that an administrative decision of the present nature is liable to challenge on the principles of “Wednesbury reasonableness”. This would mean a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. He cannot take a decision which no reasonable person could even dream of taking or consider extraneous matters. The decision to discontinue collecting Leach Residue was vitiated because it is entirely uninformed by any discernable reason and is without any legitimate basis;

(c) No reason was given as to why the decision was taken not to extend the agreement and reasons cannot be now supplanted in affidavits in reply when the decision is challenged. When wide powers are given to the State, then it is obligatory on the part of State to record clearly its reasons in the order itself for exercising such power. Despite being called upon, respondents have not produced anything on record to indicate the reason for not extending the agreement;

(d) The Apex Court in ***State of Punjab V/s. Bandeep Singh and Ors.***³, has held that every decision of an administrative or executive nature

2. (2006) 10 SCC 645

3. (2016) 1 SCC 724

must be a composite and self sustaining one, in that it should contain all the reasons which prevailed on the official taking the decision to arrive at his conclusion. It is beyond cavil that any authority cannot be permitted to travel beyond the stand adopted and expressed by it in the impugned action. For the fact that contemporaneous records have not been produced, the Court should conclude that the decision to discontinue the agreement was bad or was not justified;

(e) The Apex Court in *Manohar Lal Sharma V/s. Union of India and Ors.*⁴, held that in a writ proceeding before the Court, free flow of information from petitioners and State is an important step towards Governmental transparency and openness, which are celebrated values under our Constitution. Even though the Apex Court held that it is a settled position of law that in matters pertaining to national security, the scope of judicial review is limited, that does not mean that the State gets a free pass every time the spectre of national security is raised. Although the Court should be circumspect in encroaching upon the domain of national security, no omnibus prohibition can be called for against judicial review. Respondents' argument that this was a case of environmental issue or international issue does not mean the Court should be circumspect. There is no pleading or material which justifies that the disclosure of reasons for not extending the contract would prejudicially affect the

4. 2021 SCC Online SC 985

sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State. The fact that respondents have not produced contemporaneous material for taking those decisions, the only inference that can be drawn is that there is no discussion or material relied upon in arriving at the decision to discontinue providing a disposal plan to petitioner;

(f) Respondents have taken contradictory stand in as much as it is the case of respondent no.3 that the facilities for processing Leach Residue by respondent no.3 were dismantled and modified to suit production of high purity rare earth generation in national interest. This is incorrect because even after 2012, the agreement was renewed from 31st January 2012 and 28th March 2015;

(g) The case of respondents that processing of miniscule Leach Residue in a standalone facility was not economically viable or environmentally benign should not be accepted because it has not been demonstrated with reference to any objective material. If respondent no.3 could not pick up the Leach Residue, respondent no.1 should direct Nuclear Fuel Complex (hereinafter referred to as “NFC”) which is under respondent no.1 to collect the residue. It is respondents’ case that NFC has a small scale experimental facility to carry out research and development and the small amount of Leach Residue generated by NFC can be stored in near surface

disposal facilities or recycled is an incorrect statement because the website of NFC states that it has defined commercial operations and does not carry out small scale experimental research;

(h) The primary challenge is to arbitrariness and lack of fairness in State action and mere existence of a contractual element does not affect this Court's powers under Article 226 of the Constitution of India. It is well settled that a Court may interfere, in the exercise of its writ jurisdiction, in matters which are commercial or contractual in nature but which otherwise have a public law element. In the case at hand, there was a public law element because :

(a) the Union was aware, from the outset, of petitioner's inability to process the Leach Residue without assistance from the Union;

(b) petitioner was encouraged to set up its plant for processing Columbite and Tantalite Ores on the representation by the Union that it would provide a disposal plan for the processing of Leach Residue that would be generated and petitioner, at a considerable cost, set up its plant on the strength of this assurance;

(c) the State enjoys a monopolistic position when it comes to the activity of providing a disposal plan for disposal of Leach Residue;

(d) the Union without any demonstrable cause and without providing any opportunity to petitioner to be heard abruptly discontinued

the disposal plan that had been in place for over ten years and the conduct of the Union in arbitrarily discontinuing the disposal plan has affected petitioner's business and brought it to a complete stand-still, directly affecting its rights under Articles 14 and 19(1)(g).

*Gas Authority of India Ltd. V/s. M/s. Indian Petrochemicals Corporation Ltd.*⁵, *ABL International Ltd. V/s. Export Credit Guarantee Corporation of India Ltd.*⁶ and *Shrilekha Vidyarthi (Kumari) V/s. State of U.P.*⁷ are the precedents;

(i) In *Shimnit Utsch India (P) Ltd. V/s. W.B. Transport Infrastructure Development Corporation Ltd.*⁸ and *Union of India V/s. International Trading Co.*⁹, the Apex Court has held that an executive or administrative order termed as a policy decision is not beyond the pale of judicial review. The Court may always exercise judicial review to ascertain whether the decision is in fact a policy decision and whether the change in policy on the basis of which licenses or permits are not renewed is founded on Wednesbury reasonableness or is amenable to challenge being arbitrary, irrational and perverse. Therefore, the Court should interfere and grant the reliefs as prayed for.

5. 2023 SCC Online SC 116

6. (2004) 3 SCC 553

7. (1991) 1 SCC 212

8. (2010) 6 SCC 303

9. (2003) 5 SCC 437

11 At the outset, the learned ASG submitted that the reliefs as sought for cannot be granted as petitioner has not demonstrated any right that he has against respondents. Therefore, the question of the Court considering petitioner's case on the doctrine of legitimate expectation would not arise. The learned ASG submitted as under :

(a) No factual foundation as to the alleged right and the nature of right claimed by petitioner has been laid in the petition;

(b) The averments in the petition do not even set out any material particulars as to who from respondents gave the representation or what was the nature of the representation or the period for which the representation was to continue. The documents produced do not establish any right in favour of petitioner to claim the reliefs sought because it was purely contractual matter between petitioner and respondent no.3;

(c) The agreements clearly provide that it is valid only for a period of two years to be renewed thereafter by mutual consent which means petitioner was always aware that respondents may not consent. Petitioner never protested even during renewal when identical words were used. In such situation, the question of any legitimate expectation or breach of Article 14 does not arise. In such situation, how can there be any writ of mandamus issued to direct respondent no.3 to renew the agreement or direct respondent no.1 to engage another agency to collect the Leach

Residue;

(d) Petitioner did not want to process the residue because he did not have the necessary technology for that and petitioner had no plan for processing the residue in terms of space, manpower and other related resources. Therefore, petitioner asked respondents to help in picking up the leach residue. At the relevant point of time, respondents decided to consider and pick up the leach residue and since it was not sure how far it would be commercially or otherwise viable, the agreement with respondent no.3 was entered into only for two years at a time to be renewed by consent. Respondent decided not to continue. How can respondent be faulted for that?;

(e) In the petition, petitioner has made incorrect statements to say that it was encouraged to establish a plant and factory at Taloja to undertake processing of Columbite and Tantalite Ores because the Leach Residue generated in the process would provide respondent no.1 an indigenous and perpetual source of supply of Uranium and hence, respondent no.1 assured petitioner of regular collection and disposal of Leach Residue. These averments are contrary to the contents of letter dated 11th May 2002 from petitioner to respondent no.1 and the agreements entered into between the parties where petitioner has agreed to supply Leach Residue to respondent no.3. Recital 3 provides “*MPIL has agreed to*

supply residue (A) at Rare Earths Division of IREL at Alwaye, and IREL have agreed to purchase at the terms and conditions agreed upon hereunder.”

The agreement was a pure commercial contract and has nothing to do with any rights under Article 14 or Article 19 or doctrine of legitimate expectation;

(f) The department of Atomic Affairs as an expert in the field has taken a policy decision that Leach Residue is to be treated as waste, as the department does not foresee any further use of this Leach Residue. When the Government has decided as a matter of national policy to dismantle the disposal plant of respondent no.3 in national interest since it was not economically viable and was environmentally harmful, how can petitioner seek the reliefs as sought in the petition?;

(g) To Mr. Jagtiani's submissions that respondents' refusal to place on record the details of what transpired for the decision not to extend the contract, it was submitted that there is always a presumption that Government acts reasonably and in a non-arbitrary manner and the burden is on petitioner to dislodge the same by producing any material. In the case at hand, there is no material to support such an allegation but the fact that the processing of Leach Residue is not in public interest has not been countered by petitioner. Petitioner's case that NFC carries out commercial projects and respondent no.1 should pick up the Leach Residue through NFC

is also misplaced because NFC only carries out a pilot project and does not commercially produce the same. It is a unit within the Department of Atomic Energy and cannot be compared to a private player. Petitioner and NFC are not part of the same class. It is settled law that larger public interest would always prevail over private interest and a Writ Court would act in furtherance of the larger public interest and not against it;

(h) The Apex Court in ***Maharashtra State Board of Secondary and High Secondary Education and Anr. V/s. Paritosh Bhupeshkumar Sheth and Ors.***¹⁰, has held that the Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence, calling for revision and improvement but the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy. There is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of it being wholly beyond the scope of the regulation making power or it being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution;

(i) The Division Bench of this Court in ***Gorakhnath Shankar Nakhwa and Ors. V/s. Municipal Commissioner of Municipal Corporation of***

10. (1984) 4 SCC 27

Greater Mumbai and Ors.¹¹, has held that the aspect of security threats has to be considered day to day considering the prevailing situation and not on the basis that no untoward incident took place since the time this agreement with petitioner was entered into. This judgment also lays down that the basic principle which must guide the Court in arriving at its determination is that there is always a presumption that the Government action is reasonable and in public interest and it is for the party challenging its validity to show that it lacks in reasonableness or is not in conformity with public interest. This burden on petitioner is a heavy one and it has to be discharged to the satisfaction of the Court by proper and adequate material. The affidavits filed on behalf of respondents do not indicate anywhere that the decisions taken were not reasonable or were against public interest and in any case, petitioner has not demonstrated that those decisions were unreasonable or against public interest. It is common knowledge that Uranium is a very radioactive metal and very harmful to the environment, plants, animals and humans and if the Government once having satisfied the Court about this concern, the Court cannot substitute the threat perceived by the Government and substitute its perception by another view.

(j) The Apex Court in ***Yamuna Expressway Industrial Development Authority etc. V/s. Shakuntla Education and Welfare Society***

11. 2022 SCC Online Bom. 6703

and Ors.¹² has held that the law is settled that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. But this doctrine cannot be pressed into aid to compel the Government or the public authority to carry out a representation or promise which is contrary to law or which is outside the authority or power of the officer of the Government or of the public authority to make. To invoke the doctrine of promissory estoppel, clear sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. The doctrine of promissory estoppel cannot be invoked in the abstract and the Courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the Courts have to do equity and the fundamental principles of equity must forever be present to the mind of the Court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or

12. 2022 SCC Online SC 655

representation.

First of all there was no promise made by the Government to petitioner and in any case, as elaborated in the affidavits filed on behalf of respondents, the Court should keep in mind the results sought to be achieved and the public good at large. Uranium is a dangerous item. This apart there is no clear, sound and positive foundation laid in the petition by petitioner for invoking this doctrine. Only bald expressions without any supporting material has been pressed in aid of this doctrine. In *Yamuna Expressway* (Supra) the Apex Court has held that a policy decision could be subject to judicial review only if it is unconstitutional or dehors the provisions of any Act and Regulations or any delegatee has acted beyond its power of delegation or the executive policy is contrary to the statutory or a larger policy. None of this is even averred in the petition;

(k) Most importantly, the Apex Court, in ***State of Bihar and Anr. V/s. Sachindra Narayan and Ors.***¹³, has held that legitimate expectation is one of the grounds for judicial review but unless a legal obligation exists, there cannot be any legitimate expectation. The legitimate expectation is not a wish or a desire or a hope, therefore, it cannot be claimed or demanded as a right.

The learned ASG submitted that the petition, therefore, deserves to be dismissed.

13. (2019) 3 SCC 803

12 Mr. Thakker, appearing for respondent no.3 adopted the submissions of the learned ASG. Mr. Thakker also submitted, relying on an affidavit filed on behalf of respondent no.3, that between 2007 to 2011 petitioner did not generate any Leach Residue. The plant of respondent no.3 was dismantled in 2012, and no processing of Leach Residue was done thereafter though they picked up some small quantities later. He also submitted that admittedly, during the entire period, only about 43 Tonnes of Leach Residue has been delivered by petitioner. So no case is made out by petitioner to claim any relief.

13 First of all, what we have to consider is whether there was any legal obligation on the part of respondents towards petitioner. If the answer is negative, then there can be no legitimate expectation and therefore, the other issues raised or submissions made by petitioner need not be even gone into. In our view, there was absolutely no legal obligation on the part of respondents because no clear, unambiguous and unqualified assurance was given to petitioner by respondent no.1.

14 The fact that there was no legal obligation on the part of respondents can be found from the first letter dated 19th April 2002 annexed to the petition. The letter is addressed to respondent no.1 in which petitioner states as under :

*xxxxxxxxxxxxxxx We place on record our sincere appreciation
to you for evincing keen interest in our endeavors for setting*

up a Nb-Ta processing plant at Taloja with imported columbite-tantalite concentrates. We had brought to your kind attention the fact that these concentrates contain not an insignificant amount of U_3O_8 . Based on your advice we have submitted a note to DAE and I am enclosing a copy of the same for your kind perusal.

You may kindly note that the process will generate uranium bearing residue. Needless to add that this uranium bearing residue cannot remain accumulated in the plant. The plant will eventually yield nearly 8 tones to 10 tones of U_3O_8 content in the residue per annum. In the second phase, when we increase the production capacity, U_3O_8 production is also expected to go up accordingly. Kindly bestow your best consideration to take charge of this uranium bearing residue and have it collected and processed to yield usable uranium products for use in your programmes.

Therefore, this letter indicates that it was not respondent no.1 who encouraged or pushed petitioner to set up this plant but it was petitioner who wanted to set up the plant and for that requested Director of respondent no.1/2 to take charge of the Uranium bearing residue by having it collected and processed to yield usable Uranium products for use in programmes of respondent no.1.

15 The second letter is dated 11th May 2002 from petitioner to respondent no.1, copy whereof is annexed to the petition, which reads as under :

Subject : Niobium/Tantalum processing Plant

This is further to our letter No.MPIL/2002/4/01 dated 19th April 2002, wherein we approached your goodself for getting necessary clearance from your Department so as to enable us to go ahead with our project on Niobium and Tantalum processing at MIDC, Taloja, Navi Mumbai. Since we have already invested with Development Consultants Pvt. Limited and purchased the land at MIDC, Taloja, we would

be grateful if you can kindly issue the necessary clearances to go ahead.

While on the subject, we would like to add for your kind information that the proposed project at Taloja does not involve any plan to process the radio-activity bearing residues due to obvious reasons, which we are sure would be of great interest to your Department. While we are prepared to sell this residue at a negotiated price, we would place on record that accordingly to our preliminary estimate the radioactive material of your interest would be generated to the tune of 50 to 60 Tons per year to start with and may ultimately touch to the figure 100 TPY. The reasons for not processing this radioactive residue are two fold :

- 1. We do not have necessary technology to process this residue and hence we will not get the necessary clearances from AERB to begin the project.*
- 2. We have not at all planned for this processing in terms of space, manpower and other related resources.*

We are looking forward to receiving your continued cooperation and interest in this program, which are at an advance stage of implementation following, of course, necessary clearances. Through this program we are taking a pride enabling ourselves to extend a small assistance to our motherland.

By this letter, petitioner made it clear that it did not want to set up a residue disposal process but would sell the residue at a negotiated price to respondent no.1 and the reason for not processing the radioactive residue was because it did not have necessary technology to process the residue and it had also not at all planned for this processing in terms of space, manpower and other related resources. Petitioner wanted respondent no.1 to assist petitioner. Again this does not indicate any promise or assurance by respondent no.1 and it was actually petitioner who wanted the help of respondent no.1.

This would, in our view, demolish petitioner's case that on the basis of any assurance given by respondent no.1 petitioner set up Columbite and Tantalite processing plant in 2002-2003.

16 Reliance on an internal communication between respondent no.3 and respondent no.2 that as directed by Secretary, DAE, respondent no.3 will periodically remove the residue from the Taloja plant as and when it becomes operational also is of no assistance to petitioner. This is because it was petitioner, as noted earlier, who wanted respondent no.1 to pick up the residue and respondent no.1 gave no assurance to petitioner. This is further emphasized by the agreements itself between petitioner and respondent no.3, which for better understanding and appreciation is entirely reproduced hereinbelow :

1. Indian Rare Earths Limited, a Government of India Undertaking and a Company incorporated under the Indian Companies Act, 1956, having its Registered Office at Plot No.1207, Veer Savarkar Marg, Prabhadevi, Mumbai 400 028 (hereinafter referred to as "IREL" for brevity), on the one part and

2. Metallurgical Products (India) Pvt. Limited a Company incorporated under the Indian Companies Act, 1956, having its Registered office at T-27 MIDC, Taloja, Dist. Raigad, Maharashtra (herein after referred to as "MPII" for brevity), on the other part.

WHEREAS

1. MPIL has set up a facility in the MIDC, Taloja for processing of imported Columbite-Tantalite ore and recovering there from pure oxide and salts of Niobium and Tantalum during Phase-1 of its operation.

2. After recovery of Niobium and Tantalum values from the ore during Phase-1 operation, considerable quantity of

residue (A) is expected to be generated which would contain more than 1% REO making it mandatory for disposal as per AREB guidelines. IREL has agreed to process this residue at its Rare Earths Division Plant at Alwaye, to recover REO value before its disposal.

3. MPIL has agreed to supply residue (A) at Rare Earths Division of IREL at Alwaye and IREL have agreed to purchase at the terms and conditions agreed upon hereinunder.

NOW THEREFORE, THE PARTIES hereby agree as under :

1. MPIL has set up a facility in MIDC, Taloja for processing imported Columbite-Tantalite ore and after recovery of Niobium and Tantalum, shall arrange to supply the residue (A) containing more than 1% (one percent) REO. This residue (A) will be picked up by transport and escorts arranged by IREL for delivery at the Rare Earths Division Plant at IREL at Alwaye. The cost of such transportation however will be borne by MPIL.

2. Quantity of supply : MPIL would supply every year from 2007 onwards residue (A) containing about 10t of REO. It shall be responsibility of IREL to transport the material to Rare Earths Division Plant of IREL at Alwaye but the cost of handling & transport will be borne by MPIL. Though unlikely there may be some variations in these quoted quantities.

3. IREL undertakes to make the following payments to MPIL.

Material	REO Content %	Unit rate/Rs./Kgs REO delivered at Alwaye
A	<1%	No charge
B	1% to <5%	1000

All these processes are inclusive of customs duty, surcharge, and excise duty, sales tax, and value added tax, octroi etc. including packing, handling and transportation for delivery at Rare Earths Division of IREL at Alwaye.

4. Quality of supply.

It is expressly agreed upon that MPIL shall not supply residue (A) containing less than 1% REO. However, considering the variation in processing Columbite/Tantalite ore the minimum 1% content REO shall be computed as an average over a year of 12 months. If in a period of 12 months, the REO content falls below 1% then MPIL shall compensate IREL for the disposal at such cost to be mutually agreed upon.

5. *Payment : For residue (A) payment will be made by IREL to MPIL on receipt of the material at Alwaye and on determining the value based on the percentage of REO.*

6. *All payments shall be based on the analysis to be carried out by IREL. Three representative samples shall be taken from each consignment : one will be analyzed by IREL, one will be kept as neutral sample and one will be analyzed by a mutually agreed laboratory in case of dispute of the analysis carried out by IREL. The composition and analytical procedure shall be as agreed upon in writing.*

7. *IRE will provide wherever feasible, excise duty exemption and relevant Sales tax forms.*

8. *All disputes arising shall be settled by arbitration by sole arbitrator appointed by the Chairman & Managing Director of IREL. In case MPIL disagree with the award of arbitrator, such award can be referred to Secretary, DAE whose decision shall be final and binding on both the parties.*

9. *This agreement shall be governed by the Indian Law with courts having jurisdiction in Mumbai.*

10. *Notice : Any notice to be issued under this agreement shall be sent by registered post to the registered office of the Company herein above mentioned.*

11. *This agreement shall be initially valid for two years up to 09.08.2008 and shall be renewed by mutual consent. The price structure however may be negotiated after one year.*

12. *This agreement recognizes force majeure conditions beyond the reasonable control of both parties for due performance of the contract and such force majeure condition shall be notified within 15 days of onset of such conditions for temporary suspension during pendency of such conditions.*

(emphasis supplied)

17 Clause 7 is not provided in the first agreement. Rest of the clauses for all agreements, including the first one are identical. Clause 11 expressly provides that the validity of the agreement was only for two years and to be renewed by mutual consent. If it was to be renewed by mutual consent, that would mean that there is a possibility that the other party may

not grant the consent to renew the agreement. Petitioner was always aware and was happy with such an agreement. It never protested, which it would have, if petitioner would have set up the plant relying on any assurance of respondent no.1.

18 We should also note that by letter dated 11th May 2002, petitioner had informed respondent no.1 that they are ready to sell the residue at a negotiated price and as per the preliminary estimate the radioactive material for respondents' interest would be generated to the tune of 50 to 60 Tonnes per year to start with and may ultimately touch to the figure 100 Tonnes per year. This figure was never achieved. As against this, as submitted by Mr. Thakker, petitioner did not even generate any leach residue between 2007 to 2011.

Even in the affidavit in rejoinder filed by petitioner, affirmed on 15th December 2021, petitioner has averred that after 2012, respondent no.3 'had lifted radioactive leach residue from petitioner's plant to the extent of approximately 29 Metric Tonnes, which is almost 67% of the total radioactive leach residue lifted by respondent no.3.' If 29 Metric Tonnes comprises of 67% of the total radioactive leach residue lifted by respondent no.3, then 100% would amount to approximately 43 Metric Tonnes only. In fact, petitioner in the affidavit has also stated that post 2012, the quantity of radioactive leach residue lifted was 10.455 Tonnes on 2nd April 2013, 10.080

Tonnes on 24th February 2016 and 9.240 Tonnes on 22nd March 2017. This itself indicates that petitioner was unable to even achieve what it had promised vide its letter dated 11th May 2002.

19 In such a situation to come and tell the Court that the decision not to renew the agreement is amenable to challenge under the doctrine of legitimate expectation of petitioner is utterly baseless. In our view, there was no legal obligation that ever existed on the part of respondents requiring this Court to review the decision taken by respondents not to renew the agreement. We would rely on paragraph 23 of the judgment of the Apex Court in *State of Bihar and Anr. V/s. Sachindra Narayan and Ors.* (Supra), which reads as under :

23. In view of the above judgments, legitimate expectation is one of the grounds of judicial review but unless a legal obligation exists, there cannot be any legitimate expectation. The legitimate expectation is not a wish or a desire or a hope, therefore, it cannot be claimed or demanded as a right.
XXXXXXXXXXXXX

(emphasis supplied)

20 Therefore, in our view, we do not have to consider any other submissions made by Mr. Jagtiani or response of the learned ASG as to why respondent no.1 did not instruct respondent no.3 to renew the agreements. In light of the above view expressed by us, the question of considering whether there was any procedural impropriety or illegality or irrationality, viz., Wednesbury reasonableness, does not even arise. The points as to

whether to give consent to renew the agreement is for the decision maker and not the Court. A party cannot make a claim based merely on legitimate expectation without anything more. Such a claim *ipso facto* does not give him a right. It will be apt in the circumstances to reproduce paragraphs 20 and 21 of *Union of India V/s. International Trading Co.* (Supra), which read as under :

20. As was observed in *Punjab Communications Ltd. v. Union of India and Ors.*, the change in policy can defeat a substantive legitimate expectation if it can be justified on "Wednesbury reasonableness". The decision maker has the choice in the balancing of the pros and cons relevant to the change in policy. It is, therefore, clear that the choice of policy is for the decision maker and not the Court. The legitimate substantive expectation merely permits the Court to find out if the change of policy which is the cause for defeating the legitimate expectation is irrational or perverse or one which no reasonable person could have made. A claim based on merely legitimate extension without anything more cannot *ipso facto* give a right. Its uniqueness lies in the fact that it covers the entire span of time: present, past and future. How significant is the statement that today is tomorrows' yesterday. The present is an we experience it, the past is a present memory and future is a present expectation. For legal purposes, expectation is not same anticipation. Legitimacy of an expectation can be inferred only if it is founded on the sanction of law.

21. As observed in *Attorney General for New Southwale v. Quin* [1990 (64) Australian LJR 327] 'to strike the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the negotiation of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law; 'If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso

facto give a right to invoke these principles. It can be one of the grounds to consider, but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognized general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasure of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly, when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New Southwale's case the Court should restrain themselves and respect such claims duly to the legal limitations. It is a well-meant caution. Otherwise, a resourceful litigant having vested interest in contract, licences, etc. can successfully indulge in getting welfare activities mandated by directing principles thwarted to further his own interest. The caution, particularly in the changing scenario becomes all the more important.

(emphasis supplied)

The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence. Actions are amenable to judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. A question whether the impugned action is arbitraory or not is to be ultimately answered on the facts and circumstances of a given case. To apply the doctrine of legitimate expectations, the decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. In our view, since there was no legal obligation existed, there is no ground for applying the

doctrine of legitimate expectation.

21 In the circumstances, in our view, since there was no legal obligation on the part of respondents to give consent under the contract, we cannot grant the mandamus as prayed for in the petition.

22 Petition dismissed. No order as to costs.

(RAJESH S. PATIL, J.)

(K. R. SHRIRAM, J.)