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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision : November 8th, 2024**+ **W.P.(C) 4424/2007****SUNFLAG IRON & STEEL CO. LTD.****.....Petitioner**

Through: Ms. Malvika Trivedi, Senior Advocate with Mr. Ankur S. Kulkarni, Mr. Nirnimesh Dube, Mr. Varun Kanwal and Ms. Sujal Gupta, Advocates

V**UNION OF INDIA & OTHERS****.....Respondents**

Through: Mr. Vikrant N. Goyal, CGSC with Mr. Aditya Shukla, Advocate for R-1 Mr. Chetan Sharma, ASG with Mr. Sharat Kapoor, Mr. Amit Gupta Mr. Shubh Kapoor, Mr. Anirudh Dusaj, Ms. Bhavya Garg, Mr. Saurabh Tripathi, Mr. Shubham Sharma and Mr. Vikramaditya Singh, Advocates for SAIL Mr. Prashant Singh, Standing Counsel with Ms. Perna Dhall, Mr. Piyush Yadav and Ms.

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By: HARVINDER KAUR
BHATIA
Signing Date: 08.11.2024
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**Akanksha Singh, Advocates
for State of Chhattisgarh**

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HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (*oral*)

1. The Petitioner has filed the present Writ Petition under Article 226 of the Constitution of India thereby challenging the arbitrary, illegal and unreasonable actions / decision of the Respondents herein for not providing assured and uninterrupted regular supply of Iron Ore, for issuance of certain directions on the Respondents, and for denying the application of the petitioner for grant of Mining Lease. The Petitioner has sought the reliefs which are produced verbatim: -

i) issue a Writ of Mandamus or Certiorari or any other writ / order / direction directing the Union of India through its Linkage Committee to provide continuous and uninterrupted supply of 2,50,000 metric tonnes of Iron Ore per annum to the Petitioner Company at the rate of 20,000 metric tonnes per month for its Integrated Steel Plant at Bhandara, Maharashtra through appropriate linkage as assured;

ii) issue a writ of Mandamus or Certiorari or any other writ / order / direction directing the SAIL to make continuous and uninterrupted supply of the Iron Ore to the Petitioner with immediate effect as required by the Petitioner till the appropriate linkage is provided by the Union of India;

iii) issue a Writ of Mandamus or Certiorari or any other writ / order / direction summoning the records of the Respondents leading to issuance of the impugned



Notification dated 20th July, 2006 and set aside / quash the Notification dated 20th July, 2006;

iv) issue a writ of Mandamus or Certiorari or any other writ / order / direction declaring that the Rowghat ‘F’ deposit situated in District Bastar of Chhattisgarh cannot be reserved exclusively for any Government Company or Corporation in all the facts and circumstances of the case unless and until a confirmed commitment and a contractual obligation is created in the said Government Company or Corporation to continuously and uninterruptedly supply the required Iron Ore to the Petitioner;

v) issue a writ of Mandamus or Certiorari or any other writ/order/direction directing the Respondents to set aside the order of Respondent No.1 rejecting the Application of Petitioner Company for Prospecting Licence and direct the Respondent No.1 to consider the Petitioner's Application for Prospecting Licence in respect of Rowghat ‘F’ deposit;

vi) direct the Respondents to maintain status quo in respect to Rowghat ‘F’ Deposit, till the pendency of the present Petition or till Respondents enter into legally binding contract for supply of required iron ore to the Petitioner; and”

vii) Pass such further or other orders as this Hon’ble Court may consider fit and proper.

2. The factual matrix of the case as stated by the Petitioner in the writ

petition is as follows: -

a) The Petitioner is a Company duly incorporated under the provisions of The Companies Act, 1956 and is engaged in manufacturing of steel and for that purposes has established a sponge iron and Steel Plant in Bhandara, Maharashtra for the purpose of manufacturing steel rolled products and sponge iron.



b) It is stated by the Petitioner that the Petitioner was incorporated on 12.09.1984 for setting up an integrated Steel Plant in Bhandara, a backward region under Category D of the Maharashtra State for manufacture of Steel rolled products and sponge iron. It is further submitted that this project of theirs was promoted by a Company, namely being, M/s Sunflag Limited (United Kingdom) with a total investment of over Rs. 270 Crores.

c) It is further contended that for the purpose of encouraging economic development, the Central Government offered various incentives including but not limited to preference in raw material, i.e., Coal and Iron Ore allocation which would effectively render the project of the Petitioner and other private entities as economically viable.

d) In pursuance of the same, it is stated that the Central Government through its Linkage Committee for Coal and Iron Ore vide its Meeting held on 14.07.1987 approved Iron Ore linkage from Dalli-Rajhara lines of SAIL / Respondent No. 4 in favour of the Petitioner. The same was intimated to the Petitioner by way of a Letter dated 07.09.1987 issued by the Department of Steel, Ministry of Steel and Mines, Government of India.

e) It is stated that based on the approval of the Respondents, for supply of Iron Ore from Dalli-Rajhara lines of SAIL/ the respondent No. 4, the Petitioner was first required to setup its integrated Steel Plant at Bhandara, Maharashtra which led to a cost of Rs. 300 Crores. The said plant commenced its operation from 1988-1989 and was set up purely based on the representations and promises regarding the supply of iron ore from Dalli Rajhara lines of SAIL.

f) It is stated that once the Linkage was confirmed by the Central Government and based upon the assurances of



uninterrupted Iron Ore supply to the Petitioner, an Agreement dated 02.05.1988 was entered into between the Petitioner and SAIL / Respondent No. 4. As per the said Agreement, 2.5 Lakh Tonnes of Iron Ore was to be supplied to the Petitioner at the rate of 20,000 Tonnes per month. It had also been specified in the said Agreement that the size range of the Iron Ore should be within 10 to 40 mm which is ideal for optimum production of sponge iron.

g) It is stated that despite entering into the said Agreement, SAIL / Respondent No. 4 was never able to honour their commitment of supplying 20,000 Tonnes of Iron Ore per month to the Petitioner.

h) Due to such reason, the Petitioner was compelled to procure Iron Ore at higher costs from different locations situated more than 800 KMS from the Steel Plant of the Petitioner resulting in high transportation charges.

i) Due to the said reason, it became impermissible for the Petitioner to continue operating its Steel Plant and accordingly the Petitioner was constrained to issue several Letters dated 16.09.1992 and 17.02.1993 to the Prime Minister and Minister for Steel by raising its issue that SAIL / Respondent No. 4 is not being able to provide even 5,000 Tonnes of Iron Ore per month to the Petitioner.

j) It is stated that the Board of Directors of the Petitioner Company sometime in March, 1993 resolved that unless SAIL / Respondent No. 4 supplies adequate Iron Ore to the Petitioner, the operations of their Steel Plant may cease to be viable and in pursuance of the same, the Petitioner issued a Letter dated 17.03.1993 to the Respondent No. 1.

k) Thereafter, the Respondent No. 1 taking cognizance of the issues being faced by the Petitioner, issued a Letter dated 10.09.1993 thereby requesting the Chairman of SAIL / Respondent No. 4 to place this issue before the Board of



SAIL / Respondent No. 4 and the Respondent No. 1 was of the view that SAIL / Respondent No. 4 as per the said Agreement should provide at least 10,000 Tonnes of Iron Ore per month to the Petitioner.

l) Acting upon the same, a Meeting was held on 25.01.1994 between the representatives of the Petitioner and Bhilai Steel Plant of SAIL / Respondent No. 4 wherein SAIL / Respondent No. 4 stated that Iron Ore more than the size of 10mm cannot be spared as they themselves are facing shortage of Iron Ore and they would be able to offer less than 10mm size of Iron Ore to the Petitioner. It is stated that the Petitioner had no other option but to accept such a proposal in order to keep their Steel Plant running. The outcome of this Meeting was duly informed by the Petitioner to the Respondent No. 1 vide Letter dated 01.02.1994.

m) By way of Letter dated 01.03.1994, SAIL / Respondent No. 4 accepted the proposal of the Petitioner to conduct trials of screening 8-10 mm size of Iron Ore from the fines stockpiles at Dalli-Rajhara Mines.

n) It is stated that the Iron Ore of sizes less than 10 mm does not yield optimum and / or required production but the Petitioner in order to meet the required amount of Iron Ore agreed to additional cost of screening the 8-10 mm of Iron Ore.

o) Accordingly, two Contracts dated 27.04.1994 and 03.05.1995 were entered into between the Petitioner and SAIL / Respondent No. 4 for supply of 1.20 Lakh Tons of Iron Ore of the sizes between 6-10 mm from Dalli-Rajhara Mines at the rate of 10,000 MT per month. However, the Petitioner again received Iron Ore from SAIL / Respondent No. 4 which was lower than the contracted quantity.



p) That on 05.03.1993, the Government of India announced the National Mineral Policy, 1993 whereby the Government decided to do away with the restriction of reservation of certain minerals for exclusive exploitation by Public Sector Undertakings and open the same for the Private Sector.

q) By way of a Circular dated 29.10.1993, the Respondent No. 1 informed all the State Governments and Union Territories to carry out a review of all the areas reserved earlier for exploitation of certain mineral for Public Sector Undertakings.

r) By way of Communication dated 24.01.1994, the Respondent No. 1 informed the State Governments that the National Mineral Policy, 1993 aimed at providing a bigger role to the Private Sector in the field of minerals and hence, the Public Sector Undertakings are to be treated at par with the Private Sector. To promote competition between both the sectors, the State Governments were advised to de-reserve the areas for certain minerals (including Iron Ore) so that the willing parties or companies are able to exploit the same.

s) As aforementioned, since the size of Iron Ore less than 10 mm was not viable for production of sponge iron, and was neither technically nor economically feasible for them, the Petitioner stopped lifting such Iron Ore sometime in April, 1996.

t) That since the Central Government provided incentives to Private Sectors through the National Mineral Policy, 1993 and since SAIL / Respondent No. 4 did not supply the required amount of Iron Ore to the Petitioner despite its commitment, the Petitioner made an Application for Prospecting Licence dated 25.06.2002 under the provisions of Sections 4, 5 & 6 of the Mines and Minerals (Development and Regulation) Act, 1957 ["MMDR Act"] for captive mining of an area of 650 Hectares in Rowghat



area (Forest Plot No. 87(P) and 89(P) in Malta R.F., Taluk Narayanpur, District Bastar) which is mentioned as Rowghat 'F' Block mines for a period of 3 years.

u) It is stated that as per the Audit Report of Comptroller and Auditor General of India for the year ending March, 2003, the actual production of Dalli-Rajhara Mines in the period of 1992-1993 to 2002-2003 exceeded the capacity of the Mines and huge stock of Iron Ore got accumulated. This clearly demonstrates that Bhilai Steel Plant was not able to consume the Iron Ore produced in Dalli-Rajhara Mines and for some reason SAIL / Respondent No. 4 denied the supply of Iron Ore to the Petitioner.

v) The Petitioner vide Letter dated 03.11.2003 informed the Respondent No. 1 that the production in their Steel Plant had to be stopped for more than a period of 45 days due to non-availability of Iron Ore. It was also informed that for the purpose of ensuring continuous supply of Iron Ore, the Petitioner had applied for a Prospecting Licence.

w) The Respondent No. 3 vide Letter dated 22.11.2003, informed the Petitioner that a hearing in respect of the Application for Prospecting Licence of the Petitioner has been fixed on 02.12.2003. It is however stated that the Respondent No. 3 did not take any steps in furtherance of their Letter dated 22.11.2003.

x) After passing of more than 2 years, the Central Government issued a Notification under Section 17-A of the MMDR Act bearing no. G.S.R. 438 (E) on 20.07.2016 that the Rowghat 'F' Block mines was reserved for SAIL / Respondent No. 4 and it was declared that no further Prospecting Licence or Mining Lease would be granted in such area for a period of 10 years. It is also stated that the Central Government on 04.01.2007 granted prior approval under Section 5(1) of the MMDR Act for the Mining Lease



over Rowghat 'F' Block mines in favour of SAIL / Respondent No. 4 for a period of 20 years.

y) The Petitioner states that SAIL / Respondent No. 4 already has copious quantities of reserves at various locations and it is unfair for other Steel manufacturers to starve for raw materials while SAIL / Respondent No. 4 is enjoying its control over various Mines.

z) It is stated that after a period of 6 months after the issuance of the Notification dated 20.07.2006, the Respondent No. 3 informed the Petitioner vide Letter dated 06.01.2007 that the hearing for grant of the Prospecting Licence of the Petitioner would be heard on 12.01.2007 and vide Letter dated 16.01.2007 it was informed that the hearing was postponed to 22.01.2007.

aa) The Petitioner informed the Central Government and the State Government of the difficulties being faced by them due to non-availability of Iron Ore vide Letter dated 13.01.2007.

bb) The Petitioner issued a Letter dated 17.01.2007 to the Respondent No. 3 requesting to consider the grant of Mining Lease in order to meet the captive supply of Iron Ore required by the Petitioner for running their Steel Plant.

cc) It is stated that the Respondent No. 3 sat over the Application of the Petitioner for grant of Prospecting Licence for more than a period of 4 years and the hearing was finally granted to the Petitioner after 6 months of issuance of the Notification dated 20.07.2006, hence, it was clear to the Petitioner that the hearing to be conducted on 22.01.2007 was merely a statutory formality and is clearly a sham.



dd) The Application for Prospecting Licence of the Petitioner was rejected by Respondent No. 3 vide Order dated 23.02.2007.

ee) The present Writ Petition is therefore filed by the Petitioner in view of the above-mentioned facts thereof, praying that an appropriate writ be issued in the nature of a Mandamus or Certiorari thereby setting aside / quashing the Notification dated 20.07.2006 issued by the Central Government, that the Rowghat 'F' deposit cannot be reserved exclusively for any Government Company, to set aside the Order dated 23.02.2007 whereby the Application for Prospecting Licence of the Petitioner with respect to the Rowghat 'F' deposit was rejected, and along with other consequential reliefs.

3. The respondent no 4/SAIL filed counter affidavit. The respondent no 4 in counter affidavit submitted that the petitioner is seeking to vindicate contractual rights in relation to contracts which ceased to be in operation more than a decade ago. The petitioner was seeking extra-ordinary constitutional remedy in a contractual field by bypassing the agreed dispute resolution mechanism of Arbitration within jurisdiction of Madhya Pradesh High Court /Chhatisgarh High Court.

3.1 The petitioner forfeited its right to challenge the 2006 notification by not challenging the 2002 notification. It is further contended that SAIL is the largest iron ore and steel producing Company in India



and is currently engaged in the business of manufacture, processing and sale of Steel and has 5 main integrated steel plants which have a combined capacity of 12.03 MT of saleable Steel. Rowghat Iron ore deposit mines have 6 deposit blocks and the strategic location of F Block is vital to the respondent No.4 and any deviation therefrom would make its operations un-viable. The Letter dated 07.09.1987 (which was never communicated to SAIL) could not create a legal right on the petitioner nor could the Petitioner have any legitimate expectation than the Respondent No.4 whose application pre-dates the consent of the Respondent No.1 in its favour. Section 17A of the MMDR Act is a statutory power and there cannot be any estoppel against the exercise of a statutory power merely on the basis of a prior consent conveyed under Section 5(1) of the Act.

4. Ms. Malvika Trivedi, the learned Senior Counsel for the petitioner advanced oral arguments and Written Submissions were also submitted on behalf of the petitioner. The Ld. Senior Counsel besides referring to the factual background of the case submitted that the Petitioner has filed the present petition being aggrieved by order



dated 23.02.2007 passed by Government of Chhattisgarh, Mineral Resources Department rejecting its application to obtain prospecting license in light of the gazette notification dated 20.07.2006 reserving the entire area of 2028.797 hectares for SAIL for a period of 10 years. She relied upon the documents viz. petitioner's application dated 25.06.2002 for obtaining prospecting license for about 650.00 hectares of land leased in Khasra No. Forest Plot N. 87 (p) & 89 (p) Malta R.F., District Bastar, Chhattisgarh State. (Rowghat Iron Ore Deposit); Notification dated 20.07.2006 issued by Ministry of Mines in consultation with State Govt. reserved entire area of 2028.797 hectares for SAIL for a period of 10 years and Impugned order 23.02.2007 passed by State Government dismissing all application due to non-availability of area which stood reserved for SAIL vide notification dated 16.07.2002.

4.1 Ms. Trivedi submitted that despite promises which led the petitioner to alter its position, SAIL supplied only 6900 tones against the promised quantity of 2.5 Lac tones and thereafter stopped all supplies. She vehemently argued that that the actions of the respondents are in violation of the Doctrine of Promissory Estoppel



and she has placed reliance on **Motilal Padampat Sugar Mills Co. Ltd. V State of U.P.**, (1979) 2 SCC 409 ; **State of Punjab V Nestle India Ltd.**, (2004) 6 SCC 465 ; **Pepsico India Holdings (P) Ltd. V State of Kerala**, (2009) 13 SCC 55; **Devi Multiplex V State of Gujarat**, (2015) 9 SCC 132; **Garg Acrylics Ltd. V Union of India**, 2022 SCC OnLine Del 1890.

4.2 The learned Senior Counsel that on the basis of the assurances of the Government that Iron Ore Linkage would be provided to the petitioner from Dalli-Rajhara Lines of SAIL/ the respondent No. 4, the Petitioner invested more than Rs. 300 Crores in setting up its Steel Plant on the legitimate expectation that the Respondent will not act in an arbitrary and illegal manner. She placed reliance on **Union of India V Hindustan Development Corporation**, (1993) 3 SCC 499; **Bannari Amman Sugars Ltd. V CTO**, (2005) 1 SCC 625 and **Sivanandan C.T. V High Court of Kerala**, (2004) 3 SCC 799.

4.3 The learned Senior Counsel pointed out certain relevant portions of the Auditor Report of the CAG for the year ending March, 2003 and submitted that SAIL/the respondent no. 4 arbitrarily denied supply of Iron Ore to the Petitioner on false and made up pretext



because as per the said Report of CAG, the actual production of Dalli-Rajhara Mines during the period of 1992-1993 to 2002-2003 had exceeded its capacity resulting in huge stock of Iron Ore fines accumulating at the Mines.

4.4 The learned Senior Counsel for the petitioner brought the attention towards the Notification dated 20.07.2006 issued by the Central Government and submitted that the said Notification is illegal as certain parts of the notified areas were already covered by Prospecting Licenses which were granted in favour of third-parties. Ms. Trivedi referred Section 17 (1A) of the MMDR Act which provides that the Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it.

4.5 The Senior Counsel for the petitioner submitted that even though the Agreements entered into between the Petitioner and SAIL / Respondent No. 4 included an Arbitration Clause, the same does not cause any bar to the Petitioner from invoking the extra-ordinary writ



jurisdiction of this Hon'ble Court especially when injustice has been caused to the Petitioner by the Respondents who are functionaries of the State and relied on **Union of India V Tantia Construction Private Limited**, (2011) 5 SCC 697; **ABL International Ltd. and another V Export Credit Guarantee Corporation of India Ltd. and others**, (2004) 3 SCC 553; **Kishan Freight Forwarders V Union of India**, 2011 SCC OnLine Del 2560; **Human Care Medical Charitable Trust V Delhi Development Authority**, 2012 SCC OnLine Del 69; **Union of India V Jai Balaji Industries Ltd.**, 2015 SCC OnLine Del 13345; **Unitech Limited V Telangana State Industrial Corporation (TSIIC)**, (2021) 16 SCC 35; **Antares Systems Ltd. V Delhi Development Authority and another**, 2024 SCC OnLine Del 1805. It has been vehemently argued that to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment and the refusal of the Government to act fairly as the Petitioner had altered its position, therefore the respondents would certainly be bound by the principles of promissory estoppel.



5. Sh. Chetan Sharma, the learned Additional Solicitor General and Shri Sharat Kapoor, Advocate advanced oral arguments on behalf of the respondents. The respondent no.1/Ministry of Mines has submitted that the issuance of Notification dated 20.7.2006 in supersession of Notification dated 03.12.2004, reserving an area was based on the letter dated 27.04.2006 received from the State Government giving no objection and the Reservation was done over an area over which Prospecting license or Mining Lease was not held by any anyone before. The respondent no.1 further submitted that the commitment if made between two commercial parties if not part of the mining lease deed is not covered under the MMDR Act. It was further urged that the commercial agreements lie between two commercial parties and the same cannot have supervised by the High Court in exercise of the extra-ordinary writ jurisdiction.

5.1 The respondent No.2/Ministry of Steel submitted that the proposal of supply of iron ore by the Respondents to the Petitioner never attained finality as quantity, quality, price and period for which the iron ore was to be supplied was never determined and supply of iron ore to the Petitioner would be in contravention of Article 14 and



19 of the Constitution. The Respondent No.2 further submitted that due to various factors, it respondent No.4 was not in a feasible position to supply iron ore to the Petitioner. It was further urged that there could be no estoppel against the statutory power exercised under Section 17A (1A) of the MMDR Act more so because it was a policy decision in the wake of public interest and the same was out of the purview of the writ jurisdiction of the High Court.

5.2 The respondent No.4/ Steel Authority of India submitted that it had never given any assurances to supply iron ore to the Petitioner and as such there was no corresponding obligation of supply the same more so because the proposals of supply of iron ore never attained finality. The reliance, if any, on the letter and office memorandum is mis-placed as the same had not been sent by the Designated Authority and were of no value. Reliance was placed on **Jasbir Singh Chhabra V State of Punjab**, (2010) 4 SCC 192.

5.3 It was further urged that Interdepartmental communications and file noting in departmental files do not have sanction of law and there is always an exercise of review until a final decision is taken. Reliance was placed on the judgements of **Union of India V Vartak**



Labour Union, (2011) 4 SCC 200 and State of Uttaranchal V Sunil Kumar Vaish, (2011) 8 SCC 670. It was also urged that commercial transactions or policy decisions cannot be gone into in a Writ Jurisdiction and the Writ Petition will not be maintainable in case of dispute question of facts. Reliance was placed on **Shubhas Jain V Rajeshwari Shivam & others, (2021) 20 SCC 454.** It was further urged that the petitioner has sought quashing of the notification dated 20.07.2006, without challenging the notification being ultra vires thus making the writ petition non-maintainable on this count alone. There is no fundamental right in mining. Promissory Estoppel is not attracted due to Statutory Prohibition u/s 17A(1A) of the MMDR Act and there is no Public Interest in favour of the Petitioner for mining of Iron Ore. The Respondent placed reliance on **Monnet Ispat V Union of India & others, (2012) 11 SCC 1.**

6. The learned ASG for the Union of India also submitted that there is no fundamental right in mining. The Doctrine of Promissory Estoppel is not attracted due to Statutory Prohibition under Section 17A(1A) of the MMDR Act and there is no Public Interest in favour of the Petitioner for mining of Iron Ore. He also placed reliance on



the decision of **Monnet Ispat and Energy Limited V Union of India & others**, (2012) 11 SCC 1. It has been further submitted that the Doctrine of Legitimate Expectation and Promissory Estoppel cannot be applied in the present case as the same is overridden by larger public interest. The Petitioners cannot invoke such Doctrine as the same would block public interest for private benefit.

6.1 The learned ASG brought attention towards the prayers sought by the petitioner and pointed out that the Writ of Mandamus cannot be issued where the nature of relief sought is specific performance of a contract and the issues involved are in relation to disputed questions of fact. He also placed reliance on **Shubhas Jain V Rejeshwari Shiwam & others**, (2021) 20 SCC 454 and **Municipal Council Gondia V Divi Workers & Supplies**, 2022 SCC Online SC 247.

6.2 The learned ASG has submitted that SAIL/the respondent no. 4 has invested more than Rs. 2,300 Crores in the Bhilai Steel Plant, however, due to various concessions and royalties payable by SAIL/the respondent No. 4, the Bhilai Steel Plant is unable to meet its own production requirements and raw materials have to be imported to meet the production requirements and for functioning of



the Bhilai Steel Plant. The directions, if any, issued by this Court would not be possible to be implemented.

6.3 The learned ASG submitted that due to the reasons of making considerable investments, SAIL/the respondent no. 4 has a preferential right over the Rowghat Mines. It is submitted that the Petitioner cannot have more legitimate expectation than SAIL/the respondent No. 4 as the mining application, prior consent, Prospecting License, etc. all pre-date any of the documents or applications made by the Petitioner. He placed further reliance on **D. Wren International Ltd. & another V Engineers India Ltd. & others, AIR 1996 Cal 424** and **Excise Commissioner V Issac Peter, (1994) 4 SCC 104**.

6.4 The learned ASG contended grounds for maintainability of the Writ Petition and submitted that Clause 10.1 of the Agreement dated 02.05.1988 clearly stipulated that the validity of the Agreement was for 2 years only, Clause 14 of the said Agreement provided the territorial Jurisdiction is of District Civil Court of Durg, M.P. and Clause 15 of the said Agreement included an Arbitration Clause wherein the venue of Arbitration was decided as Ispat Bhawan,



Bhilai Steel Plant, Bhiali, M.P. Thus, according to him, the Court at New Delhi that too the High Court has no territorial jurisdiction to even entertain the Petition especially in light of the judgement of the Apex Court in **ABC Laminart Private Limited** as per which, the jurisdiction of the Courts other than the one mentioned specifically in the Contract is ousted.

6.5 It was further contented that on the basis of the above-mentioned Arbitration Clause of the Agreement dated 02.05.1988, the Writ jurisdiction of this Hon'ble Court cannot be invoked where there is an alternative remedy. It was further contended that the Writ jurisdiction is not exercisable especially if a case is based on disputed questions of fact and law or an interpretation of a contract. He has placed reliance on **Gail (India) Ltd. V Gujrat State Petroleum Corporation Ltd., (2014) 1 SCC 329.**

6.6 The learned ASG further contends that it is trite law that there can be no Writ in cases of commercial matters or disputes and relied upon the Judgement of **Kerela State Electricity Board & another V Kurien E. Kalathil & others., (2000) 6 SCC 293.**



6.7 It has been contended by the learned ASG that the Rowghat 'F' deposit has been exclusively reserved for SAIL / Respondent No. 4 by way of a Notification issued in 1961 and SAIL / Respondent No. 4 applied for the Prospecting License for Rowghat 'F' deposit sometime in August, 1983. It is also contended that the Petitioner has failed and forfeited their right to challenge the right to exclusivity of SAIL / Respondent No. 4. The learned ASG has also contended that the petitioner has approached this Court after a considerable delay of about 17 years and that this Court should not entertain the present Writ Petition at such a belated stage and on the basis of this submission, he relied upon the decision of **Chennai Metropolitan Water Supply & Sewerage Board V T.T. Murali Babu**, (2014) 4 SCC 108.

6.8 It was further urged on behalf of the Respondents that the agreement between the Petitioner and the Respondent No.4 was a stale agreement as the same was signed on 01.05.1988 for a period of 2 years and the legal maxim *Certum est quod certum reddi potest* applied in the case as the time for the contract as per Clause 10.1 of the Agreement was fixed.



7. Ms. Malvika Trivedi, the learned Senior Counsel for the petitioner in rejoinder arguments to the submissions made by the learned ASG for the respondents argued that the reliance by the respondents on **Monnet Ispat and Energy Limited** is misplaced. It is submitted that the MOU was in respect to the grant of a mining lease which was promised to the petitioner therein and the MOU was held unenforceable as the State Government was not aware about the reservation of the mining area for exploitation in favour of the Public Sector Undertakings, whereas, in the present case the petitioner was promised Linkage to the Iron Ore from Dalli-Rajhara lines of SAIL /the respondent no. 4 on the basis of which the Petitioner invested Rs. 300 Crores to set up a Steel Plant in Bhandara, Maharashtra and the Impugned Notification of the Central Government dated 16.07.2002 was subsequent to such promises / assurances. Since, there was an alteration in position based on promises, the Doctrine of Promissory Estoppel is clearly attracted.

7.1 The learned Senior Counsel submitted that there are no disputed questions of fact in the present Writ Petition and have not sought any relief seeking specific performance of any of the Agreement or



Contract entered into with SAIL /the respondent No. 4. She with respect to the issue of the Agreement dated 02.05.1988 getting expired after 2 years, submitted that the Linkages were granted by the Linkage Committee (constituted by the Cabinet of Ministers) to the Petitioner which were intended as long term arrangements and were free of specific expiration dates and the same is evident from various written communications, Agreements and the Linkage Committee's approval on 14.07.1987. It is also contended by the Ld. Senior Counsel that post entering into the Agreement dated 02.05.1988, SAIL / Respondent No. 4 failed to supply adequate quantities of Iron Ore (20,000 MT) to the Petitioner and even after entering into subsequent Contracts dated 27.04.1994 and 03.05.1995, SAIL / Respondent No. 4 again failed to supply Iron Ore to the Petitioner as per the contracted quantity.

7.2 The learned Senior Counsel with respect to the Respondents submission of not challenging the Notification dated 20.07.2006 as ultra vires and not challenging the earlier Notifications vide which right exclusivity was granted to SAIL / Respondent No. 4 is concerned, it is submitted that the Notification dated 20.07.2006 is



not akin to a stature hence there cannot be any requirement to separately challenge vires of the same and also submitted that the earlier Notifications dated 16.07.2002 and 03.12.2004 are superseded by the Notification dated 20.07.2006 hence no requirement to challenge the same. The learned Senior Counsel with respect to the submission of the Respondents that SAIL / Respondent No. 4 has invested more than Rs. 2,300 Crores is concerned, it is contended that the Petitioner has also invested more than Rs. 300 Crores, spent additional costs on sourcing Iron Ore from alternative suppliers from long distances, and have also incurred further expenditure in order to run and keep their Steel Plant functioning due to failure of SAIL / Respondent No. 4 to provide adequate quantities of Iron Ore.

7.3 The submissions of the respondents pertaining to the petitioner having an alternate remedy available by way of invoking Arbitration have been answered by the Ld. Senior Counsel by submitting that the present matter is not concerned with specific performance of contract and instead involved governmental actions affecting public interest in resource allocation which has directly impacted the Petitioner's business which would not be sufficiently dealt with under



Arbitration. It is also submitted that there are several legal precedents which affirm that Arbitration is not the sole recourse wherein there has been significant injustice and when broader issues are at stake. The Ld. Senior Counsel has again relied upon the previous judgements in support of her contentions and further submitted that the judgement of **Gail (India) Ltd.** as relied upon by the Respondents is not applicable to the facts of the present case as the issues involved therein were very complex and pertained to price fixation mechanism. The learned Senior Counsel responded to the contention of the Respondents that “*it is trite law that there can be no writ in purely commercial matters*” by submitting that when the arbitrary actions / decisions of a public authority, violation of fundamental rights and the public resources are concerned, Writ Petitions are maintainable. In furtherance of her submissions, the Ld. Senior Counsel has relied upon the judgements of **Andi Mukta Sadguru Shree Muktajee Vandas Swami Swarna Jayanti Mahotsav Smarak Trust V V.R. Rudani**, (1989) 2 SCC 691 and **Hero Motocorp Ltd. V Union of India**, (2023) 1 SCC 386.



7.4 The learned Senior Counsel has argued that SAIL/ the respondent No. 4 was granted the Prospecting Licence over the Rowghat mines as early as 1984 and had decades to explore and develop the mines, therefore, SAIL / Respondent No. 4 failed to exploit the same and utilize these resources effectively despite approval granted in 1991. It is also submitted that the actions and decisions of the Respondents are in direct contradiction of the National Mineral Policy, 1993 which encouraged Private Sector participation in mineral resource allocation. The Ld. Senior Counsel contends that the exclusive preference of the Rowghat 'F' deposit and the monopolistic control over such mines by SAIL / Respondent No. 4 are in violation of Article 39(b) of the Constitution of India which clearly provides that the ownership and control over natural resources should be distributed in a manner which subserves the common good and is also in violation of Section 4(2)(c) of the Competition Act, 2003 which prohibits dominant market positions. It is further submitted that the Petitioner applied for the Prospecting Licence in 2002, i.e., before the Rowghat 'F' deposit was reserved for SAIL / Respondent No. 4 in 2006, therefore, there was a clear lack of transparency in the



reservation process and the Notification in question was also not intimated to the Petitioner. Lastly, the learned Senior Counsel submitted that there is no delay in filing of the present Writ Petition especially that of 17 years. It is submitted that as per the facts elucidated in the Writ Petition, there have been multiple cause of actions leading up to the year of 2007 when only after exhausting its administrative remedies and the issues faced by it remaining unresolved, the Petitioner has timely preferred the present Writ Petition in the year 2007 itself.

8. The learned ASG in response to rejoinder argument has submitted that the Petitioner's own case and the first prayer seeking continuous and uninterrupted supply of 2.5 Lakhs MT of Iron Ore is a part of the Agreement dated 02.05.1988, therefore, the Petitioner is clearly seeking specific performance of the Agreement dated 02.05.1988. He further submitted that the Agreement dated 02.05.1988 was entered into based upon the mutual terms and conditions and the period of the said Agreement clearly stipulated that the term shall be of 2 years only.



8.1 The learned ASG contended that under Section 17A(1A) of the MMDR Act, the Central Government is empowered to reserve mining areas for Public Sector Undertakings and for such reason and power, the Notification dated 20.07.2006 cannot be quashed. It is also contended that the petitioner's case does not detail any cause of action in the period of 1994 and 2002. The Petitioner was sleeping on its rights until the Notification dated 20.07.2006 was issued and it is further contended that the Application for the Prospecting Licence was also delayed by the Petitioner. The learned ASG also submitted that SAIL/the Respondent No. 4 had prior approval and consent for Rowghat mines, the Prospecting Licence was granted from 14.09.1988 to 13.09.1990 and was further extended to 13.11.1992. As per the Mining Lease Application submitted by SAIL/ the respondent No. 4, it was clearly specified that the Iron Ore shall be used for captive consumption and the same was granted to SAIL/ respondent No. 4 exclusively under Section 17A(1A) of the MMDR Act, and hence, the Petitioner's Application cannot supersede this reservation. The learned ASG further contends that larger public interest lies in ensuring that SAIL/the respondent No. 4 continues it



supply of Iron Ore to its Bhilai Steel Plant in order to meet its long term investments for which SAIL / Respondent No. 4 has invested more than Rs. 2,300 Crores. Any disruption to the Growth Plan 2035 of SAIL / Respondent No. 4 shall jeopardize national interest. Ld. ASG relied on the judgement of **Sethi Auto Service Station V DDA**, (2009) 1 SCC 180 wherein the Supreme Court noted that public interest considerations override private interests. Also in **Monnet Ispat and Energy Limited** the Supreme Court held that public interest in conserving resources for PSUs must prevail over private commercial interests. Lastly, it has been argued by the Ld. ASG that the Mining Lease was only granted to SAIL / Respondent No. 4 in the year 2009 and SAIL / Respondent No. 4 was only permitted to undertake prospecting work under the MMDR Act until the Mining Lease is granted. SAIL / Respondent No. 4 proposed to open up the Rowghat deposit in 2011-2012 as per its Growth Plan 2035 and the Rowghat deposit would be exhausted by 2034-2035.

9. Having heard the parties and perusing the material on record, this Court finds that the Rowghat 'F' Block deposit, iron ore mines is situated at Rowghat Hills, Malta Reserve Forest, situated in



Naraynapur Forest Range, District Kanker in the State of Chhattisgarh (hereinafter referred as the '**Rowghat 'F' Block**') and has a total of 7 iron ore reserves. There are three reserves in the Northern portion of the Rowghat 'F' Block known as Raodongri, 'A' Block and Tarhur and four reserves in the Southern portion known as Anjrel, Kargaon, Khakagaon and Tarkel.

10. It is not in dispute that no Prospecting License or Mining Lease was held by anyone with respect to the area in which Petitioner had filed its Mining Lease application. Therefore, it is clear SAIL had never applied for Mining Lease for the area for which the Petitioner had given its application for Mining Lease and vice versa. Thus, under the legal regime which existed prior to the MMDR, Amendment Act, 2015, which was based on the 'first come first serve basis', a preferential right under S.11(2) of the MMDR Act, 1957, existed in favour of the Petitioner.

11. It is further not in dispute that representations and promises were made on various occasions it is therefore incorrect on behalf of the Respondent No.4/SAIL or Respondent No.3/Ministry of Steel to



contend that assurance of supply of iron ore to Petitioner was never given by them.

12. The Supreme Court in the matter of **Bhushan Power & Steel Limited V Mr. S.L. Seal, Add. Secretary, Government of Odisha & others**, (2017) 2 SCC 125, while dealing with the provisions of MMDR Amendment Act, 2015, has held that by insertion of Section 10A a right vested in 3 categories of applicant were protected. The relevant portion of the decision is reproduced as hereunder:

22. Newly inserted provisions of the Amendment Act, 2015 are to be examined and interpreted keeping in view the aforesaid method of allocation of mineral resources through auctioning, that has been introduced by the Amendment Act, 2015. Amended Section 11 now makes it clear that the mining leases are to be granted by auction. It is for this reason that sub-section (1) of Section 10A mandates that all applications received prior to January 12, 2015 shall become ineligible. Notwithstanding, sub-section (2) thereof carves out exceptions by saving certain categories of applications even filed before the Amendment Act, 2015 came into operation. Three kinds of applications are saved.

.....

22.3. Third category is that category of applicants where the Central Government had already communicated previous approval under Section 5(1) of the Act for grant of mining lease or the State Government had issued Letter of Intent to grant a mining lease before coming into force of the Amendment Act, 2015. Here again, the raison d'etre is



that certain right had accrued to these applicants inasmuch as all the necessary procedures and formalities were complied with under the unamended provisions and only formal lease deed remained to be executed.

It would, thus, be seen that in all the three cases, some kind of right, in law, came to be vested in these categories of cases which led the Parliament to make such a provision saving those rights, and understandably so.”

13. The said decision is also followed by the Hon'ble Supreme Court of India in the matter of **State of West Bengal & another V M/s Chiranjilal (Mineral) Industries of Bagandih & another**, 2023 SCC OnLine SC 1149.

14. It is further clear that the petitioner altered its position on the assurance/commitment of supply of Iron Ore. An unconscionable departure by the Respondent No.4/SAIL and Respondent No.3/Ministry of Steel in not supplying iron ore to the Petitioner despite making such promises/commitment at various stages is contrary to the well-established principles of doctrine of promissory estoppel. The Supreme Court in **Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P.**, (1979) 2 SCC 409 clearly applies in the facts of this case wherein it has been held as under:



“19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppel been adopted in its fullness but it has been recognized as affording a cause of action to the person to whom the promise is made. The requirement of consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negated. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. v. Sourujmull [(1880) ILR 5 Cal 669 : 5 CLR 533] . The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay v. Secretary of State [(1905) ILR 29 Bom 580 : 7 Bom LR 27] .

23. It was also contended on behalf of the Government that if the Government were held bound by every representation made by it regarding its intention, when the exporters have acted in the manner they were invited to act, the result would be that the Government would be bound by a contractual obligation even though no formal contract in the manner required by Article 299 was executed. But this contention was negated and it was pointed out by this Court that the respondents “are not seeking to enforce any contractual right : they are seeking to enforce compliance with the obligation which is laid upon the Textile Commissioner by the terms of the Scheme, and we are of the view that even if the Scheme is executive in character, the respondents who were aggrieved because of the failure to carry out the terms of the Scheme were entitled to seek



resort to the Court and claim that the obligation imposed upon the Textile Commissioner by the Scheme be ordered to be carried out”. It was thus laid down that a party who has, acting in reliance on a promise made by the Government, altered his position, is entitled to enforce the promise against the Government, even though the promise is not in the form of a formal contract as required by Article 299 and that Article does not militate against the applicability of the doctrine of promissory estoppel against the Government.

33. The State, however, contended that the doctrine of promissory estoppel had no application in the present case because the appellant did not suffer any detriment by acting on the representation made by the Government : the vanaspati factory set up by the appellant was quite a profitable concern and there was no prejudice caused to the appellant. This contention of the State is clearly unsustainable and must be rejected. We do not think it is necessary, in order to attract the applicability of the doctrine of promissory estoppel, that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promisee should have altered his position in reliance on the promise. This position was impliedly accepted by Denning J., in the High Trees case when the learned Judge pointed out that the promise must be one “which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact acted on”, (emphasis supplied). If a promise is “acted on”, “such action, in law as in physics, must necessarily result in an alteration of position”. This was again reiterated by Lord Denning in W.J. Alan & Co. Ltd. v. El Nasr Export and Import Co. [(1972) 2 All ER 127, 140] where the learned Law Lord made it clear that alteration of position “only means that he (the promisee) must have been led to act differently from



what he would otherwise have done. And, if you study the cases in which the doctrine has been applied, you will see that all that is required is that the one should have acted on the belief induced by the other party". Viscount Simonds also observed in *Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd.* [(1955) 2 All ER 657] that "... the gist of the equity lies in the fact that one party has by his conduct led the other to alter his position". The judgment of Lord Tucker in the same case would be found to depend likewise on a fundamental finding of alteration of position, and the same may be said of that of Lord Cohen. Then again in *Emmanuel Ayodeji Ajayi v. Briscoe Lord Hodson* said: "This equity is, however, subject to the qualification (1) that the other party has altered his position". The same requirement was also emphasised by Lord Diplock in *Kammins Ballrooms Co. Ltd. v. Zenith Investments (Terquay) Ltd.* [(1970) 2 All ER 871] What is necessary, therefore, is no more than that there should be alteration of position on the part of the promisee. The alteration of position need not involve any detriment to the promisee. If detriment were a necessary element, there would be no need for the doctrine of promissory estoppel because, in that event, in quite a few cases, the detriment would form the consideration and the promise would be binding as a contract. There is in fact not a single case in England where detriment is insisted upon as a necessary ingredient of promissory estoppel. In fact, in *W.J. Alan & Co. Ltd. v. El Nasr Export and Import Co.*, Lord Denning expressly rejected detriment as an essential ingredient of .promissory estoppel, saying:

"A seller may accept a less sum for his goods than the contracted price, thus inducing (his buyer) to believe that he will not enforce payment of the balance : see *Central London Property Trust Ltd. v. High Trees House Ltd.* and *D. & C. Builders Ltd. v. Rees* [(1956) 3 All ER 837] . In none of these cases does the party who acts on the



belief suffer any detriment. It is not a detriment, but a benefit to him to have an extension of time or to pay less, or as the case may be. Nevertheless, he has conducted his affairs on the basis that he has had that benefit and it would not be equitable now to deprive him of it.”

We do not think that in order to invoke the doctrine of promissory estoppel it is necessary for the promisee to show that he suffered detriment as a result of acting in reliance on the promise. But we may make it clear that if by detriment we mean injustice to the promisee which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment in such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise. The classic exposition of detriment in this sense is to be found in the following passage from the judgment of Dixon, J. in the Australian case of *Grundt v. Great Boulder Pty. Gold Mines Ltd.* [(1938) 59 CLR 641 (Aus)] :

“... It is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the



other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong, and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice.”

If this is the kind of detriment contemplated, it would necessarily be present in every case of promissory estoppel, because it is on account of such detriment which the promisee would suffer if the promisor were to act differently from his promise, that the Court would consider it inequitable to allow the promisor to go back upon his promise. It would, therefore, be correct to say that in order to invoke the doctrine of promissory estoppel it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. Here, the appellant clearly altered its position by borrowing moneys from various financial institutions, purchasing plant and machinery from De Smet (India) Pvt. Ltd., Bombay and setting up a vanaspati plant, in the belief induced by the representation of the Government that sales tax exemption would be granted for a period of three years from the date of commencement of the production. The Government was, therefore, bound on the principle of promissory estoppel to make good the representation made by it. Of course, it may be pointed out that if the U.P. Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute, but since Section 4 of the U.P. Sales Tax Act, 1948 confers power on the Government to grant exemption from



sales tax, the Government can legitimately be held bound by its promise to exempt the appellant from payment of sales tax. It is true that taxation is a sovereign or governmental function, but, for reasons which we have already discussed, no distinction can be made between the exercise of a sovereign or governmental function and a trading or business activity of the Government, so far as the doctrine of promissory estoppel is concerned. Whatever be the nature of the function which the Government is discharging, the Government is subject to the rule of promissory estoppel and if the essential ingredients of this rule are satisfied, the Government can be compelled to carry out the promise made by it. We are, therefore, of the view that in the present case the Government was bound to exempt the appellant from payment of sales tax in respect of sales of vanaspati effected by it in the State of Uttar Pradesh for a period of three years from the date of commencement of the production and was not entitled to recover such sales tax from the appellant.”

15. The judgement of the Hon'ble Supreme Court of India in the matter of **Manuelsons Hotels (P) Ltd. V State of Kerala**, (2016) 6 SCC 766 also clearly applies to this case wherein it has been held as under:

19. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject-matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which



would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court in Commonwealth of Australia v. Verwayen [Commonwealth of Australia v. Verwayen, (1990) 170 CLR 394 (Aust)] , by Deane, J. in the following words:

“1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law, the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable—or, more accurately, unconscientious—departure by one party from the subject-matter of an assumption which has been adopted by the other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.

4. The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The



cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:

(a) has induced the assumption by express or implied representation;

(b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct;

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within Category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within Category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say, it may be about the present or future existence of a fact or state of affairs (including the state of



the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, “equitable estoppel” should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).

7. Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).

8. The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibility which it might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.”

(emphasis supplied)



16. The Hon'ble Supreme Court of India in the matter of **R.N.**

Gosain V Yashpal Dhir, (1992) 4 SCC 683 has held as hereunder:

“10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage”. [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd. [(1921) 2 KB 608, 612 (CA)], Scrutton, L.J.] According to Halsbury's Laws of England, 4th Edn., Vol. 16, “after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside”.”

17. Further, upon close perusal, the language of Sec. 17A (1A) of the MMDR Act, 1957 nowhere, either expressly or impliedly, mandates exclusive accrual of mineral so exploited to such reserved public sector undertaking. Further, the section nowhere prohibits usage of exploitation minerals by a third party. If the argument of the Ld. ASG is accepted then the provisions of Rule 27(3), MCR, 1960 would become completely otiose in situations where a notification under Sec. 17A(1A) of the MMDR Act, 1957 is issued. The entire purpose



of such reservation is only to ensure a proper prospecting or mining of the area concerned and the end-use of the exploited mineral however is not covered under the reservation policy. Further, the end usage of the exploited mineral is governed by the terms and conditions of the mining lease.

18. This brings to next argument raised by the Ld. ASG on the maintainability of the writ petition that the court cannot go into the thicket of commercial transaction in a writ Jurisdiction and the Writ Petition will not be maintainable in case of disputed question of facts. As discussed earlier, the present case is not a case of disputed fact and based on various primary documents and correspondences based on which the promises were made and benefits taken and when time came to meet the corresponding obligations attached to such benefits the beneficiary respondent conveniently resiled from the said promises. Neither the letters have been disputed nor these letters have been addressed.

19. Even otherwise, the writ court can go into the disputed questions of facts and writ is maintainable in contractual obligation, disputed



facts and grant of consequential monetary claim. Art. 226 is a valuable safeguard against arbitrariness and misuse of authority. **ABL International Ltd. V Export Credit Guarantee Corporation,** (2004) 3 SCC 553 and **Unitech Limited V Telangana State Industrial Corporation (TSIIC),** (2021) 16 SCC 35. Therefore, the argument of the Ld. ASG is untenable in the facts and circumstance of the present case as there are no disputed facts in the present case as explained above and further reliance placed on the decision of **Shubhas Jain V Rajeshwari Shivam & others.** (2021) 20 SCC 454. is completely misplaced and not applicable in the facts of the present case.

20. This brings to next argument raised by the Ld. ASG that the Letters and communications had not been crystalized to enable the Petitioner to claim any right in its favour of the Petitioner since the same were only at best in the form of suggestions / recommendations. A perusal of the Letters and communications show that the same in very clear and unambiguous terms acknowledge the right of the Petitioner based on which the Petitioner altered its position.



Therefore, the argument of the Ld. ASG is untenable in the facts and circumstance of the present case more particularly when all the Respondents have acknowledged and acted on the communications exchanged during the course of discussion. Thus, the Judgment of **Jasbir Singh Chhabra V State of Punjab**, (2010) 4 SCC 192 relied by the Ld. ASG is distinguishable on facts and has no application in the present set of facts.

21. This brings to next argument raised by the Ld. ASG that there is no public interest in granting the iron ore to the private entity namely the Petitioner and therefore the doctrine of promissory estoppel has no application in the present case. I must say that it is in the public interest that the promises made by any 'state' or any organ/entity of 'state' including a public sector undertaking should be kept especially when it is a beneficiary of such promise. Be that as it may the argument of the Ld. ASG cannot be accepted in the present set of facts and circumstances as the condition of supply of iron ore to the Petitioner was on account of the larger public policy i.e. cluster mining approach for environment protection and National Mineral



Policy for uniform distribution of minerals as already discussed above.

22. The argument of the Respondents that the situation has changed over the period of time due to change in circumstances and that the writ Petition is hopelessly time barred have been considered by this Court. It is seen that the writ Petition is based on the basis of the promises which continued upto the time of the filing of the writ Petition, thus the same is duly within limitation.

23. The argument raised by the Ld. ASG that if relief is granted in favour of the Petitioner, it would discriminate against others, hence it would be violative of Art. 14 & 19 of the Constitution. The case of the Petitioner cannot be equated with others which is differently situated. Agreement between the Petitioner and Respondents was based on a give and take. This give and take had happened on the basis of the obligation of the State to ensure supply of Iron Ore in lieu of the investment made by the Petitioner in the state. This give and take has also happened because the Petitioner had got S.5(1) approval from the Central Government and had preferential right



over the area for which said approval was granted. Accordingly, the argument of Ld. ASG is rejected.

24. The arguments of the Ld. ASG regarding the lack of territorial jurisdiction of this Court due to the Arbitration Clause and the express vesting of jurisdiction with the Courts at Durg is not acceptable because firstly, the writ is duly maintainable against the instrumentalities of the State for their wrongful actions notwithstanding an Arbitration Clause. Secondly, the jurisdiction clause mentioned in the contract is in relation to the proceedings arising out of the Arbitration. Furthermore, as per Clause 2 of Article 226 of the Constitution of India, the power to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.



25. In view of the above discussions, the present writ petition is allowed and the Linkage Committee of the respondent no.1 is directed to provide with immediate effect, continuous and uninterrupted supply of 2,50,000 metric tons of Iron Ore per annum to the petitioner Company at the rate of 20,000 metric tons per month or as per altered circumstances for its Integrated Steel Plant at Bhandara, Maharashtra through appropriate linkage as assured. Further, SAIL is directed to make continuous and uninterrupted supply of the Iron Ore to the petitioner with immediate effect as required by the Petitioner till the appropriate linkage is provided by the Union of India. The respondents while fixing the price of iron ore may consider that the considerable time is lost and the petitioner has made investment in the past. The Notification dated 20th July, 2006 is held to be not retrospective and it is held that the Rowghat 'F' deposit situated in District Bastar of Chhattisgarh cannot be reserved exclusively for any Government Company or Corporation until a confirmed commitment and a contractual obligation is created in the said Government Company or Corporation to continuously and uninterruptedly supply the required Iron Ore to the Petitioner. The



order of Respondent No.1 rejecting the Application of Petitioner Company for Prospecting Licence is hereby set aside.

26. The pending application, if any, also stand disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

NOVEMBER 08, 2024
AK/ABK