HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

…

OWP No. 363/2019
[WP (C) No. 1057/2019]
CM No. 7798/2019
IA No. 01/2019
CM No. 1979/2019 (1/2019)

Ashaq Hussain Paddar and ors ……Petitioner(s)

Through: Mr. A. H. Naik, Sr. Advocate with
Mr. D. S.Chauhan, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.
Mr. Sunil Sethi, Sr. Advocate with
Mr. Ravi Abrol, Advocate for the intervenors.

OWP No. 243/2019
CM No. 7801/2019
CM 1384/2019 (01/2019)

Mohammad Iqbal Lone ……Petitioner(s)

Through: Mr. Z. A. Shah, Sr. Advocate with
Mr. A. Hanan, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 259/2019
CM 1513/2019 (1/2019)
CM Nos. 4523/2019 &7800/2019
CM No. 8068/2019

Vikar Ahmad Dar ……Petitioner(s)

Through: Mr. Rizwan Bhat, Advocate

.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 290/2019
CM No. 7799/2019
CM 1599/2019 (01/2019)

M/S Usman Constructions and others ……Petitioner(s)

Through: Mr. A. H. Naik, Sr. Advocate with
Mr. D. S.Chauhan, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 344/2019
CM No. 8067/2019
CM No. 7802/2019
CM No. 1910/2019 (01/2019)

Mohd Farooq Lone and ors ……Petitioner(s)

Through: Mr. M. A. Wani, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 477/2019
CM No. 7797/2019
CM 2340/2019 (1/2019)

Mohammad Ashore Mir and ors ……Petitioner(s)

Through: Mr. M. Ayoub Bhat, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 517/2019
CM No. 7803/2019
CM No. 2458/2019(01/2019)

Abid Hussain Mir and ors ……Petitioner(s)

Through: Mr.Mudasir Bin Hassan, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

OWP No. 2294/2018
IA No. 01/2018

Tariq Ahmad Sheikh ……Petitioner(s)

Through: Mr. G. A. Lone, Advocate.
Versus
State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

WP (C) No. 2410/2019
CM No. 8066/2019

Rouf Rashid Bhat and ors ……Petitioner(s)

Through: Mr. Lone Altaf, Advocate.
Versus
State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

WP (C) No. 2642/2019
CM No. 5149/2019

Abdul Majeed Dar ……Petitioner(s)

Through: Mr.Syed Avees Geelani, Advocate.
Versus
State of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

WP (C) No. 3893/2019
CM No. 8020/2019
CM No. 1037/2020

Ashaq Hussain Paddar and ors ……Petitioner(s)

Through: Mr. A. H. Naik, Sr. Advocate with
Mr. D. S.Chauhan, Advocate.

Versus
UT of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG for
Respondent nos. 1 to 4.
Mr. F. A. Natnoo, AAG for
Respondent nos. 5 to 8.

WP (C) No. 67/2020
CM No. 104/2020

Abdul Rashid Bhat and ors ……Petitioner(s)

Through: Mr. Mir Majid Bashir, Advocate.

Versus

UT of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

WP (C) No. 86/2020
CM No. 128/2020

Javid Ahmad Rather ……Petitioner(s)

Through: Mr. Lone Altaf, Advocate.

Versus

UT of J&K and others ……Respondent (s)

Through: Mr. S. H. Naqashbandi, AAG.

WP (C) No. 181/2020
CM No. 286/2020

M/S S. J. Constructions ……Petitioner(s)

Through: Mr. M. Ayoub Bhat, Advocate.

Versus

UT of J&K and others ……Respondent (s)

Through: Mr. F. A. Natnoo, AAG.
Mr. S. H. Naqashbandi, AAG.

OWP No. 325/2019
[WP (C) No. 678/2019]
CM No. 1606/2019(IA 1/2019)
CM No. 9610/2019

Rakesh Kumar Choudhary ……Petitioner(s)

Through: Mr. Vikram Sharma, Advocate.

Versus

State of J&K and others ……Respondent (s)

Through: Mr. F. A. Natnoo, AAG.

WP (C) No. 563/2020
CM No. 1280/2020

Rakesh Kumar Choudhary ……Petitioner(s)

Through: Mr. Vikram Sharma, Advocate.

Versus

UT of J&K and others ……Respondent (s)

Through: Mr. F. A. Natnoo, AAG for R-1.
Mr. Ayaz Lone, Dy.AG for R 2-3.

Reserved on: 27.02.2020
Pronounced on: 01.05.2020

CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE

CM No. 1038/2020

This application has been filed for impleadment of eight persons as party respondents on the ground that they are vitally interested in the outcome of these petitions for they favour the decision of the Government to allot mining leases only by way of e-auction.

The petitioners, however, oppose the plea of the applicants for impleadment but submit that they have no serious objection in case the applicants are permitted to intervene.

The applicants, for the reasons stated therein, and also for the reason that they have vital interest in the outcome of the writ petitions, are permitted to intervene.

The application is disposed of.

JUDGEMENT

1. The petitioners in all these petitions are persons having been issued letters of intent for grant of mining leases for extraction of minor minerals from various minor minerals blocks located in erstwhile State of Jammu and Kashmir (now UT of Jammu and Kashmir). In all these petitions, petitioners have raised a common grievance against a communication of the Department of Industries and Commerce issued through its Under Secretary bearing No. Ind/legal-239/2018dated 26.02.2019 whereby the Director, Geology and Mining Department, Jammu and Kashmir has been conveyed the approval of the competent authority to the scrapping of open auction carried under the Jammu and Kashmir Mining Minerals Concession, Storage Transportation of Minerals and Prevention of Illegal Mining Rules, 2016 (hereinafter referred to as the Mining Rules of 2016) and providing further that fresh auction shall be carried out only through e-auction mode. The petitioners are also aggrieved of the condition (ii) of the impugned communication whereby it is provided that till the time fresh allotments are made through e-auction, the existing mechanism would continue. The petitioners claim and pray for writ of Mandamus to direct the respondents to allow them to continue with the mining activities in their respective blocks without any interference for a period of 05 years.

2. Keeping in view the fact that the petitioners in all these petitions have a common grievance and cause to agitate and are seeking identical relief, it has been decided to hear all these petitions together and decide the same by a common judgment.

FACTUAL MATRIX:

3. Pursuant to an Advertisement Notification issued by respondent No.2, which came to be published in various newspapers, an open auction for approval of different minor minerals blocks located in various districts of the Jammu and Kashmir including the Districts of Srinagar, Budgam, Anantnag, Poonch and Udhampur etc. was conducted by duly constituted Committees headed by the Deputy Commissioner of the concerned district. Apart from others, the petitioners holding eligibility to participate in the open auction also participated in the process and were declared the highest bidders for identified mining blocks. Consequent upon the approval to the highest bids of the petitioners for their respective blocks, granted by the Chairman of District Auction Committee (Deputy Commissioners concerned), the petitioners in terms of Rule 55(9) of the Mining Rules, were issued the letters of intent with a direction to submit approved mining plan and the environmental clearance besides depositing remaining 50% of the bid amount within a period of six months enabling respondent No.2 to grant formal mining lease in favour of the petitioners for extraction of minor minerals from the allotted blocks. It is pertinent to note that intending bidders were supposed to deposit 50% of the bid amount on the fall of hammer. The formal communication in this regard was addressed by the respondent No.2 to each of the successful bidders. It is admitted case of the parties that the petitioners being the approved highest bidders and having been issued the letters of intent got the mining plan approved from the prescribed authority and submitted the same to the respondent No.2 well within the stipulated period, but, they could not submit the environmental clearance, as the same was not granted by the competent

authority despite the petitioners having made applications complete in all respects within the prescribed time. The petitioners also did not deposit the remaining 50% of the bid amount within a period of six months as envisaged in their letters of intent and as a consequence whereof formal mining leases in favour of the petitioners were not granted and no Lease Deed in this regard was drawn and executed between the parties. It is further case of the petitioners in all these petitions that while they were awaiting the environmental clearance from the competent authority, the State Government carried an amendment to the Mining Rules of 2016 by promulgating SRO 31 dated 23.01.2018 and the amended Rule 104-A to provide for substitution of the words "31.12.2017" by the words "31.03.2018". The said Rule was further amended vide SRO 161 dated 06.04.2018 and the date "31.03.2018" was substituted by the date "31.06.2018). In short, it is pleaded that by amending Rule 104-A of the Mining Rules of, 2016, the date mentioned therein was extended from time to time and it was lastly substituted by the date "28.02.2019". The amendment to Rule 104-A was intended to facilitate the petitioners to extract minor minerals from their respective blocks without first obtaining environmental clearance. The case of the petitioners, in a nutshell, is that while grant of environmental clearance in their favour and the execution of the formal Lease Deed was under process, the respondent No.2 arbitrarily issued the impugned communication dated 26.02.2019 whereby all the auctions made under the Rules of 2016 were scraped thereby infringing the rights of the petitioners.

4. That the petitioners are aggrieved and have challenged the impugned communication dated 26.02.2019 *inter alia* on the following grounds:-

(i) That the impugned communication dated 26.02.2019, whereby the right of the petitioners to extract the minor minerals from the blocks allotted to them has been taken away, has been issued by the respondent No.2 without providing them an opportunity of being heard and, therefore, violates Articles 14 as also Article 19 of the Constitution of India.

(ii) That the respondent No.2 by accepting the bids of the petitioners and issuing the letters of intent had given the petitioners legitimate expectation that on submission of the approved mining plan and completing other requisite formalities, the petitioners would be granted the mining leases. The petitioners submitted the approved mining plans in time, but, the environmental clearance could not be obtained because of the inaction on the part of the respondents. The action of the respondents in unilaterally scraping auction process in which the petitioners had emerged successful bidders and embarking upon fresh auction to be carried in e-auction mode, is not only illegal and arbitrary, but, also inflicts the legitimate expectation of the petitioners.

(iii) That the impugned communication is totally irrational, arbitrary and whimsical and is, therefore, hit by the principle of Wednesbury unreasonableness, which is core and soul of right of equality envisaged under Articles 14 of the Constitution of India.

(iv) That acting upon the assurances and representations of the respondents, the petitioners not only deposited 50% of the bid amount on the fall of hammer on completion of auction, but, also

completed other requisite formalities for obtaining approval of their mining plan and the environmental clearance. They changed their position to their detriment and therefore, the respondents cannot be permitted to wriggle out of their obligation to fulfil their part of contract. The respondents by issuing the impugned communication and denying the right of extraction of minor minerals to the petitioners have violated the principle of promissory estoppel.

(v) That the grant of environmental clearance by the competent authority was beyond the control of the petitioners. The petitioners by submitting their application forms complete in all respects and completion of requisite formalities performed their part of obligation and, therefore, the delay in issuing the environmental clearance by the competent authority cannot work to the prejudice of the petitioners, more so, when the delay in obtaining environmental clearance is not attributed to the petitioners.

5. The respondents have contested the writ petitions by filing their objections. They have sought to meet the challenge thrown to the impugned communication dated 26.02.2019 *inter alia* on the following grounds:

(i) That none of the petitioners have fulfilled their part of the obligation in terms of the letters of intent. They have neither produced the environmental clearance nor have they deposited the remaining 50% of the bid amount within the time allowed, in

the letters of intent as also as envisaged under Rule 55(9) of the SRO 105 of 2015.

(ii) That the competent authority taking into consideration the fact that the majority of the successful bidders have failed to submit the environmental clearance and deposit remaining 50% of the bid amount within six months from the issuance of LOI and also for making the process of auctioning more fair and transparent, has decided to scrap open auction conducted under the Mining Rules of 2016 and directed for grant of mining leases only through e-auction mode.

(iii) That by issuance of letters of intent, that too, provisional in nature and subject to fulfilment of certain conditions, no right to obtain mining lease or extract minor minerals ever vested in the petitioners. The scrapping of the auction process, in which the petitioners have emerged successful bidders, in terms of the impugned communication dated 26.02.2019, does not take away any of the vested or accrued rights of the petitioners and, therefore, the respondents were well within their right to withdraw from the process and embark upon the better one.

6. Apart from meeting the challenge of the petitioners to the impugned communication dated 26.02.2019, the respondents have also rebutted the factual averments made in the petition on merits. It has been pleaded by the respondents that in many cases, the petitioners after the issuance of the impugned communication have voluntarily withdrawn from the process by claiming back and accepting 50% of the bid amount deposited during the

auction process. It is also pleaded by the respondents that in the case of many petitioners, there was initial delay even in the matter of applying for grant of environmental clearance and that the argument that delay in obtaining the environmental clearance was not attributable to the petitioners has no legs to stand on. It is contended that the provisions of Rule 55(9) are mandatory in nature and the successful bidder in whose favour the letter of intent has been issued, is supposed to complete the formalities as are required for grant of mining lease, within a period of six weeks. The petitioners having failed to submit the environmental clearance and deposit the remaining bid amount have, thus, forfeited their right to have the mining lease granted in their favour. The respondents were, thus, well within their right to scrap the process and embark upon new and better one for grant of mining lease through e-auction mode.

7. Having considered the whole spectrum of arguments and counter arguments addressed by the learned counsel appearing for the parties, I am of the view that the decision in this bunch of petitions, raising identical questions of fact and law, hinges on determination of the following issues:-

i) Whether by issuance of Letter of Intent (LOI) by the respondents and acceptance of 50% of the bid amount along with approved mining plan, right has been created in favour of the petitioners to claim allotment/execution of the mining lease(s);

ii) Whether failure of the petitioners to obtain environmental clearance from the State Level Environment Impact Assessment Authority (SLEIAA) within a period of six months stipulated in their LOIs is a reason good enough for the respondents to refuse grant of mining lease;

iii) Whether in the given facts and circumstances, the petitioners are entitled to invoke the principle of estoppel and legitimate expectation;

iv) Whether failure of the petitioners to obtain environmental clearance from the SLIEAA within the stipulated period is attributable solely to the petitioners or to the respondents; or it has resulted in frustration of contract without any party being responsible for such failure;

v) Whether the impugned decision of the government to scrap the open auctions held under the Rules of 2016 (un-amended) is arbitrary, irrational and affects/takes away the accrued/vested rights of the petitioners; and

vi) What is the impact of substitution of Rule 104-A in the Rules of 2016, which was aimed at facilitating the carrying on of all the mining operations by the petitioners without there being lease deed(s) executed between the petitioners and the respondents.

8. With a view to determine the issues formulated herein above, it would be necessary to first have a glance over the statutory provisions governing the exploration and exploitation of the mines and minerals.

9. The Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred as "the Act of 1957" for short) is a Central enactment providing for development and regulation of mines and minerals under the control of the Union. The Act applies to all minerals including minor minerals. The term "minor minerals" is defined in Section 3(e) of the Act of 1957 and reads as under:-

> "(e) "minor minerals" means building stones, gavel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be minor mineral."

10. Section 5(2) of the Act of 1957 clearly provides that no mining lease shall be granted by the State Government unless it is satisfied that—

a) There is evidence to show that the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;

b) There is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned:

PROVIDED that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.

11. Section 4 of the Act of 1957 is relevant in the context of controversy involved in these petitions and the same, for expediency, is reproduced hereunder:-

"4. Prospecting or mining operations to be under license or lease

(1) No person shall undertake any reconnaissance, prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting license or, as the case may be, of a mining lease, granted under this Act and the rules made therunder:

PROVIDED that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting license or mining lease granted before the commencement of this Act which is in force at such commencement:

PROVIDED FURTHER that nothing in this sub-section shall apply to any prospecting operations

undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate of Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of clause 45 of section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government:

PROVIDED ALSO that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.

(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(2) No reconnaissance permit, prospecting licence or mining or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any

> reconnaissance permit, prospecting licence or mining lease."

12. Sections 6 and 7 deal with maximum area and period for which a mining lease may be granted by the competent authority.

13. By virtue of Section 15 of the Act of 1957, the State Governments have been empowered to make rules in respect of minor minerals.

14. In the exercise of powers conferred on it by Section 15 of the Act of 1957, the erstwhile State of Jammu & Kashmir had issued the Mining Concession Rules, 1962 and the grant of mining leases was being processed and granted under the aforesaid Rules. It was only in the year 2012, the issue with regard to indiscriminate allotment of mining operations for removal of minor minerals from the river beds and river basins without taking environmental safeguards and potential of such indiscriminate mining to cause damage to the biodiversity, destroy riverine vegetation, cause erosion, pollute water sources etc., came up for consideration before Hon'ble the Supreme Court in the case of **Deepak Kumar etc v. State of Haryana and others, (2012) 4 SCC 629** and Hon'ble the Supreme Court after delving deeply into the issues raised including the possible environmental impact on the river beds etc. laid down detailed guidelines to be carried out by the State and Union Territory Governments while framing the Rules under Section 15 of the Act of 1957. Observations of Hon'ble the Supreme Court made in para No.16 of the judgment (supra) are noteworthy and, for facility of reference, are reproduced hereunder:-

> "16. We are of the considered view that it is highly necessary to have an effective framework of mining plan which will take care of all environmental issues and also

> evolve a long term rational and sustainable use of natural resource base and also the bio-assessment protocol. Sand mining, it may be noted, may have an adverse effect on bio-diversity as loss of habitat caused by sand mining will effect various species, flora and fauna and it may also destabilize the soil structure of river banks and often leaves isolated islands. We find that, tang note of those technical, scientific and environmental matters, MOEF, Government of India, issued various recommendations in March 2010 followed by the Model Rules, 2010 framed by the Ministry of Mines which have to be given effect to, inculcating the spirit of Article 48A, Article 51A(g) read with Article 21 of the Constitution."

15. The State Government with a view to bring the Jammu & Kashmir Minor Mineral Concession Rules, 1962 in tune with the guidelines laid down in the case of **Deepak Kumar** (supra) and to give effect to the Model Rules of 2010 framed by the Ministry of Mines, Government of India, came up with The Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016, (hereinafter referred as "the Rules of 2016" for brevity), which were later on replaced vide SRO 105 dated 31.03.2016.

16. A quick look at the Rules of 2016 would show that the statute is a complete Code in itself insofar as it pertains to regulating of grant of various forms of mineral concession in respect of minor minerals and storage, transportation and prevention of illegal mining in the State. Rule 2(xi) defines "Competent Authority" and Rule 2(xii) "competitive bid" in the following manner:-

> "**Competent Authority**" means the authority competent to grant of mining lease under rule 42 of these rules"
>
> "**Competitive Bid**" means an amount offered by the participant in the open auction under these rules"

17. It may be worthwhile to note that in terms of Rule 42, the Director Geology and Mining, Government of Jammu & Kashmir has been designated as "competent authority" to grant/renew/terminate/transfer mining leases in an area up to 10 hectares. In the instant case, the subject leases, which were intended to be allotted to the petitioners are admittedly for an area below 10 hectares.

18. Rule 2(xx) defines the "**Environment Committee**" to mean the Committee constituted by Ministry of Forest and Environment, Government of India to oversee the environmental issues in this regard. '**Letter of Intent (LOI)'** is defined in Rule 2(xxxiii) to mean a Letter of Intent issued to the successful bidder on acceptance of the bid/application for grant of a mining lease, quarry licence. Similarly, as defined in Rule 2(xxxvi), "**Minor Mineral Block**" means an area not less than 05 hectares and not more than 50 hectares in a continuous stretch of land/water body, having defined limits with the evidence of one or more minor minerals that can be feasibly exploited. Rule 2(xL) defines "**Mining lease**" to mean a lease granted under these rules to undertake excavation and to carry away any minor mineral specified therein. The term "**Mining Plan**" is defined in Rule 2(xLii) to mean a plan prepared by a Recognized Qualified Person (RQP) on behalf of mineral concession holder of minor mineral and includes progressive and final mine closure plans duly approved under these rules and without which mining activity cannot be undertaken. Most important is the definition of "**Open auction/e-auction**". In

Rule 2(xLviii) it is provided that open auction or e-auction would mean bidding by the competitors online or through physical presence before the auction committee for grant of mineral concessions.

These are some of the important definitions given under the Rules of 2016, proper understanding whereof would be handy in appreciating the relevant provisions of the Rules, which call for examination in the instant case.

19. The Rules of 2016 contain 14 chapters. Chapter-I '**preliminary**' deals with short title, extent and commencement of the Rules, definition and restrictions. Chapter-II pertains to grant of minor minerals concession and for that purpose deals with preparation of mining plan by the Recognized Qualified Person (RQP) registered under these rules and recognized under Rule 22-B of Mining Control Rules, 1980 (Central Rules) and his qualifications etc. In terms of Rule 6 of this Chapter, no person shall be granted any minor mineral concession in any area under the Rules of 2016 unless a mining plan is submitted and approved under the provisions of these Rules, nor shall any person commence mining operation for minor minerals in any area except and in accordance with the mining plan approved under these rules.

20. On a plain reading of Section 4 of the Act of 1957 alongwith Rule 6 of the Rules of 2016, it is abundantly clear that no mineral concession in any area can be granted unless there is approved mining plan submitted by a concessionaire or lessee and he would also not commence any mining operation for minor minerals in any area unless he has been granted mining

lease and such operations shall be in accordance with the approved mining plan.

21. Apart from meeting the two pre-requisites i.e. submission of mining plan and its approval by the competent authority and allotment of lease, the environmental clearance by the State Level Environment Impact Assessment Authority (SLEIAA) is also *sine qua non* for embarking upon the mining operation in the minor mineral area. Rule 15 of Chapter-III of the Rules of 2016 deals with the aforesaid aspect.

22. Chapter-IV of the Rules of 2016 which deals with grant of mining lease contains provisions which are critical for examination in the instant case. Rule 26 of Chapter-IV is of paramount relevance and is, thus, reproduced hereunder:-

> "26. Restrictions on grant and renewal of mining lease.---
>
> (1) No mining lease shall be granted by the competent authority unless the such authority is satisfied that there is evidence to show that the area for which the lease is applied for has occurrences of minor mineral.
>
> (2) No lease shall be granted or renewed by the competent authority unless there is a mining plan duly approved under these rules and environmental clearance has been obtained by the applicant irrespective of the size of the mining area."

23. From a bare reading of Rules 26, it is abundantly clear that for grant of mining lease in a particular area, it is necessary for the competent authority to be first satisfied that there is evidence to show that the area for which the lease is applied for or is to be granted has the occurrences of minor mineral. Sub Rule 2 of Rule 26 makes it further clear that submission of mining plan duly approved under these rules and environmental clearance obtained by the

applicant under Chapter-III is *sine qua non* for grant or renewal of lease by the competent authority.

24. Rule 27 deals with procedure for grant of mining lease, whereas Rule 28 pertains to application for grant or renewal of mining lease of minor minerals etc. Rule 31, however, provides that competent authority may refuse to grant or renew any mining lease subject to the reasons to be recorded and communicated to the applicant in writing. It may be apt to reproduce Rule 31, which goes as under:-

> "31. Renewal or refusal of application of mining lease.--- The competent authority may refuse to grant or renew any mining lease subject to reasons to be recorded and communicated to the applicant in writing."

25. Chapter VI of the Rules of 2016 deals with grant of mining lease/quarry license by auction. Rule 52, which was later on amended, laid down absolute rule that mining leases shall be granted only through a process of open auction and read as under:-

> "52. Grant of Mining Lease/Quarry Licence.---- Mining leases and quarry licences shall be granted only through a process of open auction by the authority competent to grant lease/licence:
> Provided that the mining leases through open auction up to 5 hectares shall be granted only to permanent residents of Jammu and Kashmir State, and above 5 hectares, preference will be given to State subject either individual or in Joint Venture with non-residents."

26. Rule 53 deals with constitution of auction committee to be headed by Deputy Commissioner concerned or an officer authorized by him not below the rank of Additional Deputy Commissioner. Rule 55 lays down the terms and conditions for grant of mineral concession through auction. Rule 55(3)

lays down provision of deposit of earnest money, which should be not less than Rs.1.50 lacs or 15% of the minimum bid whichever is higher and this earnest money deposited by participants is liable to be returned immediately on completion of the auction proceedings, of course if it is not forfeited by the chairman of the committee during auction proceedings. Sub Rule 7 to 9 of Rule 55 are of utmost importance and debated before me by the learned counsel appearing for the parties, in their own way, and, therefore, it would be befitting to reproduce the aforesaid sub-rules as well:-

> "55 (7) On completion of the bid process i.e. fall of the hammer, the Chairman may provisionally accept or reject the highest bid offered or received during the auction proceedings and shall send his recommendations the Director. The highest bidder shall have to deposit 50% of the bid amount after completion of the auction process:
>
> Provided that in case the auction proceedings are not conducted under the Chairmanship of Deputy Commissioner, the recommendations as required under clause (6) above shall be made with the approval of the Dy. Commissioner concerned.
>
> (8) No highest bid shall be regarded as accepted unless approved by the Director in case the highest bid is up to Rs.150.00 lacs and by the Government in case the highest bid is above Rs.150.00 lacs.
>
> (9) Once a bid is provisionally accepted, Director shall issue Letter f Intent (LOI) to the concerned bidder to complete the formalities as required for the grant of mining lease or quarry license under these rules within a period of six months, including deposition of remaining bid amount. The concerned bidder shall not extract or allow any extraction till such mining lease or quarry license is granted."

27. From a careful perusal of Sub-rules (7) to (9) of Rule 55 in continuation and in their entirety, it becomes abundantly clear that in the process of open auction, the Chairman of the auction committee, on completion of the bidding process, may provisionally accept or reject the highest bid offered or received during the proceedings and send his recommendations to the Director. The highest bidder would deposit 50% of the bid amount immediately after completion of the auction process. No highest bid shall be regarded as accepted unless it is approved by the Director or by Government, as the case may be and once a bid is **provisionally accepted**, the Director shall issue Letter of Intent to the concerned bidder to complete the formalities as required for grant of mining lease under the Rules within a period of six months and would also deposit the remaining bid amount within the aforesaid period. Rule 55(9), however, reiterates the position as reflected in Section 4 of the Act of 1957 and provides that the concerned bidder shall not extract or allow any extraction of minor minerals till the mining lease is granted

28. Put in a nutshell, it can be held that the highest bidder or a prospective lessee on being intimated the acceptance of his bid by the competent authority is obliged to complete all the requisite formalities within a period of six months from the date he receives Letter of Intent (LOI). The requisite formalities envisaged under the Act of 1957 and the Rules of 2016 are primarily two fold and are as under:-

i) Submission of mining plan prepared by RQP and approved by competent authority.

ii) Submission of environmental clearance from the SLEIAA, which is a statutory committee constituted by the Ministry of Forest and Environment, Government of India to oversee environmental issues arising out of the grant of minor mineral leases for extraction and exploitation etc.

Along with submission of aforesaid formalities complete in all respects, the prospective lessee is also obliged to deposit the remaining bid amount within a period of six months. It is, thus, clear that six months period granted to the prospective lessee or highest bidder, whose bid has been accepted and in whose favour Letter of Intent has been issued, is **statutory in nature** and there is no power reserved in the Director, Geology and Mining or the Government to extend the same.

29. On examination of the case of the petitioners in all these petitions, it is seen that none of the petitioners had been able to complete the requisite formalities within the statutory period of six months. The petitioners had submitted the mining plan(s) duly prepared by the RQP and the same also came to be approved by the competent authority. The petitioners, however, could not submit environmental clearance from the SLEIAA nor did they deposit remaining amount of the bid(s) within the stipulated period. Failure to submit the environmental clearance is attributed by the petitioners to the committee and the failure of the respondents-State to prepare District Survey Reports, which, as per petitioners, were *sine qua non* for grant of environmental clearance by the SLEIAA and also that there was no SLEIAA constituted for the State of Jammu and Kashmir w.e.f. 28.10.219 till 05.07.2019. It may be pertinent to note that the SLEIAA was constituted by

the Ministry of Forest and Environment, Government of India for a period of three years vide SO No.268 dated 28.01.2016, which period expired on 27.01.2019 and the new committee was constituted by the Government of India vide its Notification No.2379-E on 05.07.2019 for another three years' term. It is also urged by the petitioners that the respondents realizing the difficulty of the petitioners in getting the environmental clearance from the committee within the stipulated period amended Rule 104-A of the Rules of 2016 to provide transitory permits to the successful bidders i.e. the petitioners herein and others so as to enable them to extract minor minerals from their respective mining areas strictly in accordance with the mining plans approved by the department of Geology and Mining.

30. To counter this argument of learned counsel appearing for the petitioners, learned State counsel submits that the delay in obtaining the environmental clearance from the committee was wholly attributable to the petitioners. It is submitted that none of the petitioners even applied for environmental clearance within the stipulated period of six months. It is further argued that even in the absence of the SLEIAA during the period of 29.01.2016 till 04.07.2019, the petitioners were free to apply before the Ministry of Environment, Forest and Climate Change at the central level. It is urged that the petitioners deliberately did not pursue their cases of environmental clearance and even avoided to deposit the balance of the bid amount(s) and, therefore, in that view of the matter the petitioners had forfeited their right, if any, to claim grant of lease and execution of the formal lease deed(s). The respondents have indicated the dates on which each of the

petitioners logged on the state portal for grant of environmental clearance by the environmental committee.

31. Be that as it may, it is a fact that the petitioners could not meet the pre-requisites contained in the LOIs and the statutory prescriptions laid down under the Rules of 2016. They not only failed to submit the environmental clearance from the committee within the time stipulated by the Statute i.e. six months but they also failed to deposit the balance bid amount within the aforesaid period. And for this reason, the petitioners, in my opinion, forfeited their right, if any, to claim grant of lease(s) and execution of the formal lease deed. The failure to obtain environmental clearance by the petitioners, in the given facts and circumstances, may not be wholly attributable to the petitioners but the fact remains that no environmental clearance could be procured or obtained by the petitioners, for whatever reasons, within the statutory period of six months. If this Court were to agree with the petitioners, it could, at best, be a case of frustration of contract. This aspect, I shall be dealing in the later part of the judgment. Suffice it to say that, while the petitioners were awaiting environmental clearance from the committee, the statutory period to complete the requisite formalities came to be expired. Department of Geology and Mining came to their rescue and substituted existing Rule 104-A to provide a window to the successful bidders to extract minor minerals from their respective areas as per the approved mining plan, absence of environmental clearance from SLEIAA notwithstanding.

32. While this hand-in-glove bonhomie between the successful bidders i.e. the petitioners herein and the department was going on at the cost of possible degradation of environment, a petition titled **Radha Krishan and others v.**

State of J&K (OWP No.1176/2018) came up for consideration before this Court in which the petitioner Radha Krishan and others had challenged the *vires* of Rule 52 and 57 of the Rules of 2016. It was the specific case of the petitioners in the aforesaid writ petition that in the definition clause i.e. Rule 2(xLviii), the mode of e-auction had been provided along with open auction but in the Rule 52, mining lease/quarry licence was provided to be granted only through a process of open auction. This Court taking cognizance of the aforesaid writ petition vide its interim order dated 19.06.2018 directed that no licence for mining lease and quarry shall be granted by the competent authority otherwise than by mode of e-auction. The relevant extract of the order is reproduced hereunder:-

> "Notice in MP also returnable within four weeks.
>
> Meanwhile, subject to objections and till next date of hearing, it is provided that no licence for mining leases and quarry shall be granted by the competent authority otherwise than by mode of e-auction."

33. The interim direction passed in the aforesaid matter, apparently, became a stumbling block in the way of carrying out the open auction and grant of mining leases even where the auction had already taken place. This is how, the matter came up for consideration before the Government. Analysing the rule position and taking note of the modern technology and also realizing that grant of state largesse through e-auction is the most potent, effective and widely accepted method, certain amendments in the Rules of 2016 were proposed. In the instant case, we are primarily concerned with the amendment carried to clause (xLvii) of Rule 2 and Rule 27, 44 and 52 of the Rules of 2016 in terms of SRO 161 dated 07.03.2019, which goes as follow:

"SRO 161 :- In exercise of the powers conferred by section 15 read with section 23C of the Mines and Minerals (Development and Regulation) Act, 1957, (Central Act 67 of 1957), the Government hereby makes the following amendments in the Jammu and Kashmir Minor Mineral Concession, Storage, Transportation of Minerals and Prevention of Illegal Mining Rules, 2016; namely:-

1. Clause (xLvii) of rule 2 shall be substituted by the following:-
"(xLviii) "e-auction" means bidding by the competitors online for grant of mineral concessions;

2. In clause (xiii), (xxx) of rule 2, 27, 44 and 52 for the words "open auction" wherever appearing, the words "e-auction" shall be substituted.
By order of the Government of Jammu and Kashmir."

34. With effect from 07.03.2019, e-auction was provided to be the only mode for grant of mining leases in the UT of Jammu & Kashmir. It is beyond the pale of any discussion that the amendments carried out by SRO 161 of 2019 are prospective in nature and, therefore, would be applicable only to cases for grant of leases/quarry licences arising on or after 07.03.2019.

35. From a perusal of the record produced by the State counsel, it would further transpire that the Government of Jammu & Kashmir taking a holistic view of the matter that e-auction would, indisputably, allow more competition and will also address the issue of cartelization and intimidation, took a considered decision to scrap the open auction carried out under the Rules of 2016 as these stood before amendment by SRO 161 of 2019. The decision aforesaid is backed by the following reasons:-

i) It is necessary to comply with the interim direction passed by this Court in the case of Radha Krishan (supra), whereby this

Court has directed not to allot any mining lease or quarry licence other than by mode of e-auction.

ii) That e-auction is most potent and effective way of granting state largesse given the modern technology in place as on date.

iii) Material available with the department in the shape of details of the open auction carried out by the respondents is clearly indicative of the fact that successful bidder in number of blocks is the same person.

iv) The highest bids received also show that these are almost the same as the minimum reserved bids and even the minimum reserved bids have been fixed on the lower side.

v) The open auction has the potential of creating cartelization and atmosphere of intimidation.

vi) Despite lapse of more than a year, the successful bidders have not yet obtained environmental clearance despite the department having issued clear notices in this regard to them.

36. It is, keeping in view the aforesaid facts and circumstances, the respondents took a decision to first amend the Rules of 2016 to provide "e-auction" as the only mode for allotment of mining leases and quarry licences. It was also decided to scrap the open auctions carried out under the Rules of 2016 as they stood before amendment on 07.03.2019. It was further decided that till the time fresh allotments were made, the existing mechanism would continue, which may require extension of transitory provision for some time etc. The aforesaid exercise conducted by the government resulted in issuance of the impugned notification, whereby with the approval of the Advisor

Incharge, policy decision taken by the government was conveyed to the petitioners. It is this communication of the respondents, which is assailed in these petitions on the grounds referred to herein above.

37. In the backdrop of above, the issues framed by this Court may be dealt with in seriatim.

ISSUE No.(i)

38. The claim of the petitioners that with the issuance of LOI by the respondents and acceptance of 50% of the bid amount as also the approved mining plan, right to have the mining leases allotted came to be created in their favour, is totally misconceived and not tenable in law. LOI issued to the successful bidders is in the form of invitation to offer and is, by its very nature, provisional. It is so indicated clearly in the LOIs.

39. The Letter of Intent (LOI) only conveys to the successful bidder that his highest bid has been accepted by the District Auction Committee and he is statutorily, as well as, contractually obliged to fulfill the requisite formalities envisaged under the Rules of 2016, besides depositing remaining 50% of the bid amount within a period of six months before he becomes entitled to the grant of mining lease in his favour.

40. As discussed above, on critical examination of the relevant provisions of the Rules, the period of six months fixed for completing the requisite formalities is found to be statutory in nature and there is no provision in the Rules for extending it further. The requisite formalities, *inter alia*, include the submission of mining plan prepared by RQP and its approval by the competent authority and submission of environmental clearance from SLEIAA.

41. That apart, Letter of Intent clearly conveys to the successful bidder that besides completing the aforesaid formalities, he is further bound to deposit the remaining 50% of the bid amount within the period of six months. The petitioners have miserably failed to do so. Other than submitting the mining plan prepared by the RQP, they have failed to submit environmental clearance as also to deposit the remaining bid amount within the statutory period of six months.

42. Reading of Rules 15, 26(2) and 55(7) to 55(9) of the Rules of 2016 together would make the position further clear. I have gone through the record produced by the learned State counsel carefully and found that in many of the cases the petitioners submitted their online applications for environmental clearance even after the expiry of statutory period of six months and such of them, atleast, cannot blame the respondents for not granting them environmental clearance in time.

43. Be that as it may, as provided in Section 4 of the Act of 1957 read with Rule 26(2) of the Rules of 2016, no lease can be granted or renewed by the competent authority unless there is a mining plan duly approved under the Rules and environmental clearance obtained by the prospective lessee irrespective of the size of mining area. The right to claim grant of lease and execution of formal lease deed would accrue to the petitioners only, if the aforesaid requisite formalities are completed within the statutory period prescribed therefor. Accordingly, issue No.(i) is decided by holding that no right, whatsoever, accrued to the petitioners at any time to claim the grant of mining leases on the ground of issuance of Letter of Intent (LOIs) in their

favour or by deposition of 50% of the bid amount on the conclusion of the auction process.

Issue No.(ii)

44. Discussion on Issue No.(i) and the observations made herein above, is complete answer to issue No.(ii) as well. Failure of the petitioners to obtain environmental clearance from the SLEIAA within the statutory period of six months was a reason good enough for the respondents to refuse the grant of mining leases in favour of the petitioners. This is notwithstanding the fact that the delay in obtaining environmental clearance from the SLEIAA may not be attributable solely to the petitioners.

45. Obtaining of environmental clearance within a period of six months is statutory in nature and the authority to grant such clearance is vested in a statutory committee constituted by the Ministry of Environment and Forest, Govt. of India and is, therefore, not an authority subordinate to the Government of J&K.

46. Whether or not there was delay in preparing the District Survey Reports by the respondent-department is a question of fact, which cannot be gone into in these proceedings. The petitioners, if they succeed in establishing that the delay in granting environmental clearance in time was attributable to the SLEIAA or for want of preparation of District Survey Reports, the petitioners may have a remedy in common law to seek compensation, as may be permissible in law, but petitioners' non-compliance with the prerequisites laid down by the statutory rules has taken away the right of the petitioners, if any, to claim grant of mining leases.

Issue No.(iii)

47. This issue pertains to the claim of the petitioners that the State is bound to grant mining leases in their favour and cannot be permitted to resile after the petitioners, acting upon their representation, have changed position to their detriment. It is submitted that the pursuant to the representation made by the petitioners by issuing notice for open auction, the petitioners participated in the process and also emerged as successful bidders. Apart from depositing earnest money, the petitioners also deposited 50% of the bid amount immediately on conclusion of the auction process. They, at their expense, got prepared the mining plan from the RQP and submitted the same to the respondents for approval. The mining plan was approved and they approached simultaneously the environmental impact committee and spent huge amount for issuance of clearance and providing of personal hearing as per the procedure but the environmental clearance was not granted to them for the reasons wholly attributable to the environmental committee and the State-respondents. They claim to have made all the preparation for extraction of minor minerals from their respective areas and drastically changed the position to their detriment. The respondents, now, cannot be allowed to resile from their unequivocal promise that on completion of all the requisite formalities, they would be granted mining leases.

48. The doctrine of promissory estoppel and legitimate expectation has been invoked by the petitioners to substantiate their claim. In the first place, I do not find that the principle of estoppel or for that matter the principle of legitimate expectation is attracted in the facts and circumstances of the case. LOI, as has been dealt with in detail herein above, unequivocally conveyed to

the petitioners that the acceptance of their highest bids is provisional in nature and subject to the completion of requisite formalities including deposition of remaining bid amount within a period of six months. This condition laid down in the LOI is not only contractual in nature but is backed by statutory provisions. The petitioners knew that under the statute as also in terms of the LOI issued in their favour, they would be entitled to the grant of mining leases only after they complete the requisite formalities. There was, thus, no unequivocal promise extended to the petitioners that the successful bidders shall be allotted the mining leases, notwithstanding their failure to complete the requisite formalities.

49. It is trite law that doctrine of promissory estoppel is a rule of equity and, therefore, weak in nature. This right can be defeated by intervening public interest. Doctrine of promissory estoppel cannot be invoked in abstract and the Courts are bound to see all aspects including the objective to be achieved and public good at large. The doctrine of promissory estoppel must yield to the overwhelming public interest. The Court would not insist for enforcement of the principle of promissory estoppel, if it would be inequitable to hold the government or public authority to its promise, assurance or representation. In the case of **Shri Sidhbali Steel Limited v. State of U.P. (2011) 3 SCC 193**, Hon'ble the Supreme Court in paragraph 33 held thus:-

> "33. Normally, the doctrine of promissory estoppels is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to its promise made by it, the court would not raise an equity in favour of the promiseee and enforce the

promise against the Government. **Where public interest warrants, the principles of promissory estoppel cannot be invoked. The Govermet can change the policy in public interest**. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law."

50. The Doctrine of Promissory Estoppel or equitable estoppel represents a principle evolved by equity to avoid injustice and cannot be invoked in the abstract. The Courts are bound to consider all aspects including the results sought to be achieved and 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 for ever be present to the mind of the Court. The Doctrine must yield when the equity so demands and 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 public authority to its promise, assurance or representation. Similarly, the Doctrine of legitimate expectation is only an aspect of Article 14 of the Constitution dealing with citizen in a non-arbitrary manner and thus, by itself, does not give rise to an enforceable right. But in testing the action taken by the Government authority, whether arbitrary or otherwise, it would be relevant. (see **State of West Bengal v. Niranjan Sngha (2001) 2 SCC 326**.

51. Having regard to the admitted factual position obtaining in the instant case, none of the Doctrines discussed above are attracted. This Court, as noted above, has already found that there was no unequivocal promise extended to the petitioners that on mere deposit of 50% of the bid amount, the petitioners (successful bidders) would necessarily be granted the mining leases, rather, grant of mining leases and execution of formal lease deeds was made subject to fulfillment of certain conditions, which the petitioners were supposed to comply within the stipulated period prescribed by the statute itself. Accordingly, issue is answered in favour of the respondents and against the petitioners.

Issue No. (iv)

52. The factual context in which this issue has arisen in these proceedings has already been elaborately dealt with herein above. At the cost of repetition, it may be pointed out that pursuant to the petitioners having been declared successful bidders and acceptance of their bids with the receipt of 50% of the bid amount at the conclusion of the auction process, the petitioners were issued Letters of Intent, signifying and conveying to the petitioners that their bids, which have been found to be the highest bids, have been provisionally accepted and that they shall submit approved mining plan and environmental clearance as also deposit remaining 50% of the bid amount within a period of six months. This was unequivocally conveyed to the petitioners that it is only upon completion of aforesaid prerequisites, mining leases in their favour for extraction of minor minerals shall be granted.

53. Indisputably, out of the three prerequisites indicated in the Letter of Intent, the petitioners could comply with only one of them i.e. they submitted the approved mining plan within the stipulated period. They did not even deposit the remaining 50% of the bid amount within the stipulated period and the explanation put forth by the petitioners is that they were awaiting environmental clearance from the SLEIAA. In terms of Clause 2 of Rule 26 of the Rules of 2016, the submission of mining plan duly approved under the Rules and environmental clearance obtained by the prospective lessee from the competent authority is *sine qua non* for grant of mining lease.

54. From a conjoint reading of Rule 26(2) and 55(9) of the Rules of 2016, it is abundantly clear that the statutory period to complete the requisite formalities required for grant of mining lease including deposition of remaining bid amount is six months and there is no power or authority reserved in the Government or any other authority under it to extend this statutory period. Atleast, none was pointed out to me by learned counsel appearing for the parties.

55. The question as to whether the failure on the part of the petitioners to obtain requisite environmental clearance is attributable to them or to the respondents would pale into insignificance for the reason that the statute lays down a fixed period of six months to complete the formalities before a prospective lessee could become entitled to grant of mining lease.

56. That aside, from a perusal of the record, it is profoundly found that there was initially delay on the part of the petitioners to apply for environmental clearance. Many of the petitioners submitted their online

applications for seeking environmental clearance much after the expiry of six months from the date of issuance of Letters of Intent. There is no denial of the fact that for some period, as noted herein before, the statutory body i.e. SLEIAA was not in position, tenure of the earlier body had expired and it took some time for the Central Government to reconstitute the new body. Be it noted that SLEIAA is an independent statutory authority constituted by the Ministry of Environment and Forest, Govt. of India and is neither subordinate nor subject to the control of the State/Union Territory. It is also not very clear as to whether the SLEIAA could not issue environmental clearance to the petitioners because of some lack of coordination from the State-respondents.

57. Be that as it may, in the given facts and circumstances, the only option that is left to this Court is to presume that, perhaps, none of the contracting parties i.e. petitioners or the respondents are responsible for such delay. In that event, it would be a clear case of frustration of contract by subsequent events.

58. It is true that the Doctrine of frustration of contract cannot apply where event which is alleged to have frustrated the contract arises from the act or election of a party. Doctrine of frustration of contract has been clearly set out in Pollock Mulla's Contract Law 13th Edition Volume I at page 1124 thus:-

> "DOCTRINE OF FRUSTRATION Frustration signifies a certain set of circumstances arising after the formation of the contract, the occurrence of which is due to no fault of either party and which renders performance of the contract by one or both parties physically and commercially impossible."

59. In the case of **J. Lauritzen A/S v. Wijsmuller B.V. 1990 WLR 754790**, the conditions of applicability of doctrine of frustration of contract were set out in the following manner:-

> "(i) The doctrine of frustration was evolved to mitigate the rigour of the common law's insistence on literal performance of absolute promises (Hirja Mulji Vs. Cheong Yue Steamsip Co. Ltd. [1926] A.C. 497 at 510).
>
> The object of the doctrine was to give effect to the demands of justice, to achieve a just and reasonable and fair, as an expedient to escape from injustice where such would result from enforcement of a contract in its literal terms after a significant change in circumstances (Hirji Mulji, supra at 510).
>
> (ii) Since the effect of frustration is to kill the contract an discharge the parties from further liability under it, the doctrine is not to be lightly invoked, must be kept within narrow limits and ought not to be extended.
>
> (iii) Frustration brigs the contract to an end forthwith, without more and automatically (Hirji Mulji, supra, at 505, 509).
>
> (iv) The essence of frustration is that it should not be done to the act or election of the party seeking to rely on it (Hirji Mulji, supra, at 510).
>
> A frustration event must be some outside event or extraneous change of situation (Paal Wilson & Co. A/S V. Partereedero Hammath (8) (902) ARBPL 663/13 Blumenthal (The Hannah Blumenthal) [19830 1 A.C. 854 at 909.
>
> (v) A frustrating event must take place without blame or fault on the side of the party seeking to rely on it (Bank Line Ltd. Supra, at 452).
>
> In fact the established law was summarized initially thus: "The classical statement of the modern law is that of Lord Radecliffe in Davis Contractors Ltd. V. Fareham Urban District Council [1956] A.C. 696 at 729".

> Frustration occurs whenever the la recognizes that without default of either party a contractual obligation has become incapable of being performed…."

60. It is, thus, clear that frustration brings the contract to an end forthwith relieving the parties of their respective contractual obligations. Section 56 of the Indian Contract Act, which embodies this doctrine, reads thus:-

> "56. Agreement to do Impossible act---- An agreement to do an act impossible in itself is void."

61. The essence of the doctrine of frustration of contract is, thus, if parties who are under an obligation to perform their part of reciprocal promise under any contract through their hands up and claim to be relieved of their obligation, they commit breach thereof. The relief that the law grants must be, not due to their fault, but only due to an act by another beyond their control.

62. Viewed in this context, I am of the considered view that failure of the petitioners to complete the requisite formalities including obtaining of environmental clearance from the statutory authority, if not, attributable to them is equally not attributable to the respondents. If this Court were to assume that the petitioners had applied to the SLEIAA well within time, and had completed all the requisite formalities as enjoined by law, even in that event, the failure on part of the SLEIAA to grant environmental clearance in time cannot be attributed to the respondents. In that event, the instant case would fall in the category of the contract which has been frustrated due to an act of another beyond the control of parties and this would relieve the parties of their obligation to perform their reciprocal promises.

63. Independently of the aforesaid, this Court does not see any justification in the argument of the learned counsel representing the petitioners that they

had no legal obligation to deposit the remaining 50% of the bid amount without first having been given the environmental clearance by the SLEIAA. The obligation to pay the remaining 50% of the bid amount was independently of the obligation to submit the approved mining plan and the environmental clearance. In that view of the matter, strictly speaking, even the doctrine of frustration of contract would not come into play.

Issue No. (v)

64. The decision of the government impugned in these petitions clearly falls in the realm of a policy decision and the parameters within which judicial review against the policy decision of the government can be exercised have been aptly culled out in the judgment of **Tata Cellular v. Union of India (1994) 6 SCC 651**. Paragraph 70 and 77 of the judgment are relevant and, therefore, are reproduced hereunder:-

> "70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or faovuritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course if the said power is exercised for any collateral purpose the exercise of that power will be struck down.
>
> *********

77. The duty of the court is to confine itself to the question of legality. Its concern should be: (1) Whether a decision-making authority exceeded its powers?

(2) committed an error of law, (3) committed a breach of the rules of natural justice, (4) reached a decision which no reasonable tribunal would have reached, or (5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

65. Similarly in the case of **Premium Granite v. State of Tamil Nadu, AIR 1997 SC 2233**, Hon'ble the Supreme Court in paragraph 52 of the judgment held thus:

"52. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. The Court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution of India or any

other statutory right. In our view, it will not be correct to contend that simply because under Rule 8(C) of the Mineral Concession Rules, quarry leases are to be granted to particular agency or agencies, exemption from the operation of the said Rule cannot be made with the aid of the other provisions of the Mineral Concession Rules. If all the provisions of the Mineral Concession Rules are held to form an integrated scheme then each of such provisions must be held to be mutually complimentary. It will, therefore, be not proper to hold that a policy decision envisaged in Rule 8(C) cannot be modified with the aid of the other provisions of the Mineral Concession Rules and in its field of operation, the said Rule 8(C) holds a supreme position. The application of Rule 8(C) should be understood and held as subject to other provisions in the Mineral Concession Rules.

66. This Court in the case of **Milk Producers Cooperative Marketing Processing Ltd. v. Union of India, 2018 Supreme (J&K) 900**, elaborately discussed the scope of interference by this Court in policy matters and after surveying the case law on the point in paragraph No.19 concluded thus:-

"19. From the analysis of the aforesaid judgments rendered by the Supreme Court in series of cases, it is now firmly settled that the scope of interference in the policy decision of the Government is well defined and circumscribed by the parameters laid down from time to time. The policy decisions of the Government are not immune to challenge in the writ jurisdiction and the judicial review in the policy matters of the Government is not absolutely barred. However, the Courts would be loathed to interfere in the policy decisions of the Government, unless such decisions are totally irrational, arbitrary or *mala fide*. The decision of the democratic government governed by Rule of law including its policy decisions must conform to Article 14 of the Constitution of India. The Government by its policy decisions

> cannot meet out invidious discrimination to a citizen or class of citizens, more so when such decisions pertain to distribution of public largsee. Such policy decision, if tailor-made to suit a person or class of persons for the purpose of conferring state largesse can also be well subjected to judicial review. However, the policy decisions taken by the government *bona fide* and in larger public interest cannot be judicially reviewed on the ground that these decisions are not correct or that a better decision could have been taken by the government nor would the judicial scrutiny extend to the determination of the merits of such decisions as while exercising the power of judicial review in such matters, the Court does not act as an appellate authority nor it is within the domain of the Court to direct or advise the executives in the matter of policy or to summarize qua any matter which under the Constitution lies within the sphere of legislature or executives. So long as the authorities laying down policy decisions do not transgress their constitutional limits or statutory power, such decisions cannot be found fault with and subjected to judicial scrutiny. The Court would not interfere in the policy decision of the Government even if these do not appear to be agreeable to the Court."

67. Viewed in light of the legal position adumbrated herein above, it is clearly seen that the impugned communication is nothing but a policy declaration by the respondents after taking into consideration host of factors. The respondents, after threadbare discussion and obtaining reports from different quarters and also keeping in view the pending litigation and the interim direction issued in the case of Radha Krishan (supra), took an informed decision that the Rules of 2016, insofar as these provide for grant of mining leases by open auction, were required to be amended to provide for competitive bidding by e-auction only. Possibility of cartelization and

intimidation having its play in the process of open auction was also taken note of. It was clearly found by the respondents that under the auction(s) that had taken place, no right had fructified in the petitioners (successful bidders), who despite having been granted numerous opportunities had failed to complete the requisite formalities that would have entitled them to the grant of lease(s). The respondents, therefore, decided to scrap the process and to return bid amount(s) whatever the petitioners had deposited and embark upon fresh exercise for allotment of the mining leases as per the amended rules and by resorting to the process of e-auction. This Court does not find any arbitrariness or irrationality in the decision of the respondents.

68. It is a universally acknowledged fact that in the present day society where cartelization and intimidation during open auction is the order of the day, e-auction is the most potent, fair, transparent and viable mode of grant of public largesse. Incongruity in the Rules, which was noticed by this Court in **Radha Krishan's** case (supra), and which had prompted this Court to pass an interim order directing the respondents not to grant any mining lease or quarry licence otherwise than by e-auction, was addressed by the respondent in proper perspective. The amendment to the Rule of 2016 effected by SRO 161 dated 07th March, 2019 was the result of such exercise. The respondents also found that in the process of open auction, which the department had resorted to, only 2-3 persons had emerged as successful bidders in most of the blocks and that the bid amounts offered were equal to or narrowly higher than the reserved bid(s). The respondents also found that there was something wrong even with the fixation of minimum reserved bids for many blocks. Taking into account its concerns and to substitute the existing system of open auction by a

more efficient and potent method of allotment of leases by e-auction, an informed policy decision was taken by the respondents. The impugned communication only conveys such decision, which cannot, by any stretch of reasoning, be held to be unlawful, arbitrary or irrational and thus, amenable to judicial review by this Court.

Issue No. (vi)

69. The petitioners have relied upon the transitory provision in the form of Rule 104-A introduced in the Rules of 2016 to buttress their argument that the respondents at one point of time did appreciate the difficulty of the petitioners in obtaining the environmental clearance from the prescribed authority and thus, permitted them the extraction and transportation of the minerals on royalty basis from their respective blocks without insisting for mining lease and environmental clearance from the competent authority.

70. I have noticed this submission with utmost pain and anguish. This is so because the government under Section 15 of the Act of 1957 is not empowered to create a provision in the Rules, which has the effect of nullifying the statutory requirement of adequately safeguarding the environmental concerns in the process of mining and leases and acting contrary to the judgment rendered by Hon'ble the Supreme Court in the case of **Deepak Kumar** (supra). It may be noted that immediately upon framing of the Rules of 2016, the government vide SRO 133 dated 20.04.2016 inserted Rule 104-A which reads thus:-

> "104-A Transitory Provision:- As a transitory measure and in order to ensure uninterrupted supply of minor minerals to the consumers, the department may issue permission valid upto

> 31.07.2016 for extraction of minor minerals to any existing quarry holder or to any person extracting such minor minerals or for transportation of such minerals on royalty basis."

This provision was subsequently substituted by SRO 269 dated 12.08.2016, which reads thus:-

> "SRO 269:
>
> "104-A **Transitory Provision**:- As a transitory measure and in order to ensure uninterrupted supply of minor minerals to the consumers, the department may issue permission valid up to 31st March, 2017 for extraction of minor minerals to any existing quarry holder or to any person extracting such minor minerals or for transportation of such minerals on royalty basis **and for completion of auction process, preparation of mining plan and obtaining environment clearance from the competent authority by the successful bidder**.
>
> This notification shall deem to have been come into force with effect from 01.08.2016."

71. From a perusal of Rule 104-A, as it was initially inserted, it clearly transpires that it was intended to provide a transitory measure and to ensure uninterrupted supply of minor minerals to the consumers. Essence of the provision was to enable the extraction of minor minerals to any existing quarry holder or to any person extracting such minor minerals or for transportation of such minerals on royalty basis. The provision provided for issuance of permission in this regard only for a period up to 31.07.2016. The object of the transitory provision aforesaid when it was inserted in the Rules of 2016, was apparent and understandable. The Rules of 2016 were promulgated only on 31.03.2016 and the process of allotment of mining leases in accord with the aforesaid rules would have taken some time. But the way in

which the aforesaid provision was subsequently substituted vide SRO 269 dated 12.08.2016 and, thereafter extended from time to time, speaks volume about the manner in which the provisions of the Act of 1957 and the Rules framed by the Government vide SRO 105 of 2016 were jettisoned. It is under this transitory provision, successful bidders like the petitioners were permitted to carry on mining operations in the blocks for which they had been issued Letters of Intent without environmental clearance from the SLEIAA.

72. The provision aforesaid made it possible for the successful bidders like the petitioners to explore the minerals indiscriminately without taking requisite precautions for protection of environment and control of pollution while conducting mining operation(s) in the mining mineral areas. Rule 104-A, on the face of it, is in violation of Section 4 of the Act of 1957, which unequivocally provides that no person shall undertake any mining operation in any area except under and in accordance with the terms and conditions of mining lease granted under the Act and the Rules made thereunder. The Rules of 2016 also re-enforce this dictate of law and provide that no person shall undertake any mining operation or activity in respect of any minor mineral in any part of the State except and in accordance with the provisions of the Rules of 2016.

73. I am aware that *vires* of Rule 104-A is not under challenge in these petitions and that the provision has also outlived its life and lost its efficacy as the same has not been extended beyond 30.04.2019. It has also been brought to my notice that even the National Green Tribunal has intervened in the matter and has stopped all mining and quarry operations in the Union Territory of J&K carried out without environmental clearance.

74. I have ventured to discuss the impact of Rule 104-A on the instant litigation for the reason that the same was relied upon by the petitioners to buttress their submission that once the respondents had realized the difficulty of the petitioners in obtaining environmental clearance, it was not fair on their part to scrap the whole process in one go and that too without there being any good reasons to do so. Besides, it was necessary to show abhorrence to the "hand-in-glove" machination of the vested interests. I am devoid of any material to know the exact environmental degradation caused by these indiscriminate mining operations carried out by the petitioners and others under the shelter of Rule 104-A inserted and substituted in the Rules of 2016. Let the competent authority in the government take cognizance of the issue as also the appropriate action that may be warranted under law.

75. Suffice it to say that Rule 104-A was not only in violation of the provisions of the Act of 1957 and the rules framed thereunder but was a clear affront to the Environmental (Protection) Act, 1986 and the rules framed thereunder.

76. For the reasons given and the discussion made hereinabove, I find no merit in these writ petitions and the same are, accordingly, dismissed. However, it is clarified that this judgment shall not come in the way of the petitioners or any person to claim refund of their bid amount(s), if any, lying with the respondents or to sue the respondents in appropriate proceedings for any loss or damage, if any, suffered by the petitioners, as may be permissible in law.

77. A copy of this judgment be kept on the records of each connected file.

78. Original record produced by Mr. F. A. Natnoo, AAG, be returned.

(**Sanjeev Kumar)**
Judge

JAMMU.
01.05.2020
Anil Raina, Addl. Reg/Secy

Whether the order is speaking : Yes
Whether the order is reportable: Yes