IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE EIGHTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE THE CHIEF JUSTICE SRI JITENDRA KUMAR MAHESHWARI
AND
THE HONOURABLE SRI JUSTICE K.SURESH REDDY

WRIT PETITION NO: 8410 OF 2020

Between:

M/s.Standard Metalloys Pvt.Ltd., through its Authorised Signatory Sh. Sumit Tripathi, having Regd. Office at 819, Naurang House, 21, K.G. Marg, New Delhi-110001

...PETITIONER

AND

1. Union of India, Rep by its Secretary, Ministry of Mines, Shastri Bhawan, New Delhi-110001
2. Additional Director General and Administering Authority, Geology Survey of India, GSI Complex, Seminary Hills Nagpur-440006
3. Department of Atomic Energy, Rep by its Secretary, Anushakti Bhawan, Mumbai-440001

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to

(i) Issue an appropriate writ, order or direction in the nature of writ of certiorari to quash notification dated 27.7.2019 issued by the Department of Atomic Energy as being ultra vires the OAMDR Act and/or the Atomic Energy Act, and/ or

(ii)Issue an appropriate writ, order or direction in the nature of writ of certiorari to quash order dated 6.11.2019 issued by the Central Government, and/ or

(iii)Issue an appropriate writ, order or direction to declare Rule 3A of the Off-Shore Area Mineral Rules, 2006 as ultra vires the OAMDR Act, 2002, and/or

(iv)Issue an appropriate writ, order or direction in the nature of writ of mandamus to direct the respondents to execute and sign the deed of exploration licence with the petitioner in furtherance of order of grant dated 5.4.2011 and in terms of the inter party decision of the Honble High Court of Delhi under compliance to this Honble Court,

(v)Issue an appropriate writ, order or direction in the nature of writ of certorari for quashing of reference dated 01.04.2019 made by Ministry of Mines to CBI for reopening of PE No. PE AC1 2012 A0005 already closed earlier by the CBI vide closure report dated 28.3.2013.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Pass ex-parte and interim orders in favour of the Petitioners and direct status quo be maintained with regard to the offshore blocks mentioned with regard to the offshore blocks mentioned in notification dated 07.06.2010.

IA NO: 2 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to Pass ex-parte and interim orders in favour of the Petitioners and stay the operation of the order dated 6.11.2019 and notification dated 27.07.2019.

Counsel for the Petitioner: SRI D.YASHRAJ SINGH DEORA for
SRI S.VIVEK CHANDRA SEKHAR

Counsel for Respondents: SRI N.HARINATH, Asst.Sol.General for
SRI PASALA PONNA RAO, SC for Central Govt.

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH : AMARAVATI

CHIEF JUSTICE J.K. MAHESHWARI
&
JUSTICE K. SURESH REDDY

WRIT PETITION No.8410 of 2020

M/s. Standard Metalloys Private Limited,
through its Authorised Signatory Sh. Sumit Tripathi,
Having Regd. Office at 819,
Naurang House, 21, K.G. Marg,
New Delhi -110001.

.. Petitioner

Versus

1. Union of India
   Rep. by its Secretary,
   Ministry of Mines,
   Shastri Bhawan,
   New Delhi -110001.

2. Additional Director General and Administering Authority,
   Geology Survey of India,
   GSI Complex, Seminary Hills,
   Nagpur-440006.

3. Department of Atomic Energy,
   Rep. by its Secretary,
   Anushakti Bhawan,
   Mumbai – 440001.

.. Respondents

Counsel for the petitioner	:	Mr. D. Yashraj Singh Deora, for Mr. S. Vivek Chandrasekhar
Counsel for the respondents	:	Mr. N. Harinath, Assistant Solicitor General
Date of reserving the order	:	01.09.2020
Date of pronouncing the order	:	18.09.2020

ORDER

Per J.K. Maheshwari, CJ

Invoking the jurisdiction under Article 226 of the Constitution of India, the petitioner filed the present writ petition, seeking to quash the policy decision vide notification dated 27.07.2019 of the Department of Atomic Energy (hereinafter be referred as 'the DAE' for brevity), i.e., respondent No.3 as being *ultra vires* to the Offshore Areas Minerals (Development and Regulation) Act, 2002 (hereinafter be referred as 'the OAMDR Act' for brevity); to quash the consequential order dated 06.11.2019 issued by respondent No.1 – Ministry of Mines, Government of India; to declare Rule 3A of the Offshore Areas Mineral Concession Rules, 2006 (hereinafter be referred as 'the OAMC Rules' for brevity) as *ultra vires* to the provisions of the OAMDR Act; to quash the letter dated 01.04.2019 addressed by the Ministry of Mines, Government of India, to the Central Bureau of Investigation for reopening of the Preliminary Enquiry bearing No.PE AC1 2012 A0005, which was closed earlier vide closure report dated 28.03.2013, for further investigation; and to direct the respondents to execute and sign the deed of exploration licence in favour of the petitioner in furtherance to the order of grant dated 05.04.2011.

2. The present case has chequered history, wherein the issue of grant of exploration licences under the OAMDR Act has already

undergone two rounds of litigation upto Hon'ble the Supreme Court and on both occasions, Hon'ble the Supreme Court has refused to interfere with the findings of the High Court. While dismissing S.L.P.(C).No.5530 of 2014, vide order dated 31.03.2014, against the judgment of Bombay High Court, Hon'ble the Supreme Court upheld the process of selection, legality and propriety in granting exploration licences in favour of private parties including the petitioner herein.

3. The facts which are not in dispute and are borne out from the record are, the OAMDR Act came into force on 15.01.2010. Respondent No.1 appointed the administering authority under the provisions of the OAMDR Act on 11.02.2010. The said administering authority issued notification dated 07.06.2010, in terms of the mandate of Section 10 of the OAMDR Act, which required the authority to issue notification within six (6) months of the Act, indicating the offshore areas available for grant of exploration licences. By the said notification, 62 offshore blocks were notified for grant of exploration licences. Pursuant to the said notification, various applications were received seeking allotment of the blocks. The authority concerned accordingly has constituted a screening committee consisting of experts from Indian Bureau of Mines (IBM), Geological Survey of India (GSI) and National Institute of Oceanography (NIO). The screening committee has

drawn up guidelines based on the requirements under the provisions of the OAMDR Act, more specifically Section 12, and undertook the selection process recommending the names by a list of allottees for grant of exploration licences on the website on 22.03.2011. Thereafter, the administering authority, in exercise of its power under section 12 of the OAMDR Act, issued orders dated 05.04.2011 granting exploration licences for the 62 blocks to 16 successful applicants, including the petitioner herein who was granted six blocks in the Bay of Bengal. The said blocks granted to the petitioner for exploration are adjoining the coastline of Andhra Pradesh State.

4. Assailing the process of selection adopted by the administering authority, various private parties, though not participated, approached different High Courts and tried to stall the allotment. Several Writ Petitions were filed before this Court, the High Court of Madras and the High Court of Bombay by different parties. In the meantime, based on the news item published in newspapers, which sought to raise suspicion on the allocation of the blocks, the Central Bureau of Investigation initiated a preliminary enquiry. However, after conducting a thorough probe, the CBI submitted a closure report dated 28.03.2013, having found no evidence of *mala fide* on the part of any public servant and no evidence of any quid-pro-quo between the public servants and the

successful allottees. In fact, the CBI also came to the conclusion that there was no evidence to suggest any financial loss to the public exchequer or any corresponding gain to any private person in the whole exercise undertaken by the screening committee for grant of exploration licences. However, the CBI seemed to suggest that the alleged criteria for selection was fixed and adopted by the screening committee after inviting the applications, which may amount to an irregularity. The report of the CBI was accepted by the Ministry of Mines, because the Minister of Mines, Government of India, in a reply to a question in Parliament, stated that no misconduct was found by the CBI on the part of any official, thus put the said matter at rest.

5. The private parties, who were seeking to stall or nullify the grants somehow or the other, did not meet with any success in any of the Courts. The High Court of Bombay, Nagpur Bench, before which the entire selection process was challenged, including the criteria adopted by the screening committee, which was commented upon by CBI as being irregular, has not found fault with the procedure adopted for selection being in accordance with law and upheld the same. Vide detailed judgment dated 17.09.2013 passed in W.P.No.1502 of 2011, the High Court of Bombay was pleased to hold that the selection process adopted by the administering authority including the laying of the guidelines by

the screening committee even after receiving the applications was fair and just. The Court was of the opinion that the guidelines framed by the Committee were merely an elaboration of the criteria prescribed under Section 12 of the OAMDR Act, as such the selection was in accordance with the provisions of the Act and by following the procedure. The High Court observed that laying down the criteria to carry out the provision of Section 12 was, in fact, to avoid arbitrariness in exercise of discretion. It is important to mention that before the Bombay High Court, respondent No.1 defended the action and the criteria adopted by the then administering authority in the process of selection. SLP (C).No.5530 of 2014 preferred by the private party against the judgment of the Bombay High Court was also dismissed by Hon'ble the Supreme Court, vide its order dated 31.03.2014. Accordingly, the validity of the selection process and the same being in accordance with law attained finality.

6. Even thereafter, the issue of execution of the exploration licence remained pending before the administering authority for a considerable period on the pretext that one of the cases filed by a private party before this Court was pending and had not been decided. At that stage of time, there was no indication by the administering authority regarding any error in the notification of the blocks or its intention not to grant the blocks. The change in the

attitude of the administering authority seems to have occurred when the then Secretary (Mines), in a meeting dated 14.07.2015, directed IBM to explore a way to cancel the allotment of the blocks so that the same blocks could be re-granted. It is the contention of the petitioner that the said exercise was obviously undertaken to benefit certain private parties who had not been granted blocks in the previous allotment process.

7. Since the administering authority was not executing the exploration licences to the allottees despite the selection process having attained the finality by the Court, some allottees approached the High Court of Bombay and the High Court of Delhi seeking writs in the nature of Mandamus to direct the authority to execute the exploration licences. These petitions were filed sometime in June, 2016. On service of notice to the administering authority, in a hurried manner, order dated 30.06.2016 was issued seeking to annul the notification and grants so as to defeat the pending writ petitions in Courts. The petitioner herein challenged the said order dated 30.06.2016 in WP (C).No 7537 of 2018 before the Delhi High Court. Vide judgment dated 06.02.2019 passed in the said writ petition along with batch of connected writ petitions, the order dated 30.06.2016 was set aside by the learned single Judge of the Delhi High Court, directing the respondents to execute the exploration licence. The Court, in the judgment, recorded

findings against the officers of Ministry of Mines indicating their *mala fide* and the manner in which the cancellation order dated 30.06.2016 was passed arbitrarily.

8. Based upon the findings in the aforesaid Judgment, a complaint was made by the then administering authority on 11.02.2019 to the Central Vigilance Commission (CVC). The CVC, vide order dated 15.03.2019, directed for an independent investigation against the officers of the Ministry of Mines. Being influenced by the said development, officers in the Ministry of Mines immediately wrote a letter to the CBI on 01.04.2019, making request to reopen the Preliminary Enquiry closed earlier on 28.03.2013 after thorough investigation.

9. In the meantime, the said order dated 06.02.2019 of the learned Single Judge of the Delhi High Court was challenged by respondent No.1 in LPA No.185/2019 & batch, which was upheld by the Division Bench vide judgment dated 25.04.2019, wherein once again serious strictures were passed against the conduct of the officers indicating their *mala fide* in making a reference to CBI on 01.04.2019 for reopening of the PE. Aggrieved by the above judgment, respondent No.1 preferred SLPs, lead case being SLP (C). No. 11759 of 2019, before Hon'ble the Supreme Court. In the said SLPs, vide order dated 23.05.2019, Hon'ble the Supreme Court directed the Secretary, Department of Atomic Energy, to file an

affidavit about the policy decision of the Central Government, asking whether they want to go by the bids invited or they want to interdict all private players, if so, how they can do so in view of the provision in the statute.

10. In response to the said order, the Secretary, DAE, filed his affidavit in July, 2019 and deposed that any policy decision of the Government as adopted under the OAMDR Act could be implemented only pursuant to an amendment in the OAMDR Act. The Secretary, DAE, immediately issued the impugned notification dated 27.07.2019, referring Section 6 of the OAMDR Act and Rule 18(1)(iv)(b) of the OAMC Rules, and sought to contend that it has powers under Sections 3 and 14 of the AE Act to cancel the grant orders for exploration licences and that too retrospectively. By the said notification, grant of operating rights were prohibited in respect of atomic minerals in any offshore areas in the country, including the sixty-two blocks, to any person, except to the Government or a Government Company or a Corporation owned or controlled by the Government and all actions taken in this behalf by the Central Government under the OAMDR Act prior to the date of the notification were rescinded.

11. When the SLPs came up for hearing, the said policy decision was produced before Hon'ble the Supreme Court. The Court, after having refused to interfere with the judgments of the Delhi High

Court, also has not commented on the merit of the policy decision dated 27.07.2019, and was pleased to direct that any policy decision taken would be *prospective* in nature.

12. Even after the above proceedings, the petitioner did not get to enjoy the fruits of the long drawn litigation. Respondent No.1 within a short span of the disposal of the SLPs, issued show-cause notice dated 19.08.2019 to the petitioner, by relying upon the notification dated 27.07.2019 issued by respondent No.3. The petitioner filed contempt proceedings in Contempt Petition (C).No.967 of 2019 before Hon'ble the Supreme Court. During pendency of the said Contempt Petition, respondent No.1, after hearing the petitioner, passed order dated 06.11.2019 under Section 7 of the OAMDR Act pre-maturely terminating the order of grant of exploration licence dated 05.04.2011. As the order dated 06.11.2019 came to be issued, Hon'ble the Supreme Court, vide order dated 27.01.2020, disposed of the Contempt Petition, granting liberty to the petitioner to challenge the said order dated 06.11.2019 in appropriate proceedings before the High Court. In view of the same, the present petition came to be filed by the petitioner assailing the impugned notification dated 27.07.2019, the order dated 06.11.2019 and to seek the reliefs above referred.

13. The contention of the petitioner is that the notification dated 27.07.2019 is liable to be quashed, being *ultra vires* to the

provisions of the OAMDR Act as well as the Atomic Energy Act, 1962 (hereinafter be referred as 'the AE Act' for brevity). Learned counsel for the petitioner has referred and relied upon various provisions of the OAMDR Act and the OAMC Rules with specific reference to Sections 2, 3, 5, 6, 12 and 13 of the OAMDR Act. Further reliance is placed on Rule 18 of the OAMC Rules to contend that the DAE does not have any discretion with regard to grant of exploration licences for atomic minerals, therefore, the said authority is seeking to achieve something indirectly which could not have been done directly. It is also contended that the issue pertaining to interpretation of the provisions of the OAMDR Act is no longer *res integra* inasmuch as the High Court of Delhi, in the proceedings inter parties, has already held in judgements dated 06.02.2019 passed by the learned Single Bench and 25.04.2019 of the learned Division Bench, that private person or companies can be granted exploration licences for atomic minerals under the provisions of the OAMDR Act, and the statute does not restrain such grant. Therefore, the notification dated 27.07.2019, which is merely an *executive* instruction cannot override the statutory provisions which have already received judicial examination by the inter-party judgment. It is also contended that the issue is also barred by *res judicata* and the respondents cannot be permitted to reagitate the said issue. With regard to *ultra vires* of the said notification to the provisions of the AE Act, it is contended that

Sections 3 and 14 of the AE Act, sought to be relied upon, do not confer specific powers and cannot be said to relate to the object sought to be achieved by the notification. It is further contended that Section 30 of the AE Act requires rules to be framed to give effect to the object of the AE Act prospectively. The respondents have not framed any rules to the extent as is being sought to be provided by the executive instruction. The Rules framed are the Atomic Energy (Working of the Mines, Minerals and Handling of Prescribed Substances) Rules, 1984 (hereinafter be referred as 'the Rules of 1984' for brevity). Those Rules deal with the contingency of discovery of the prescribed substance during mining. Thus, the AE Act or the Rules do not restrict grant of operating right to private parties. It is contended that where law requires a thing to be done in a particular manner, the same should be done only in that manner and in no other manner. It is also alleged by the petitioner that the rules framed are required to be placed before both Houses of Parliament in terms of the requirement under Section 30 of the AE Act and in that case, they may likely to be rejected by the Parliament. Therefore, the respondents have sought to sidestep the mandatory procedure prescribed under law by way of issuing the impugned notification. It is further contended that the said notification seeks to undermine the statutory provisions that is Parliamentary law viz. the OAMDR Act, and the Secretary, DAE, who has issued the said notification was fully

conscious about the legal position as is evident from his affidavit filed before Hon'ble the Supreme Court, wherein he had categorically admitted that any policy of the Government could be implemented only after an amendment to the OAMDR Act. In this fact, the said notification travels beyond the scope of the OAMDR Act as well as the AE Act and therefore, is required to be quashed.

14. With regard to the order dated 06.11.2019 cancelling the order of grants retrospectively, it is contended that the said order is liable to be quashed as the same is in violation of Section 7(2) of the OAMDR Act, which embodies the principles of natural justice otherwise guaranteed under Article 14 of the Constitution of India. The petitioner contends that though show-cause notice was issued and hearing was fixed, but the said process was nothing but an empty formality as the authority had already made up its mind to cancel the allocation/grants of the exploration licence. Learned counsel, referring the language of the show-cause notice as well as the stand of the Government before Hon'ble the Supreme Court, contended that the decision to terminate the grant was pre-determined. On the issue of challenge to the said order on merits, it is contended that it suffers from fetter of discretion which the Central Government, i.e. the Ministry of Mines had to apply. However, the Central Government, instead of exercising its own independent consideration on the situation, has in turn solely

impressed upon the notification dated 27.07.2019 issued by the DAE, however, passed the order impugned.

15. Insofar as the challenge to Rule 3A of the OAMC Rules is concerned, the same is stated to be *ultra vires,* contending firstly, it travels beyond the scope of the parent Act which by itself does not provide any restriction on private companies being granted atomic minerals as defined under Part B of Schedule-I of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter be referred as 'the MMDR Act' for brevity). In the alternative, it is contended that Rule 3A, being subordinate legislation, can in any event not apply retrospectively or impact or affect vested rights. The issue pertaining to vested rights already stands settled before the High Court of Delhi wherein the issuance of order of grant dated 05.04.2011 has been recognized as conferring vested right to the petitioner.

16. Lastly, it is contended that the letter/request dated 01.04.2019 issued by respondent No.1 asking CBI to re-open the investigation with regard to the grants is out of vindictiveness and has been done to undermine the order of Bombay High Court and is a malicious exercise of power. Learned counsel placed reliance, firstly, on the CVO, IBM and CBI enquiries itself, which were held prior to the judgment of the High Court of Bombay dated 17.09.2013 in W.P.No.1502 of 2011 and the respondents

themselves had defended the action of the then administering authority as well as the screening committee before the High Court of Bombay, which, on consideration of the factual and legal situation, specifically arrived at the finding that the screening committee had acted in accordance with law and the criteria framed is traceable from Section 12 of the OAMDR Act and no irregularity of any nature was found in the selection process for grant of exploration licences. The High Court further held that the criteria adopted by the Selection Committee was to avoid arbitrariness and as such, the findings of CBI to the extent that there was procedural irregularity stood impliedly overruled by the High Court of Bombay. It is further contended that interference to the said judgment was refused by Hon'ble the Supreme Court in the S.L.P. It is, therefore, contended that request to reopen the CBI investigation after a lapse of 6 years i.e. by letter dated 01.04.2019 by Respondent No.1, itself speaks volume about *mala fides*. If any investigation was further desired by respondent No.1, it was always open to the said respondent to have requested the CBI to reopen the matter immediately after the closure report dated 28.03.2013. However, they did not do so, knowing fully well that there were no discrepancies in the entire process. In fact, the said closure report had also been accepted by the Ministry of Mines and a confirmation to this effect was also given to the Parliament by the Minister of Mines. It is only when the respondents realized

that their illegal attempt at cancelling the allocations vide the order dated 30.06.2016, would not hold water in Court, that the respondents started making allegations against their own officials. Learned counsel further contends that *mala fide* of respondent No.1 is a writ large on the face that the said letter dated 01.04.2019 had been written by Mr. Niranjan Kumar Singh, the then Joint Secretary-cum-CVO of Ministry of Mines against whom the CVC had already initiated the investigation on 15.03.2019 and in order to mislead the CBI, crucial material facts viz. Judgment dated 17.09.2013, order dated 31.03.2014 of the Hon'ble Supreme Court and the O.M. dated 15.03.2019 initiating independent investigation against officials of Ministry of Mines including Mr. Niranjan Kumar Singh were deliberately suppressed in the letter dated 01.04.2019 and therefore, the action of issuing the letter was out of malice. It is, accordingly, contended that *mala fides* are to be inferred from a total consideration of the surrounding circumstances.

17. Learned counsel placed reliance on the judgment of **Directorate of Film Festivals v. Gaurav Ashwin Jain**[1], on the issue of scope of judicial review while examining the Government policy. Reliance has further been placed on **U.P. State Road**

[1](2007) 4 SCC 737

Transport Corporation v. Mohd. Ismail[2]. On the issue, when law requires something to be done in a particular manner, it ought to be done in that way, reliance is placed on the decisions in **Patna Improvement Trust v. Lakshmi Devi**[3], **Babu Verghese v. Bar Council of Kerala**[4], **State of Punjab v. Gurdial Singh**[5], **Dipak Babaria v. State of Gujarat**[6]. In support of the contention, the orders passed by the Delhi High Court, interpreting the provisions of the OAMDR Act, since became final on SLP being disposed without interfering in the judgments of the Delhi High Court and the said judgments could not be sought to be nullified, reliance has been placed on the judgments of Hon'ble the Supreme Court in **Union of India v. K.M. Shankarappa**[7], **Mohd. Aslam v. Union of India**[8] and **Medical Council of India v. State of Kerala**[9]. In support of the contention that in the manner in which the power has been exercised while framing Rule 3A and issuing policy decision retrospectively, such action is not permissible in terms of the provisions of the statute and is arbitrary, reliance has been placed upon the judgment of Hon'ble the Supreme Court in **Hukam Chand v. Union of India**[10]. It is urged that the action

---

[2](1991) 3 SCC 239
[3]1963 Supp (2) SCR 812
[4](1999) 3 SCC 422
[5](1980) 2 SCC 471
[6](2014) 3 SCC 502
[7](2001) 1 SCC 582
[8](1994) 6 SCC 442
[9](2019) 13 SCC 185
[10](1972) 2 SCC 601

taken by the respondents was in violation of the principles of natural justice and in support of the said contention, reliance has been placed on the judgments in **Oryx Fisheries (P) Ltd. v. Union of India**[11] and **ONGC Ltd. v. Western Geco International Ltd.**[12]

18. Respondent Nos.1 and 2 have filed their counter-affidavit and in terms of the averments made therein, the learned Assistant Solicitor General has sought to oppose the writ petition on the grounds that the power of judicial review is limited and that what is primarily under challenge in the writ petition is the policy decision of the Government to not grant mining of atomic minerals to private companies/parties in the offshore areas. It is contended that the minerals in question are of strategic value and allowing private parties to mine the same would impact the security of the nation. Various judgments have been referred on the aspect of policy decision of the Government and the alleged bar on the interference by the Courts in such decisions. The respondents have also relied upon the order of Hon'ble the Supreme Court to overcome the contention of the petitioner pertaining to the findings of the High Court of Delhi. The respondents have sought to place reliance on the order of Hon'ble Apex Court dt.29.07.2019 passed in the SLP of the respondents challenging the order of the Delhi

[11](2010) 13 SCC 427
[12](2014) 9 SCC 263

High Court. Much reliance has been placed on the sentence "*the directions of the High Court shall not come in the way in implementing the policy decision/action*", to contend that by virtue of the same, the effect of the judgments of the High Court of Delhi are completely wiped off and the said orders of the High Court stand merged in the order of the Hon'ble Supreme Court. Based on the same, it is stated that under Section 6 of the OAMDR Act read with Rule 18 of the OAMC Rules, the DAE-respondent No.3 was fully competent to exercise its discretion and take a policy decision to not grant exploration licence or mining leases to private companies for atomic minerals. The said policy, it was contended, is also in consonance with the policy under the provisions of the MMDR Act and the rules framed thereunder. Reliance is also placed on various provisions of the AE Act to contend that respondent No.3 has acted *intra vires* to the provisions of the said Act while issuing the instructions vide notification dated 27.07.2019. It has been sought to be highlighted that the minerals in question, viz. ilmenite, rutile, garnet, sillimanite, zircon, are of high strategic importance. Suggestion has also been sought to be made pertaining to the importance of zircon in energy production through nuclear plants. Monazite which is a prescribed substance being notified as such under the AE Act, is also said to be available in the suite of minerals available in the said offshore blocks. Accordingly,

it is claimed that the writ petition should be rejected as DAE was fully within its powers to have issued the impugned notification.

19. In so far as exercise of power under Section 7 of the OAMDR Act is concerned, the respondents have contended that the same was strictly followed in compliance with the said provisions and principles of natural justice, as such a show-cause notice was issued and opportunity of hearing was provided to the petitioner. The Central Government, thereafter, has rightly arrived at the conclusion to prematurely terminate the operating rights vide order dated 06.11.2019.

20. With regard to Rule 3A as inserted in the OAMC Rules, it was contended by the learned Assistant Solicitor General that the same is in compliance with Section 6(b) of the OAMDR Act, which provides that the grant may be to an Indian company that satisfies such conditions as may be prescribed. Accordingly, under Section 35 of the OAMDR Act, while exercising its rule making power, the said condition under Rule 3A has been prescribed and as such the said Rule is *intra vires* to the OAMDR Act.

21. Lastly, regarding the letter dated 01.04.2019, it is sought to be contended that the CBI enquiry has already commenced based on the said letter. It is also contended that a writ petition has been filed challenging the enquiry before the High Court of Delhi. It is

also submitted that respondent No.1 has taken note of the discrepancies/irregularities in the selection process as brought out by the CBI in its report dated 28.03.2013, which has aroused suspicion of respondent No.1 with regard to the said grants and undue haste shown by the then administering authority in execution of the exploration licences pursuant to the order dated 09.11.2017 of the High Court of Delhi when the Government was still contemplating further course of action and accordingly the said letter initiating enquiry cannot be held to be vitiated by *mala fides*. It is accordingly contended that the writ petition deserves to be dismissed.

22. Learned Assistant Solicitor General appearing on behalf of the respondents also placed reliance on the judgment of **Directorate of Film Festivals v. Gaurav Ashwin Jain,** on the point of scope of judicial review. Placing reliance on the judgment of **M.P. Oil Extraction v. State of M.P.**[13], it is said that unless the policy framed by the State is capricious and arbitrary, interference should not be made by the Court. Further, relying upon the judgment of **Balco Employees Union v. Union of India**[14], it is contended that the Courts should not embark upon an enquiry as to whether a particular public policy is wise or a better public policy can be evolved and interference with the policy decision by the Court is

---

[13](1997) 7 SCC 592
[14](2002) 2 SCC 333

not permissible merely on the ground that fairer or wiser or more scientific or more logical policy may be possible. Further, on the point of exceptions available in relation to the principles of natural justice, reliance has been placed on the judgments of **Justice K.S. Puttuswamy v. Union of India**[15], **Maneka Gandhi v. Union of India**[16] and **Mohinder Singh Gill v. CEC**[17]. Finally, it is urged that what is in the interest of national security is not a question of law and it is a matter of policy, therefore, the Court is not required to interfere, and in support thereof, reliance has been placed on the judgment of **Ex. Armymen's Protection Services P. Ltd. v. Union of India**[18]. In view of the aforesaid judgments, it is urged that the petition filed by the petitioner may be dismissed.

23. On consideration of the averments made in the writ petition, counter-affidavit filed by respondent Nos.1 & 2, the rejoinder filed by the petitioner, the rival contentions as advanced and the reliefs prayed before the Court, mainly the following issues arise for determination in the present case:

1. Whether the policy decision of the DAE taken vide Notification dated 27.07.2019 is within the ambit and power of the AE Act and/or OAMDR Act and not *ultra vires* to the statute, or it is dehors the

[15] AIR 2017 SC 4161
[16] 1978 AIR 597
[17] (1978) 1 SCC 405
[18] (2014) 5 SCC 409

provisions of both the Acts, and issued arbitrarily with lack of bona fides?

2. Whether the order dated 06.11.2019 passed by respondent No.1 is after due application of mind or merely relying upon the Notification dated 27.07.2019 and such action is in consonance to the provisions of Section 7 of the OAMDR Act, in observance of the principles of natural justice?

3. Whether Rule 3A of the OAMC Rules, as notified on 23.08.2019, is *ultra vires* to Section 35 of the OAMDR Act, and having sanction of law?

4. Whether the letter dated 01.04.2019 sent by respondent No.1 to the Director of Central Bureau of Investigation to reopen the Preliminary Enquiry bearing No.PE AC1 2012 A0005 already closed vide closure report dated 28.03.2013, after six years is tainted with *mala fide* looking to the facts of the case?

24. Before dealing with the questions framed hereinabove and in the context of the facts of the present case and the reliefs so prayed, challenging the policy decision of the Central Government, at the outset, it is necessary to see whether the scope of judicial review is available to this Court in exercise of power under Article 226 of the Constitution of India. In the said context, it is to be noticed that in the S.L.P. arose out of the inter-party judgment delivered in favour of the petitioner by the Delhi High Court,

Hon'ble the Supreme Court, vide judgment dated 29.07.2019, has said that the policy decision produced before the Court is not in issue, therefore, they are not in a position to comment on it, but it can be examined on its own strength and merit on the anvil of law and the provisions of the statute.

25. Learned counsel representing both the parties placed reliance on the judgment of Hon'ble the Supreme Court in **Directorate of Film Festivals v. Gaurav Ashwin Jain** (supra). In the said judgment, while dealing with the issue of the scope of judicial review in para 16, Hon'ble the Supreme Court held as thus:

> *"The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."*

26. In view of the aforesaid, it is clear that while examining a policy of the Government, the Court may look whether it violates

the fundamental rights of the citizens or is opposed to the provisions of the Constitution or opposed to any statutory provision or manifestly arbitrary. It is clear that it cannot be interfered on the ground that it is erroneous or a better, fairer or wiser alternative may be available.

27. Further, Hon'ble the Supreme Court in its judgment in **Bombay Dyeing & Mfg. Co. Ltd. V. Bombay Environmental Action Group**[19], has carved out several factors on which the Court may enquire into a policy decision of the Government. Those factors are (i) whether the discretion conferred upon the statutory authority had been properly exercised; (ii) whether exercise of such discretion is in consonance with the provisions of the Act; (iii) whether while taking such action, the executive Government had taken into consideration the purport and object of the Act; (iv) whether the same subserved other relevant factors which would affect the public at large; (v) whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and (vi) whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

---

[19] (2006) 3 SCC 434

28. Recently, in the case of **Indian Oil Corporation Ltd. V. Shashi Prabha Shukla**[20], Hon'ble the Supreme Court, while dealing with the plea of absolute discretion, has referred the observations made by Lord Reid in ***Padfield v. Minister of Agriculture, Fisheries and Food: (AC p. 1030 CD)***, which read thus:

> *"... Parliament must have conferred the discretion with the intention that it should be used to promote the policy and objects of the Act; the policy and objects of the Act must be determined by construing the Act as a whole and construction is always a matter of law for the court. In a matter of this kind it is not possible to draw a hard-and-fast line, but if the Minister, by reason of his having misconstrued the Act or for any other reason, so uses his discretion as to thwart or run counter to the policy and objects of the Act, then our law would be very defective if persons aggrieved were not entitled to the protection of the court."*

29. On consideration of the said precedents, it is a trite law to say that the policy formulated by the Government contrary to the provisions of the statute or in an arbitrary exercise of power affecting fundamental rights, can be interfered with by the High Court in writ jurisdiction. The Court, while exercising powers of judicial review, can always examine a policy to check whether it violates fundamental rights or is opposed to provisions of the Constitution or opposed to any statutory provision or it is

---

[20] (2018) 12 SCC 85

manifestly arbitrary. Simultaneously, the Rules framed without having sanction of law by the statute cannot be termed as intra vires. In view of the forgoing legal position laid down by Hon'ble the Supreme Court, now, it can safely be concluded that the scope of judicial review is available to this Court in exercise of the power under Article 226 of the Constitution of India, to the subject matter in issue. Hence, we deal with the questions framed in seriatim.

Question No.1: **Whether the policy decision of the DAE taken vide Notification dated 27.07.2019 is within the ambit and power of the AE Act and/or OAMDR Act and not *ultra vires* to the statute, or it is dehors the provisions of both the Acts, and issued arbitrarily with lack of bona fides?**

30. For the purpose of deciding this issue, it is necessary to refer concluding relevant portion of the Notification dated 27.07.2019, which is reproduced hereunder;

> *"AND WHEREAS section 6 of the Offshore Areas Mineral (Development and Regulation) Act, 2002 contemplates that no production lease for atomic minerals or prescribed substances be granted without consultation with the Department of the Government of India dealing with the Atomic Energy;*
>
> *AND WHEREAS sub-clause (b) of clause (iv) of sub-rule (1) of rule 18 of the Offshore Areas Mineral Concession Rules, 2006* ***contemplates that no atomic mineral shall be included in the Exploration Licence without approval of the Department of Atomic Energy*** *and therefore, as the said blocks are in continuity of onshore*

Beach Sand Mineral deposits and are known to contain appreciable concentration of strategic atomic minerals and prescribed substances, including zircon and monazite, ***as a matter of policy, the Department of Atomic Energy shall not be granting prior approval to private parties for exploration and mining in the said offshore blocks****;*

AND WHEREAS in view of the foregoing paragraphs regarding continuity of Beach Sand Mineral deposits in offshore areas and their strategic importance, it is imperative that the mineral concessions in offshore areas be brought at par with the onshore areas in their treatment and therefore, in order to safeguard the strategic interest of the nation, it is expedient in larger national interest to prohibit the grant of operating rights in terms of any reconnaissance permit, exploration licence or production lease of atomic minerals as defined in Part B of the First Schedule of the Mines and Minerals (Development and Regulation) Act, 1957 in any offshore areas to any person, except the Government or a Government Company or a Corporation owned or controlled by the Government;

NOW, THEREFORE, in exercise of the power conferred under sections 3 and 14 of the Atomic Energy Act, 1962 (33 of 1962), the Central Government hereby prohibits grant of operating rights in respect of atomic minerals in any offshore areas in the country, including said sixty-two blocks, to any person, except the Government or a Government Company or a Corporation owned or controlled by the Government, under the Offshore Areas Mineral (Development and Regulation) Act, 2002; and declares that any action taken in this behalf by the Central Government under the Offshore Areas Mineral (Development and Regulation) Act, 2002 prior to the date of this notification shall stand rescinded."

(emphasis supplied)

31. On perusal, it reveals that the DAE has exercised the powers to issue the said policy under Sections 3 and 14 of the AE Act and placed reliance on Section 6 of the OAMDR Act and rule 18(1)(iv)(b) of the OAMC Rules. Therefore, the relevant provisions of the said Acts and Rules are required to be discussed.

32. It is to be noted that the AE Act was brought for development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes and for matters connected therewith. Thus, the legislative intent and object to bring such enactment is to make use of the automatic energy in development and its regulation for the welfare of the citizens. As per Clause (a) of sub-Section (1) of Section 2 of the AE Act, the atomic energy is defined as the energy released from atomic nuclei as a result of any process, including the fission and fusion processes. Clause (b) therein defines 'fissile material' to be uranium 233, uranium 235, plutonium or any material containing these substances or any other material that may be declared as such by notification by the Central Government. As per Clause (c), minerals include all substances obtained or obtainable from the soil, including alluvium or rocks by underground or surface working. 'Prescribed substance', as has been defined in Clause (g), means to be any substance, including any mineral prescribed by the Central Government, by notification, being a substance which in its opinion

is or may be used for the production or use of atomic energy or research into matters connected therewith and includes uranium, plutonium, thorium, beryllium, deuterium or any of their respective derivatives or compounds or any other materials containing any of the aforesaid substances. Therefore, looking to the definition of 'minerals', it is clear that it applies to onshore minerals available either by the surface mining or underground mining. The said concept is applicable only for onshore mining not for offshore mining. Therefore, as per the intent and object of the AE Act and looking to the definition of 'minerals' and 'prescribed substance', it applies to onshore mining and not to the offshore mining.

33. While issuing the impugned notification dated 27.07.2019 by the DAE, the power under Sections 3 and 14 of the AE Act has been invoked. However, to understand the intention of the legislature, it is expedient to quote those provisions. Section 3 of the AE Act is reproduced as thus:

> *"**3. General powers of the Central Government.**—Subject to the provisions of this Act, the Central Government shall have power—*
>
> *(a) to produce, develop, use and dispose of atomic energy either by itself or through any authority or corporation established by it or a Government company and carry out research into any matters connected therewith;*
>
> *(b) to manufacture or otherwise produce any prescribed or radioactive substance and any articles which in its opinion are, or are likely to be, required for, or in connection with, the production, development or use of atomic*

energy or such research as aforesaid and to dispose of such prescribed or radioactive substance or any articles manufactured or otherwise produced;

(bb) (i) to buy or otherwise acquire, store and transport any prescribed or radioactive substance and any articles which in its opinion are, or are likely to be, required for, or in connection with, the production, development or use of atomic energy; and

(ii) to dispose of such prescribed or radioactive substance or any articles bought or otherwise acquired by it,

either by itself or through any authority or corporation established by it, or a Government company;

(c) to declare as "restricted information" any information not so far published or otherwise made public relating to –

(i) the location, quality and quantity of prescribed substances and transactions for their acquisition, whether by purchase or otherwise, or disposal, whether by sale or otherwise;

(ii) the processing of prescribed substances and the extraction or production of fissile materials from them;

(iii) the theory, design, construction and operation of plants for the treatment and production of any of the prescribed substances and for the separation of isotopes;

(iv) the theory, design, construction and operation of nuclear reactors;

(v) research and technological work on materials and processes involved in or derived from items (i) to (iv);

(d) to declare as "prohibited area" any area or premises where work including research, design or development is carried on in respect of the production, treatment, use, application or disposal of atomic energy or of any prescribed substance;

(e) to provide for control over radioactive substances or radiation generating plant in order to—

(i) prevent radiation hazards;

(ii) secure public safety and safety of persons handling radioactive substances or radiation generating plant; and
(iii) ensure safe disposal of radioactive wastes;

(f) to provide for the production and supply of electricity from atomic energy and for taking measures conducive to such production and supply and for all matters incidental thereto; either by itself or through any authority or corporation established by it or a Government company; and

(g) to do all such things (including the erection of buildings and execution of works and the working of minerals) as the Central Government considers necessary or expedient for the exercise of the foregoing powers."

34. Perusal of the aforesaid Section makes it clear that it confers general power to the Central Government subject to the provisions of the Act. As per sub-sections (a), (b), (bb) and (f) of Section 3 of the AE Act, it is clear that the power is available to produce, develop, use and dispose of atomic energy and other incidental matters either by itself or through any authority or corporation established by it or a Government company. With respect to the power conferred under other sub-sections of Section 3, viz., (c), (d), (e) and (g), the general power of supervision is available only with the Central Government. In this regard, it is to be noted that in the original Act of 1962, the power to produce, develop, use and dispose of atomic energy and to carry out research in the matters connected therewith as specified in sub-section (a) and to carry out other incidental matters as specified in sub-sections (b), (bb) and

(f) was not given to the instrumentalities of the Central Government, but it is introduced only by Act No.29 of 1987 with effect from 08.09.1987. Therefore, by making amendment of the Act in 1987, certain powers exclusively conferred upon the Central Government, have been extended to its instrumentalities, which are limited to the extent specified in sub-sections (a), (b), (bb) and (f) of Section 3 of the AE Act. The said intention fortifies from the language in Section 14 of the AE Act, which confers power of control over production and use of atomic energy. The provisions of this Section, being also relevant, are reproduced as thus:

> *"14.* ***Control over production and use of atomic energy.****—(1) The Central Government may, subject to such rules as may be made in this behalf, by order prohibit except under a licence granted by it—*
>
> *(i) the working of any mine or minerals specified in the order, being a mine or minerals from which in the opinion of the Central Government any of the prescribed substances can be obtained;*
>
> *(ii) the acquisition, production, possession, use, disposal, export or import—*
> *(a) of any of the prescribed substances; or*
> *(b) of any minerals or other substances specified in the rules, from which in the opinion of the Central Government any of the prescribed substances can be obtained; or*
> *(c) of any plant designed or adopted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith; or*
> *(d) of any prescribed equipment.*
>
> *(1A) No licence under sub-clause (c) of clause (ii) of sub-section (1) shall be granted to a person other than a Department of the Central Government or any authority or*

an institution or a corporation established by the Central Government, or a Government company.

(1B) Any licence granted to a Government company under sub-section (1) shall stand cancelled in case the licensee ceases to be a Government company and, notwithstanding anything contained in any other law for the time being in force, all assets thereof shall vest in the Central Government free from any liability and the Central Government shall take such measures for safe operation of the plant and disposal of nuclear material so vested in it, as may be necessary in accordance with the provisions of section 3.

(2) Nothing in this section shall affect the authority of the Central Government to refuse a licence for the purpose of this section or to include in a licence such conditions as the Central Government thinks fit or to revoke a licence and the Central Government may take any action as aforesaid.

(3) Without prejudice to the generality of the foregoing provisions, the rules referred to in this section may provide for—

(a) the extent to which information in the possession of, or which has been made available to, the person granted a licence for purposes of this section, should be regarded as restricted information;

(b) the extent to which the area or premises under the control of the person to whom a licence has been granted for purposes of this section, should be regarded as a prohibited area;

(c) the conditions and criteria for location of any installation or operation of any plant in respect of which a licence has been granted or is intended to be granted for the purposes of this section including those necessary for protection against radiation and safe disposal of harmful by-products or wastes;

(d) the extent of the licensee's liability in respect of any hurt to any person or any damage to property caused by ionising radiations or any radioactive contamination either at the plant under licence or in the surrounding area;

(e) provision by licensee either by insurance or by such other means as the Central Government may approve, of sufficient funds to be available at all times to ensure settlement of any claims in connection with the use of the site or the plant under licence which have been or may be duly established against the licensee in respect of any

hurt to any person or any damage to any property caused by ionising radiations emitted at the plant under licence or radioactive contamination either at the plant under licence or in surrounding areas;

(f) obligatory qualifications, security clearances, hours of employment, minimum leave and periodical medical examination of the persons employed and any other requirement or restriction or prohibition on the employer, employed persons and other persons; and

(g) such other incidental and supplementary provisions including provisions for inspection and also for the sealing of premises and seizure, retention and disposal of any article in respect of which there are reasonable grounds for suspecting that a contravention of the rules has been committed, as the Central Government considers necessary.

(4) The Central Government may also prescribe the fees payable for issue of licences under sub-section (1)."

35. From perusal of the above provision, it is luculent that the Central Government may, by order, prohibit, subject to such rules as may be made in this behalf, except under a licence granted by it, the working of any mine or minerals specified in the order, from which in the opinion of the Central Government, prescribed substance can be obtained from the said mineral, as per sub-section 1(i) of Section 14 of the AE Act and the acquisition, production, possession, use, disposal, export or import of items as per sub-clauses (a), (b) and (d) of clause (ii) of sub-section 1 of Section 14 of the AE Act. Thus, in these matters, where licence is granted, there is no prohibition. By sub-section 1A of Section 14, there is a prohibition in respect of grant of licence pertaining to

matters under sub-clause (c) of clause (ii) of sub-section 1, which relates to any plant designed or adopted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith. Therefore, in the statute, while conferring power upon the Central Government to have control over production and use of atomic energy, absolute prohibition is made in the matter of grant of licence only with respect to any plant designed or adopted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith. It does not prohibit the grant of licence by the Central Government for the purpose of mine and mineral. Thus, Section 3 of the AE Act does not deal with the grant of licences of mine and mineral, while Section 14 deals with it, by which the grant of licences of mine and mineral of a prescribed substance is permissible under a licence granted by the Central Government, subject to the rules made in this behalf and the exceptions stated above.

36. The Central Government has formulated the Rules of 1984 in exercise of the power under Sections 14 and 30 (2) (e), (g) and (l) of the AE Act. The said Rules deal with the working of the mines, minerals and handling of prescribed substances. The term 'handle', as defined in Rule 2(i) includes manufacture, possess, store, use, transfer by sale or otherwise, export, import, transport or dispose

of. Under Rule 2(l), 'licencee' has been defined as any person who has been granted a licence for mining, milling, processing and/or handling of prescribed substances, under the Act or Rules made thereunder. As per rule 2(n), 'milling' includes crushing, pulverising, sieving, processing chemically or otherwise of the ores or minerals or chemical concentrates of prescribed substances. As per Rule 2(q), 'person' has been defined, which includes any individual, corporation, association of persons whether incorporated or not, partnership, estate, trust, private or public institution, group, government agency or any state or any political subdivision thereof or any political entity within the state, any foreign government or nation or any political subdivision of any such government or nation or other entity. Thereby, it is clear that the licence may be granted to any person, i.e., any individual private person. Rule 3 makes it clear that licence is necessary for mining, milling, processing and/or handling any ore mineral or other material from which any one or more of the prescribed substances can be extracted. Therefore, the mining of a prescribed substance can be possible under a licence by a licencee as per the conditions specified in the licence as per Rule 4. From the above, it is clear that under the Rules of 1984, the mining of a prescribed substance by any person is permissible under a licence. The restriction under Sections 3 and 14 of the AE Act is not applicable to the mining operation by a person being licencee even for the prescribed substance. The general restriction

under Section 3 is with respect to **produce, develop, use and dispose of atomic energy and carry out research into any matters connected therewith**, while under Section 14, the grant of licence is restricted only to the extent of **any plant designed or adopted or manufactured for the production, development and use of atomic energy or for research into matters connected therewith**. Therefore, the legislative intent is very much clear that production and use of atomic energy should not be done by any individual but it ought to be done by the Central Government and in furtherance to the said legislative intent, the amendment in the AE Act has been brought in the year 1987.

37. Thus, under Sections 3 and 14 of the AE Act, the mine and mineral operation of a prescribed substance by a licencee, who may be any person as specified in the Rules, is not restricted, but the production and use of atomic energy by a private individual is restricted. The petitioner at present has only applied for an exploration licence and in terms of provisions of the OAMDR Act, it has nothing to do for the production, development, use or disposal of atomic energy or to carry out research into any matters connected therewith. Therefore, the various provisions discussed above would not even come into play at present when all that the parties are undertaking exploration at their own cost to prove the

existence of mineable quantities of the mineral, that too, without knowing which mineral or substance may be possibly found at the stage of exploration licence.

38. The impugned notification dated 27.07.2019 has been issued in exercise of the power under Sections 3 and 14 of the AE Act, by which the Central Government prohibited grant of operating right in respect of atomic minerals in any offshore area in the country, including 62 blocks, to any person. As discussed herein, it is clear that if grant is made regarding mine and mineral from which a prescribed substance can be obtained in operation under a licence granted under the Rules of 1984, the general prohibition with respect to minerals containing prescribed substance do not debar operation of mine. Therefore, reference to Sections 3 and 14 of the AE Act prohibiting the mining operation in general as per impugned notification is misplaced and it cannot be resorted to prohibit the grant of operating rights under the provisions of the OAMDR Act. Therefore, the exercise of the power under the provisions of the AE Act is contrary to the legislative intent, object and also against the scope of the provisions of the AE Act.

39. Moreover, on a consideration of the provisions of the AE Act, it is evident that all minerals which are identified as atomic minerals under the provisions of MMDR Act are not protected under the said Act. Rather the Act seeks to govern only those atomic minerals

which are notified as "prescribed substance" as defined under Section 2(g) of the Act. The objective of the Act is to control mineral from which "atomic energy" can be harnessed. The petitioner is seeking to explore the availability of other minerals like ilmenite, sillimanite, zircon, rutile which admittedly are no longer prescribed substances. Respondent No.3, in fact, issued a notification dated 20.01.2006 by which the said minerals were specifically removed from the list of prescribed substances w.e.f 01.01.2007. Admittedly, the said notification or the Beach Sand Mineral Policy of 1998 issued by respondent No.3, with intent to promote private participation in mining of the aforesaid atomic minerals, are not withdrawn till date and govern the field. Pursuant thereto, number of mining leases for such minerals namely, ilmenite, sillimanite, rutile and zircon were granted to private parties onshore which are still in operation. It is also relevant that these atomic minerals are also being exported from the country by the private parties as is evident from the Notification dated 21.08.2018 issued by the Director General of Foreign Trade (DGFT) and recent circular dated 01.08.2020 of Indian Rare Earth Limited (IREL).

40. The power under Section 14 of the AE Act is not absolute and subject to the rules in exercise of the power under Section 30 of the Act to carry out the purposes in Section 14 of the Act, which

are the Rules of 1984. Under the said Rules, any person handling prescribed substances has to apply for a licence and such an application would necessarily have to be considered on a case to case basis. The respondents have not framed any rules to the extent as is being sought to be provided by the executive instruction and in fact, the said notification is in the teeth of the Rules which already exist under the AE Act, which otherwise do not restrict its applicability only to the extent of the Government or Government Companies or Corporation. Thus, the impugned notification would amount to supplanting the provisions in both the Act and the Rules by executive instructions contrary to the provisions of statute, which itself is not permissible. In other words, the grant of licence of mine and mineral to the prescribed substance permitted by the provisions of the AE Act and the Rules of 1984 cannot be allowed to be fettered by executive instructions issued vide impugned notification dated 27.07.2019.

41. In addition, as per sub-section (4) of Section 30 of the AE Act, any of the statutory provision brought by way of amendment would apply prospectively and not retrospectively. Therefore, the applicability of the impugned notification dated 27.07.2019 to the grants already made, that too, with retrospective effect without there being any such power under the Act and the Rules, is

arbitrary. Thus, the notification dated 27.07.2019 is contrary to the statute and against all cannons of law.

42. Reverting to the reference of Section 6 of the OAMDR Act and Rule 18(1)(iv)(b) of the OAMC Rules in the impugned notification dated 27.07.2019, the said provisions are required to be considered. On perusal of the intent and object of the OAMDR Act, it clearly stipulates to provide for development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India and to provide for matters connected therewith or incidental thereto. As per Section 3, the Act applies to all minerals in the offshore areas including any mineral prescribed by notification under clause (g) of sub-section (1) of Section 2 of the AE Act. Therefore, the applicability of the OAMDR Act to the provisions of the AE Act is confined to the extent of clause (g) of sub-section (1) of Section 2 of the AE Act. Under clause (b) of Section 4 of the OAMDR Act, the atomic minerals would include the minerals specified in Part B of the First Schedule to the MMDR Act. Clause (l) of Section 4 clarifies that the minerals include all minerals except mineral oil and hydrocarbon resources relating thereto.

43. In view of the foregoing, it is clear that the mineral prescribed by notification, as per clause (g) of sub-section (1) of Section 2 of the AE Act and the mineral specified in Part B of the

First Schedule to the MMDR Act included in the atomic minerals, have relevance for the purpose of OAMDR Act and not otherwise. It is necessary to clarify that the operating right would include the right of a holder of a reconnaissance permit or an exploration licence or a production lease. In the said context, the limited role of respondent No.3- DAE has been specified, while dealing with the grant of operating right, which can be made to an Indian national or a company as defined in Section 3 of the Companies Act, 1956, subject to such conditions as may be prescribed. While giving power of operating right, by proviso to Section 6, a rigour has been put to the effect that the grant of production lease for atomic minerals or prescribed substances may not be made without *consultation* with the Department of the Government of India dealing with the Atomic Energy. Therefore, for the purpose of reconnaissance or exploration, the operating right can be granted even without consultation with DAE, to any person, in terms of Sections 11 and 12 of the OAMDR Act respectively. The said exercise of grant of production lease shall be done by the administering authority as per Section 13 of OAMDR Act. Thus, by Section 3 of the OAMDR Act, the legislative intent is clear that if any of the mineral as specified in clause (g) of sub-section (1) of Section 2 of the AE Act, is found during exploration, for its production lease the role of DAE comes into, otherwise, they have no role to play. Thus, legislation added proviso to Section 6 of the

OAMDR Act regarding consultation with the DAE at the time of grant of production lease. As per Section 8 of the OAMDR Act, it is clear that by way of notification in the official gazette, any offshore area may be reserved by the Central Government not already held under any operating right, for the purpose of operation by it, specifying its boundaries, but the said areas may be de-reserved by way of notification of the Government. The necessary implication of the said provision is that the Act applies to all minerals in offshore area but certain areas may be reserved by the Central Government for operation by them under Section 8 of the OAMDR Act. Therefore, under the OAMDR Act, the operating right even for atomic mineral or the prescribed substance specified under clause (g) in sub-section (1) of Section (2) of the AE Act, in any offshore area can be given to any private individual or private company and as per Sections 12 and 13 of the OAMDR Act, the grant of operating right is not restricted to the Government, Corporation owned and controlled by it and its instrumentalities.

44. Section 35 of the OAMDR Act also confers the rule making power to the Central Government. Sub-section (3) of Section 35 specifies the procedure as to how the rule so framed may be placed before each House of Parliament and in case both the Houses agree, subject to modifications, if any, the rules may be notified, but those rules shall be without prejudice to the validity of

anything previously done under the rules. Therefore, when an act was done under the provisions of the OAMDR Act and the rules framed thereunder by granting the exploration licence by order dated 05.04.2011, cancelling the said grant already made in the year 2011, by way of notification dated 27.07.2019, amounts to applying the said notification retrospectively by impacting and affecting vested rights, which is not permissible.

45. The impugned notification dated 27.07.2019 further refers to Rule 18(1)(iv)(b) of the OAMC Rules. The said Rule, along with clause (iv)(a) is relevant, therefore, reproduced as thus:

> ***"18. Conditions of an exploration licence.-*** *(1) Every exploration licence granted under these rules, shall, in addition to any other conditions that may be specified therein, be subject to the following-conditions, namely:-*
>
> *(i)* .....
>
> *(ii)* .....
>
> *(iii)* .....
>
> *(iv) (a) the licensee shall report to the administering authority the discovery of any mineral not specified in the licence within a period of sixty days from the date of such discovery. Consequent upon such reporting, the newly discovered mineral shall be deemed to have been included in the exploration licence except the mineral oils namely oil, gas, gas hydrate, oil sands or any other hydrocarbon compound,*
>
> *(b) the licensee shall, if encountered during exploration operations, report indications of any form of mineral oil, namely, oil, gas, gas*

hydrate, oil sands or any other hydrocarbon compound, to the administering authority within a period of sixty days from the date of such encounter, who in turn shall pass on the information to the Secretary to the Government of India in the Ministry of Petroleum and Natural Gas:

Provided that no atomic mineral shall be included in the exploration licence without approval of the Department of Atomic Energy."

46. A perusal of the above Rule makes it clear that in addition to the conditions specified in the exploration licence granted, the condition prescribed in this Rule would be applicable. While exploring the mineral under a licence, if any mineral not specified therein is discovered newly, it is required to be reported to the administering authority within a period of sixty days and on such reporting, the said mineral shall be deemed to have been included in the exploration licence except the mineral oils namely oil, gas, gas hydrate, oil sands or any other hydrocarbon compound. The proviso to this Rule would restrict that on discovery of the new mineral under a licence and intimation to the administering authority, without approval of the DAE, the atomic mineral shall not be included for exploration. Meaning thereby, the aforesaid Rule applies in a case where exploration licence has been granted and during exploration, any new mineral has been discovered. Thus, it

does not restrict grant of exploration licence to a licencee as specified under the provisions of the OAMDR Act.

47. In the context of the discussion of the statutory provision of Section 6 of the OAMDR Act and Rule 18(1)(iv)(b) of the OAMC Rules, the judgment dated 06.02.2019 passed in W.P.No.7537 of 2018 inter-party by the Delhi High Court is relevant. The case before the Delhi High Court was that after grant of exploration licence on 05.04.2011 to the petitioner, the exploration licence deed was not executed in view of CRZ notification dated 06.01.2011 and an order of cancellation of the licence was passed on 30.06.2016. However, the cancellation was assailed seeking further direction of execution of exploration licence deed. The Delhi High Court, in the said judgment dated 06.02.2019, in paras 88 and 89, observed as thus:

> *"88... The OAMDR Act, 2002 governs the grant of mining concessions over the Offshore Areas (Preamble and Section 4(n) which admittedly includes CRZ IV i.e. territorial waters of the country (12 nautical miles). The said Act governs grant of mines including "atomic minerals" (Section 3 read with Section 4(1) and (b)). There is no restriction on the grant of exploration of licence for any minerals under the OAMDR Act, 2002, neither is there such a restriction under the CRZ notification. The limited restriction is at the stage of production lease which stage has not been reached yet. In terms of the proviso to Section 6 of the OAMDR Act, consultation is required with Department of Atomic Energy*

before granting a 'production lease'. In the present case the issue pertains to "exploration license" which is governed by Section 12 whereas production lease is governed by Section 13 of the Act and there is no requirement of consultation with DAE for grant of exploration license. The reliance by the respondents on proviso to Rule 18(I)(iv)(a) of OAMC, 2006 is also misplaced as the proviso has been inserted only as an exception to rights provided under sub clause (a) of clause (I)(iv) of Rule 18 viz., that if any additional minerals which had not been applied in the first place are discovered during exploration, in that event except atomic minerals, such newly discovered minerals by legal fiction would be part of the license. For atomic minerals which were not part of the exploration license, prior approval of Department of Atomic Energy would be required. ***In the present case application was specifically made for named atomic minerals and, therefore, the aforesaid Rule would not be applicable to the present case."***

(emphasis supplied)

89. It is further pertinent to mention that notification dated 7.6.2010 was for all minerals including atomic minerals. The Offshore Areas Mineral Development & Regulation Act, 2002 under Section 3(1) clearly states that the said Act shall apply to all minerals in the offshore areas including any mineral prescribed by notification under clause (g) of Sub Section (1) of Section 2 of the Atomic Energy Act, 1962 (33 of 1962) except mineral oils and hydrocarbons related thereto. The First Schedule of the OAMDAR Act, 2002 specifies the royalties for various minerals to be found in offshore areas and includes minerals such as ilmenite, rutile, zircon, sillimanite and leucoxene which also form part of the list of atomic minerals in part B of the First Schedule of MMDR Act, 1957. Therefore, it is evident that the OAMDR Act, 2002

always envisaged mining and exploitation of rare minerals/atomic minerals such as ilmenite, rutile, zircon, sillimanite and leucoxene by private companies and to this effect, specific provisions have been laid down in the OAMDR Act, 2002 and OAMC Rules, 2006 wherein it is contemplated that in case atomic minerals are found in the offshore areas, what actions have to be undertaken by the authorities as well as the permitee/licensee/lessee. This shows that exploration of atomic minerals was always contemplated in the offshore mining Act / Rules....."

48. The said order of the learned single Judge was assailed before the Division Bench in L.P.A.No.185 of 2019 & batch, which was decided vide judgment dated 25.04.2019, and in para 63 of the said judgment, the Division Bench of the Delhi High Court, has recorded the findings as under:

"63.....The learned writ court has correctly held in the impugned order that the limited restriction is only at the stage of production lease which stage has not been reached and under this provision i.e. Section 6, only consultation is required with the Department of Atomic Energy before granting the production lease. In the present case, the issue pertains to exploration licence which is granted under Section 12 whereas a production lease is granted under Section 13 which stage has not arrived in the present case; and therefore the finding of the learned writ court in this regard is absolutely correct and reliance on Rule 18(1) is misplaced as this rule pertains to inclusion of those atomic minerals which are not part of the original exploration licence and therefore prior approval of the Department of Atomic Energy would be required to include such mineral in the licence deed.....

....In fact, challenge is made by contending that grant of exploration licence for atomic minerals to private companies is not permissible in offshore areas..... It is evident from Section 3 of the Act which governs grant of all minerals including atomic minerals; and therefore it is clear that there are no restrictions for grant of exploration licence even for such minerals under the OAMDR Act.....The contention of the learned Solicitor General that the notification dated 07.06.2010 was never meant for atomic minerals cannot be accepted for the following reasons:

(a) The Offshore Areas Mining (Development and Regulation) Act, 2002 under Section 3(1) clearly states that the said Act shall apply to all minerals in the offshore area including any mineral prescribed in the notification issued under Clause (g) to sub-section (1) of Section 2 of the Atomic Energy Act, 1962 except mineral oils and hydrocarbons.

(b) .....

(c) It is evident that the OAMDR Act always envisaged mining and exploration of rare minerals/atomic minerals such as ilmenite, rutile, zircon, etc. by private companies and to this effect specific provisions have been laid down in the Act and Rules framed wherein it is contemplated that when atomic minerals are found in the offshore area, what procedure has to be followed; particularly, seeking opinion of the Department of Atomic Energy and submitting six monthly report to the Secretary of the Department of Atomic Energy in terms of exploration lease deed 'Form K'. This clearly shows that exploration of atomic minerals was always directed for in the OAMDR Act."

49. As is evident, the High Court of Delhi also arrived at the same conclusion with respect to Section 6 of OAMDR Act and Rule

18(1)(iv)(b) of OAMC Rules and on the aspect of grant of operating rights to private parties for atomic minerals and the said decisions being *inter parties*, are binding on the Union of India, which was the unsuccessful party to the said proceedings.

50. The aforesaid judgment of the Division Bench of the Delhi High Court was put to test before Hon'ble the Supreme Court by filing S.L.P.No.11759 of 2019. In the said SLP, the Court, vide interim order dated 23.05.2019, directed the Secretary, DAE, to file an affidavit about the Central Government policy and decision, whether they want to go by the bids invited or they want to interdict all those private players and, if yes, they should explain as to how they propose to do so, particularly, in view of the provisions in the statute. Relevant portion of the order dated 23.05.2019 of Hon'ble the Supreme Court is reproduced as thus:

> *"By the next date, the affidavit by Secretary who is the highest in rank in the Department of Atomic Energy, should be filed before this Court about the Central Government policy and decision, whether they want to go by the bids invited or they want to interdict all those private players and if yes, they should explain as to how they propose to do so particularly in view of the provisions in the Legislation".*

51. Pursuant to the said order, Mr. K.N.Vyas, Secretary of the DAE, has filed his affidavit and in paras 44 and 50 thereof, he has deposed that the OAMDR Act is required to undergo necessary

amendments so as to make it consistent with the objective and intent of the Central Government policy as adopted in the MMDR Act granting exclusive operating rights for atomic minerals to Government agencies. Relevant extracts of the said paras are reproduced as thus:

> *"44.....In this scenario, OAMDR Act 2002 shall also undergo necessary amendment so as to make it consistent with the objective and intent of the Central Government policy as adopted in the MMDR Act granting exclusive operating rights for atomic minerals to Government Agencies....."*
>
> *50. To conclude I respectfully state as under:-*
>
> *i) That there cannot be two separate yardsticks for regulating the Atomic Minerals found in onshore and offshore areas of the Country. In other words, treatment of Atomic Minerals under OAMDR Act 2002 cannot be different from treatment under MMDR Act 1957. In view of this, there is a need for amending the OAMDR Act 2002 and the rules framed there under thereby reserving the operating rights of Atomic Minerals occurring in offshore areas to Government agencies in the interest of mineral development and conservation consistent with the present policy of the government with respect to onshore mining."*

52. In view of the affidavit of the Secretary of the Department of Atomic Energy, the Department of Atomic Energy was clear in its understanding that without amendment of the OAMDR Act and the Rules framed thereunder, restriction in the matter of grant of operating rights to private parties is not possible. After filing such affidavit before Hon'ble the Supreme Court, on the next date of

hearing, i.e., on 29.07.2019, the impugned policy decision dated 27.07.2019 was produced by which the grant of operating rights to the private parties was prohibited with retrospective effect *inter alia* stating that such right for offshore mining can be granted under the OAMDR Act only to the Government or Government company or a Corporation owned and controlled by the Government. The Hon'ble Supreme Court disposed of the said petition on the same day, i.e., on 29.07.2019, and the order passed is reproduced as thus:

> *"The affidavits given in Court are permitted to be filed during the course of the day.*
>
> *Mr. Tushar Mehta, learned Solicitor General of India, has placed before us a policy decision taken by the Government of India. We have gone through it.*
>
> *As per policy decision including the respondent 16 licences are to be cancelled. Be that as it may, we decline to comment on the merits of the aforesaid policy decision as that is not in issue before us.*
>
> *It is open to the Government of India to take action in accordance with law, as already mentioned in the note that has been produced before us.*
>
> *We are not inclined to interfere with the impugned orders passed by the High Court. The policy decision would be prospective in nature and it would be open to the Government of India to take action in accordance with law as per the policy decision including the respondent. However, we make it clear that similar action has to be taken against all the players in field, 16 in number, and not against one individual. The directions of the High Court shall not come in the way in implementing the policy decision/action. However, the action*

taken shall be open to judicial review on its own strength and merits that has to be tested on the anvil of the law and the provisions of the Act in appropriate proceedings, if it is questioned.

We also make it clear that CBI inquiry has to be in accordance with law and would be subject to decision of High Court and it cannot be confined against individual company.

The special leave petitions are, accordingly, disposed of. Pending application(s), if any, shall stand disposed of."

53. By the said order of Hon'ble the Supreme Court, it is clear that 16 exploration licences may be cancelled as per the said policy decision dated 27.07.2019, but the Court declined to comment on the merits of the said policy as it was not in issue before. Thus, challenge of the policy decision was left open. Simultaneously, Hon'ble the Supreme Court was not inclined to interfere with the orders passed by the Delhi High Court, and confirmed the findings recorded interpreting the unclinching provisions of the OAMDR Act and the Rules. The Court observed, the Government is free to take a decision as per the policy decision, equally applying to all players in the field and implementing the same *prospectively*. If any action is taken, it was left open for judicial review on its own strength and merits as per the provisions of the Act in appropriate proceedings. Thus, in the context of the interim order dated 23.05.2019 passed in SLP.No.11759 of 2019 and looking to the affidavit filed by the Secretary of the DAE, the amendment in OAMDR Act is required in

the matter of refusing to grant the operating right to any private party, because the OAMDR Act does not prohibit such grant to any person or it can be granted only to the Central Government. Therefore, the DAE was aware that under the OAMDR Act, restriction to give operating right of a mine to private individual is not specified.

54. At this stage, it is relevant that during arguments in their appeal before the Division Bench of the High Court of Delhi, similar arguments had been made by the respondents and in para 56 of its judgment dated 25.04.2019, the Division Bench concluded as under:-

> *"56.....That apart, one more ground taken before us in the appeals is that it is policy decision not to go ahead with the grant of exploration licence and to annul the notification dated 07.06.2010. However, no policy decision in this regard has been brought on record. How, when, where and in what manner such a policy decision was taken is not indicated and* ***it is surprising that when the OAMDR Act clearly provides for grant of exploration licence, till the Act is amended pursuant to any such policy decision, any action in this regard would be contrary to law****."*
>
> ***(emphasis supplied)***

55. In view of the said discussion and looking to the findings so recorded by the High Court of Delhi, as confirmed by Hon'ble the Supreme Court, in the context of the provisions of the OAMDR Act, it can be gathered that the grant of operating right to private party

is permissible and the said grant only in favour of a Government or Corporation owned and controlled by it or its instrumentalities can be possible only by way of an amendment in the OAMDR Act. Thus, as per the intention and object and the provisions of the OAMDR Act, there was no scope to the respondents to deny the execution of exploration licence deed. Hence, the Government, giving go-by to the provisions of the OAMDR Act, which applies to the offshore mining, proceeded to disguise the action under the AE Act, with the aid of Sections 3 and 14 of the AE Act, which are having no application, as already discussed. As such, exercise of the power to issue the notification dated 27.07.2019 in reference to the provisions of the OAMDR Act is contrary to the Act and Rules, and is arbitrary and illegal.

56. It is settled law that legislature has the right to legislate the law with retrospective date. In so far as subordinate legislation is concerned, unless the legislature specifically confers power on the delegatee to legislate with retrospective effect, all subordinate legislation will apply only prospectively without impacting or affecting vested or accrued rights. The policy in question is merely an executive act, and does not even satisfy the requirement of subordinate legislation and as such the policy can neither be retrospective or retroactive. Even if it is presumed to be a subordinate legislation, it will be hit by well settled principles of law

as held in catena of decisions including but not limited to ***Hukam Chand v. Union of India (supra)***, wherein the Hon'ble Apex Court held as under :-

> ***"8.*** *Perusal of Section 40 shows that although the power of making rules to carry out the purposes of the Act has been conferred upon the Central Government,* ***there is no provision in the section which may either expressly or by necessary implication show that the Central Government has been vested with power to make rules with retrospective effect****. As it is Section 40 of the Act which empowers the Central Government to make rules, the rules would have to conform to that section. The extent and amplitude of the rule-making power would depend upon and be governed by the language of the section. If a particular rule were not to fall within the ambit and purview of the section, the Central Government in such an event would have no power to make that rule. Likewise, if there was nothing in the language of Section 40 to empower the Central Government either expressly or by necessary implication, to make a rule retroactively, the Central Government would be acting in excess of its power if it gave retrospective effect to any rule.* ***The underlying principle is that unlike Sovereign Legislature which has power to enact laws with retrospective operation, authority vested with the power of making subordinate legislation has to act within the limits of its power and cannot transgress the same.*** *The initial difference between subordinate legislation and the statute laws lies in the fact that a subordinate law-making body is bound by the terms of its delegated or derived authority and that Court of law, as a general rule, will not give effect to the rules, thus made, unless satisfied that all the conditions precedent to*

the validity of the rules have been fulfilled (see Crales on Statute Law, p. 297, Sixth Edition.)."

(emphasis supplied)

57. In ***Mahabir Vegetable Oils (P) Ltd. v. State of Haryana***[21], the Hon'ble Supreme Court held as under:

> ***"42.*** *It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne [(1911) 2 Ch 1 : 104 LT 759 (CA)] .)"*

> ***"44.*** *By reason of Note 2, certain rights were conferred. Although there lies a distinction between vested rights and accrued rights as by reason of a delegated legislation, a right cannot be taken away. The amendments carried out in 1996 as also the subsequent amendments made prior to 2001, could not, thus, have taken away the rights of the appellant with retrospective effect."*

58. In ***State of Jharkhand v. Shiv Karampal Sahu***[22], at para 17, the Hon'ble Supreme Court held that "*...ordinarily, a subordinate legislation should not be construed to be retrospective in operation...*".

---

[21] (2006) 3 SCC 620

[22] (2009) 11 SCC 453

59. As per the provisions of Section 35 of the OAMDR Act and Section 30 of the AE Act, it is clear that the Rules, if any made, would have prospective application and such Rules shall be brought by a procedure so prescribed therein. In the present case, the OAMDR Act has not been amended, but by way of the impugned notification, prohibition of offshore mining was directed, that too retrospectively. Looking to the legislative intent, applicability of the notification without having sanction of the statute, making it applicable retrospectively, is in excess of the power conferred to the Department and contrary to the affidavit of the Secretary of the Department filed in the Hon'ble Supreme Court. Such act can only be termed as arbitrary and with lack of bona fides. The aforesaid judgment in the case of ***State of Jharkhand*** *(supra)* would apply squarely to the facts of the present case. Thus, the issuance of the impugned notification without sanction of the statute is manifestly arbitrary and in excess of power.

60. In the impugned notification, after referring to Section 6 of the OAMDR Act and Rule 18(1)(iv)(b) of the OAMC Rules, it is further stated that the Beach Sand Mineral deposits in offshore is required to be brought at par with onshore areas in their treatment in order to safeguard the strategic interest of the nation. In this regard, it is to be noted that the MMDR Act applies to onshore areas while the OAMDR Act applies to offshore areas. The policy

decision, if any, is required to be brought by the Government, it must be in consonance with the intent, object of the statutory provisions of the individual Act, having its application either to offshore or onshore. Without amendment, bringing a policy contrary to the statute, in the guise of safeguarding the strategic interest of the nation, is impermissible. In the counter-affidavit filed by the respondents, the said strategic interest of the nation has been clubbed with the safety and security of the country without any support of law. In this context, in the inter-parties judgment of the Delhi High Court, in para 92, it is clarified that after de-listing the atomic minerals such as ilmenite, rutile, zircon and leucoxene from the list of prescribed substances vide notification dated 20.01.2006, more than 50 mining leases were granted onshore under the MMDR Act for mining of the above said atomic minerals, which are being mined by those private persons. It is not the case of the respondents that all those mining leases have been cancelled. Therefore, taking a plea to bring offshore mining at par to onshore mining is an arbitrary exercise. In the said context, it is necessary to explain that prior to bringing the OAMDR Act, under the MMDR Act, Beach Sand Mineral Policy dated 16.10.1998 was floated inviting the participation by private sectors and mining leases were granted to them for onshore areas as referred in the judgment of the Delhi High Court. The Beach Sand minerals including ilmenite, rutile, zircon and leucoxene are having wide

industrial applications and uses like paints, papers, plastics, textiles, ceramics, medical and electronics appliances etc. These minerals are also being exported freely by the private parties, which is apparent from the notification dated 01.08.2020 issued by the Indian Rare Earth Limited (IREL). IREL is an agency of the Central Government to canalise the export of the onshore minerals. On the teeth of the said fact, reference made in the notification regarding strategic interest of the nation or security of the nation is only to give the flavour of the security of national interest, contrary to the intent and object of the OAMDR Act and clearly shows an arbitrary approach of the respondents. These facts also show that the reasons are being manufactured to somehow justify the action of cancellation of operating rights to the allottees. This is not the first time that the respondents have indulged in such an act. The High Court of Delhi had also come to similar conclusion on consideration of the facts and law that the reasons were being manufactured by the respondents to try and justify their illegal action.

61. Further, the policy in question framed by Respondent No.3 is at absolute variance with the National Mineral Policy 2019 which is approved by the Cabinet and which specifically provides for private participation in exploration activities including in beach sand minerals. Relevant portions of the said policy are as under:-

> *"4. **PROSPECTING AND EXPLORATION***
>
> *4.1 .....*

4.2 While the Government agencies will continue to perform the tasks assigned to them for survey and exploration, ***the private sector would be encouraged to take up exploration activities. Government agencies will expend public funds particularly in areas where private sector investments are not forthcoming due to reasons such as high uncertainties****. States may be mandated to create dedicated funding for boosting exploration activities without additional burden on miners.*

4.3 Particular attention will be given to the prospecting and exploration of minerals in which the country has a poor resource-cum-reserve base despite having the geological potential for large resources. Special attention will be given towards exploration of energy critical minerals, fertilizer minerals, precious metals and stones, strategic minerals and other deep seated minerals which are otherwise difficult to access and for which the country is mainly dependent on imports.

4.4 ***Exploration shall be incentivised to attract private investments as well as state-of-the-art technology****, within the ambit of auction regime, through Right of First Refusal at the time of auction or seamless transition from Reconnaissance permit to Prospecting Licence to Mining Leases or auctioning of composite Reconnaissance permit cum Prospecting License cum Mining Lease in virgin areas on revenue sharing basis or any other appropriate incentive as per international practice.*

6.2 Conservation and Mineral Development

Conservation of minerals shall be construed not in the restrictive sense of abstinence from consumption or

preservation for use in the distant future but as a positive concept leading to augmentation of reserve/resource base. There shall be an adequate and effective legal and institutional framework promoting zero-waste mining as the ultimate goal and a commitment to prevent sub-optimal and unscientific mining. The concept of collaborative mining amongst mining concessionaires located in large mining belt shall be encouraged to ensure optimum extraction of mineral. Value addition and general customisation of product will be encouraged by providing fiscal and/ or non-fiscal incentives.

6.9 Beach Sand Minerals

Efforts will be made to encourage extraction of the replenishable deposits of beach sand minerals for improved economic growth *by ensuring coordination between the different agencies viz., State Governments, Ministry of Environment, Forests & Climate Change, Indian Bureau of Mines, Department of Atomic Energy, Atomic Minerals Directorate for Exploration and Research, and Department of Customs and Excise etc. so that regulation of mining of beach sand minerals is in conformity with the mining and other related laws, while also conforming to national security requirements and established international protocols."*

(***emphasis supplied***)

62. In ***State of Kerala v. Kerala Rare Earth & Minerals Ltd***[23], the Hon'ble Supreme Court was considering a similar situation wherein the State of Kerala, after approving the grant of

[23] (2016) 6 SCC 323

mining leases for atomic minerals to private parties, subsequently sought to deviate from its decision on the ground that in terms of the Industrial Policy of the State, mining should be undertaken by the State Corporations/companies. The said action of the State was quashed by the High Court of Kerala and the decision of the High Court was affirmed by Hon'ble the Supreme Court, observing that the policy of the State in ousting the private parties was in the teeth of the National Mineral Policy, 2008. The Hon'ble Court in this regard observed as under:-

> ***"10.*** *.....The State Government as noticed in the earlier part of the judgment has, while declining applications for grant of lease, relied upon its own policy according to which the mineral deposits in question are reserved for exploitation by a State agency only. Two precise questions, therefore, fall for consideration in the light of the stance taken by the State Government viz.:*
>
> *(i) .....*
>
> *(ii) If it is, whether the Government has the right to decline leases on the ground that the minerals or the areas where the same are found have been reserved for exploitation by government companies or corporations?"*
>
> ***12.*** *The Mineral Policy, 2008 of the Government of India, inter alia, provides as under:*
>
> > *"4. Role of the State in mineral development*
> >
> > *The role to be played by the Central and State Governments in regard to mineral development has been extensively dealt in the Mines and Minerals (Development and Regulation) Act, 1957 and Rules made under the Act by the Central Government and the State Governments in their respective domains. The provisions of the Act and the Rules will be reviewed and harmonised with the basic features of the new National Mineral Policy. In future the core*

functions of the State in mining will be facilitation and regulation of exploration and mining activities of investors and entrepreneurs, provision of infrastructure and tax collection. In mining activities, there shall be arm's length distance between State agencies (public sector undertakings) that mine and those that regulate. There shall be transparency and fair play in the reservation of ore bodies to State agencies on such areas where private players are not holding or have not applied for exploration or mining, unless security considerations or specific public interests are involved.

***

5.2 While these government agencies will continue to perform the tasks assigned to them for exploration and survey, the private sector would in future be the main source of investment in reconnaissance and exploration and government agencies will expend public funds primarily in areas where private sector investments are not forthcoming despite the desirability of programmes due to reasons such as high uncertainties."

13. *It would thus appear that for the minerals in question there was no reservation made in favour of any State-owned corporation or agency. That is perhaps the reason why the Government of India had granted approval to the State Government's recommendations on some of the applications filed by the respondents.* ***The State Government Policy, however, runs contrary to the National Mineral Policy, 2008 formulated by the Government of India, Ministry of Mines, insofar as it does not permit a mining lease in favour of any entity other than a State-owned corporation or agency.*** *The State Industrial Policy, 2007, relied upon by the State Government in this regard to the extent it is relevant for our purposes, is as under:*

"12.0. Mining and Geology

12.1. Intensive efforts will be made to explore and utilise mineral resources of the State without adversely affecting the ecology and environment.

Mineral exploration activities for iron ores, high grade china clay, bauxite and other minerals will be streamlined and strengthened.

12.2. Mining of mineral sand will be done through State/Central public sector undertakings only. However mining of minerals will not be permitted in those areas where the Government appointed Expert Committee recommended against mining. The Government will encourage manufacture of value added products.

12.3. The Government will conduct a scientific study on mineral deposits in the State.

12.2.1. Titanium

Considering the rich mineral deposits in the State, a comprehensive scheme to produce titanium metal, titanium composites by using state-of-the-art technology shall be evolved with the help of the Central Government agencies and international organisations. If the potential of this natural resource is used properly and scientifically, it will immensely pave way for rapid industrialisation of the State as titanium is a unique material for strategic applications. The approach is not to limit the activities to manufacturing alone but to harness its vast potential by setting up a chain of titanium-based industries through forward integration. However, utmost care shall be taken to contain the adverse impact on environment by mining, processing and related activities by adopting strict monitoring and control measures. To develop a package for making use of the immense potential of titanium, support shall be availed from national and international organisations."

15. *There is no gainsaying that the State Government can 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, but, in*

terms of sub-section (2) of Section 17-A (supra) where the Government proposes to do so, it shall by notification in the Official Gazette specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved. Three distinct requirements emerge from Section 17-A(2) for a valid reservation viz.:

(i) the reservation can only be with the approval of the Central Government and must confine to areas not already held under any prospecting licence or mining lease;

(ii) the reservation must be made by a notification in the Official Gazette; and

(iii) the notification must specify the boundaries of such areas and the mineral or minerals in respect of which such areas will be reserved."

***17.** It is well settled that if the law requires a particular thing to be done in a particular manner, then, in order to be valid the act must be done in the prescribed manner alone. (See CIT v. Anjum M.H. Ghaswala [(2002) 1 SCC 633], Captain Sube Singh v. Lt. Governor of Delhi [(2004) 6 SCC 440], State of U.P. v. Singhara Singh [AIR 1964 SC 358:(1964) 1 Cri LJ 263 (2)] and Mohinder Singh Gill v. Chief Election Commr. [(1978) 1 SCC 405]). Absence of the Central Government's approval to reservation and a notification as required by Section 17-A, therefore, renders the State Government's claim of reservation untenable till such time a valid reservation is made in accordance with law. **It is trite that the State Government's general executive power cannot be invoked to make a reservation dehors Section 17-A**."*

(emphasis supplied)

63. The aforesaid judgment in ***State of Kerala v. Kerala Rare Earth & Minerals Ltd*** *(supra)* is applicable in the present case as well. The policy of the Government, as projected in furtherance of which notification dated 27.07.2019 by Department of Atomic

Energy was issued, is clearly contrary to the National Mineral Policy. Thus, the issuance of the impugned notification is contrary to the National Mineral Policy 2019 and on this ground also, the same is arbitrary.

64. The issuance of the notification is further impermissible in law as it not only amounts to DAE sitting in appeal over the judgments of the High Court of Delhi and Hon'ble the Supreme Court but also exercising power which it does not have. Therefore, it is evident that the notification dated 27.07.2019 is nothing but a colourable exercise of power. In this regard, the law laid down by the Hon'ble Apex Court in ***State of Punjab v. Gurdial Singh (supra)***, is apposite, wherein the Hon'ble Court held as under:

> ***"9.*** *The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of*

which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.

65. In ***Kalabharti Advertising v. Hemant Vimalnath Narichania***[24], the Hon'ble Supreme Court explained legal malice as under:

"***25.*** *The State is under obligation to act fairly without ill will or malice— in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object.* ***It means exercise of statutory power for "purposes foreign to those for which it is in law***

[24] (2010) 9 SCC 437

intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts."

(emphasis supplied)

66. In the context of the discussions made hereinabove on the facts and law, the argument regarding *res judicata* on all issues as raised by the petitioner, is not germane looking to the separate cause of action and issuing the notification in the context of the provisions of the AE Act, though the findings as recorded in the previous litigation regarding interpretation of Section 6 of the OAMDR Act and other Acts and Rules are well covered by the principles of *res judicata* and being relevant, have been duly considered above. An argument has been advanced by the respondents that the observations made by the learned Single Bench or the Division Bench of the Delhi High Court are nullified in view of the observation made by Hon'ble the Supreme Court in the order dated 29.07.2019 passed in the S.L.P. (C) No.11759 of 2019, that the directions of the Delhi High Court would not come in the way while implementing the policy. In this regard, it is to observe that in the order passed in the S.L.P., it is made clear that the policy decision was not under challenge before Hon'ble the Supreme Court, however, the Court has not touched the merits of the policy. Simultaneously, the Court was not inclined to interfere

in the orders of the Delhi High Court. In view of the same, the meaning of the word 'directions' would denote the direction part by which the Delhi High Court has directed the authorities for execution of the exploration licence deed within two weeks. Therefore, the observation of the Supreme Court was only with respect to execution of the said licence deed in view of the policy. Now, the said policy was not found in consonance with the provisions of the AE Act and not having sanction of law either under the AE Act or the OAMDR Act, as discussed hereinabove. Therefore, in that view of the matter, the argument as advanced is of no avail to the respondents and is hereby repelled.

67. In view of the foregoing discussion, it is to be concluded that the DAE does not have power either under Section 3 or 14 of the AE Act to deny operating rights to private parties for mining of minerals. The said provisions to grant licence in favour of Central Government or any authority or a Corporation established by the Central Government or a Government company is limited to the acquisition, production, possession, use, disposal, export or import of any plant designed or adopted or manufactured for the production, development, and use of atomic energy or for research into matters connected therewith, and not for the mining operations. Simultaneously, the OAMDR Act permits grant of exploration licence to any private person or company and it is only

at the stage of production lease that the consultation with the DAE is required. In terms of Rule 18(1)(iv)(b) of the OAMC Rules, it applies in a situation of discovery of any new mineral not specified in exploration licence for which approval of the DAE is contemplated. Therefore, the issuance of the policy dated 27.07.2019 is contrary to the statute, which cannot be sustained in the eye of law and is liable to be quashed. It is further to observe that as per the discussion made hereinabove, the policy has been made applicable with retrospective effect, which is contrary to the provisions of the statute and therefore, it has been issued arbitrarily and with lack of bona fides and on this ground also, it is liable to be quashed.

68. In view of the discussion made hereinabove, the legislative intent to bring the OAMDR Act and the AE Act and interpretation of the provisions of law are clear. In the said fact, the judgments of **M.P. Oil Extraction v. State of M.P.** (supra) and **Balco Employees Union v. Union of India** (supra) relied upon by the learned Assistant Solicitor General in support of their contention that the Court has no power to interfere in the policy decision, are of no help to the respondents.

Accordingly, Question No.1 is answered.

<u>Question No.2:</u> Whether the order dated 06.11.2019 passed by respondent No.1 is after due application of mind

or merely relying upon the Notification dated 27.07.2019 and such action is in consonance to the provisions of Section 7 of the OAMDR Act, in observance of the principles of natural justice?

69. Regarding the order dated 06.11.2019 passed by respondent No.1, it is to be seen whether the said order was passed observing the principles of natural justice inscribed in Section 7(2) of the OAMDR Act or it is only relying upon the policy decision dated 27.07.2019 challenged in this case. After issuance of the said notification dated 27.07.2019, the petitioner was served with the show-cause notice dated 19.08.2019 by respondent No.1. The said show-cause notice is mainly premised on the said notification and as per the language of paragraphs 10 and 11 of the show-cause notice, it reveals that a decision to cancel the operating rights with regard to 62 offshore blocks had already been taken by respondent No.1. For ready reference, paragraphs 10 and 11 of the show-cause notice are reproduced as thus:

> *"10. Accordingly, in the interest of the conservation and regulation of atomic minerals in the offshore areas, the Central Government in exercise of the powers conferred under Section 7 of the OAMDR Act, in consultation with the administering authority,* ***has decided to terminate*** ***any operating right in respect of the 62 offshore mineral blocks notified vide the notification dated 07.06.2010****.*
>
> *11. In view of* ***above decision of the Central Government****, the notice is hereby served under Section 7*

of the OAMDR Act, as to why the order for grant of Exploration Licence issued by the administering authority vide their No IBM/OAMCR/EL/2010-11/CCOM-BOB-8 Dated 05.04.2011 for Block Nos. 16, 17, 18, 19, 20, 21 in Bay of Bengal sector shall not be terminated."

(emphasis supplied)

70. As can be seen from the contents of the show-cause notice, it is clear that the Government wanted to exercise the power under Section 7 of the OAMDR Act in the interest of the conservation and regulation of atomic minerals in offshore areas. Therefore, after consultation with the administering authority, the decision to terminate the operating rights in respect of 62 offshore mineral blocks was taken. In the said context, the show-cause notice was issued to the petitioner.

71. Looking to the show-cause notice, the power has been exercised under the OAMDR Act. Section 7 of the OAMDR Act deals with a situation where the Central Government is having right to prematurely terminate any operating right in respect of any mineral in any offshore area, after consultation with the administering authority, if it is of the opinion that it is expedient in the interest of development and regulation of offshore mineral resources, preservation of natural environment and prevention of pollution, avoidance of danger to public health or communication, ensuring safety of any offshore structure or conservation of mineral

resources. As per the show-cause notice, the Central Government wanted to exercise the power in the interest of conservation and regulation of atomic minerals. It is made clear here that Section 7 of the OAMDR Act refers to regulation of offshore mineral resources. So far as conservation of mineral resources is concerned, it is to observe here that the OAMDR Act was promulgated in the year 2002 and the OAMC Rules were promulgated in the year 2006 but came into force on 15.01.2010 by the issuance of notification dated 12.02.2010 by the Central Government in the Official Gazette. As per Section 10 of the OAMDR Act, the administering authority is required to notify the offshore areas for which reconnaissance permit, exploration licence or production lease may be granted. Such notification was issued on 07.06.2010. In furtherance to the said notification, the petitioner applied for grant of exploration licence to which the allotment was made on 05.04.2011 in terms of Section 12 of the OAMDR Act. Similarly, the allotments of other offshore areas notified were also made in favour of other persons who were found to be eligible. After such grant, exploration licence deed was not executed in favour of anyone for a long time due to pendency of litigation in Courts on account of challenge to the selection process for grant of exploration licences. Even after the said cases were decided against the private individuals upto Hon'ble the Supreme Court and the selection process attained finality by judicial

pronouncement, the exploration licence deeds were not executed in favour of the allottees and instead, a notification dated 30.06.2016 was issued cancelling the said grant in terms of the CRZ notification dated 06.01.2011. It is not out of place to mention here that the Delhi High Court has concluded that the said CRZ notification did not restrict the grant and issued direction for execution of the exploration licence deed in a time bound manner, yet the deeds for exploration licences were not executed. Instead of executing the exploration licence deed, once again, the exploration licences were cancelled by the order dated 06.11.2019 in terms of the notification dated 27.07.2019 of the DAE.

72. In the above facts, it is clear that after commencement of the OAMDR Act in the year 2010, by way of notification dated 07.06.2010, for the first time, the offshore areas of CRZ-IV were notified for grant of exploration licences, which even after grant, were not executed in favour of the petitioner or anyone except in one case in which under the direction of Delhi High Court, the exploration licence deed was executed. It is to observe here that the OAMDR Act has been brought with intent to explore the mineral resources in offshore areas. Therefore, the offshore blocks were notified for grant of exploration licences, but in view of the above facts, the licence deeds were not executed till date and the matter was kept pending in litigation. Therefore, while cancelling the grant

of the petitioner vide impugned order dated 06.11.2019, using the expression 'conservation of mineral resources' is flimsy and fake. The purpose for which the OAMDR Act was introduced by the Central Government and after notifying the 62 offshore blocks for the first time, when the deeds for exploration licence have not been executed even after grant, the question of conservation of mineral resources does not arise. It is to be noted here that the exploration is a process by which the Government may arrive at a conclusion what are the mineral resources available in the offshore area and when this process itself has not commenced, taking a pretext of conservation of mineral resources is completely misplaced.

73. It is also highly significant to observe that the intent behind 'Conservation of minerals' has been explained under the heading 'Conservation and Mineral Development' in the National Mineral Policy, 2019 pronounced by the Ministry of Mines, respondent No.1, after it was approved by the Cabinet, Government of India. Relevant portion of para 6.2 of the said policy are as under:-

> ***"6.2 Conservation and Mineral Development***
>
> *Conservation of minerals shall be construed not in the restrictive sense of abstinence from consumption or preservation for use in the distant future but as a positive concept leading to augmentation of reserve/resource base. There shall be an adequate and effective legal and institutional framework promoting*

zero-waste mining as the ultimate goal and a commitment to prevent sub-optimal and unscientific mining. The concept of collaborative mining amongst mining concessionaires located in large mining belt shall be encouraged to ensure optimum extraction of mineral. Value addition and general customisation of product will be encouraged by providing fiscal and/or non-fiscal incentives."

74. The intent of the Government with regard to conservation and development of mineral resources is very clear that conservation of minerals shall not be construed in the restrictive sense of abstinence from consumption or preservation for use in the distant future but as a positive concept leading to augmentation of reserve/resource base and to focus on zero-waste mining approach in order to prevent unscientific mining and to encourage mining concession holders to ensure optimum extraction of minerals and their value addition for which the Government is to provide fiscal and/or non-fiscal incentives. Being so, how could respondent No.1, author of the said National Mineral Policy, could pass order dated 06.11.2019 terminating grants for exploration of minerals in the name of conservation of minerals which is completely in the teeth of the said Mineral Policy. On the other hand, if the intent of the Government is to conserve these minerals for Government controlled companies, then it cannot be termed as conservation of minerals and rather it can only be

termed as reservation of minerals in the name of conservation. Therefore, in both the scenarios, use of powers under section 7(1) of the OAMDR Act for conservation of atomic minerals is unjust, unlawful and contrary to the National Mineral Policy which cannot be accepted.

75. It is not out of place to observe here that the OAMDR Act was enacted in the year 2002 and brought into effect in January, 2010 with intent and object of development and regulation of mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. This development and regulation can only be possible when some mineral resources have been explored and their details, such as types of minerals, quality, quantity, geographical location including depth in sea bed at which minerals are located, are brought to the notice of the Government. Prior to its exploration, cancelling the same referring the conservation of mineral resources makes the object of the enactment redundant. As discussed above, the power of Section 7(1) of the OAMDR Act to terminate the operating rights has been made available in specified situations. Out of them the situation as made applicable for cancelling the exploration licences by the impugned order dated 06.11.2019 on the pretext of conservation of mineral resources is apparently against the object and intent of the OAMDR Act and to make the implementation of

the Act nugatory. In the said context, the cause to which the show-cause notice was issued is against the spirit of the OAMDR Act. Therefore, the cancellation of the licence for a cause which does not exist as on date is an arbitrary and colourable exercise of the power. In this regard, relevant reference may be seen from the order dated 06.02.2019 of the Delhi High Court, wherein aspersions have been cast on the conduct of the officials of respondent No.1 while cancelling the grant vide order dated 30.06.2016, which are as under:

> *"73.... The impugned order is also vitiated as the objective to cancel was predetermined as evident from minutes dated 14.07.2015 when IBM was asked to try and cancel the grants so that the exploration licence would be available for re-grant. Such an act of pre-mediation is also violative of the principles of natural justice.*
>
> ****
>
> *75. The issue of overlapping of some blocks is nothing but an afterthought and the reasons have been manufactured to somehow cancel the grants so that the same can be re-allocated/re-granted....*
>
> ****
>
> *78. Thus, the case of the respondents is absolutely false and said issue is without affidavit with an attempt to mislead this Court.*
>
> ****
>
> *81. ...Therefore, the entire basis of the impugned order dated 30.06.2016 viz. that allegedly mining within CRZ is not*

permissible, is erroneous. The said reasoning also suffers for non-application of mind in as much as at present, the stage is only of exploration and no mining operations can be undertaken under an exploration license as stated above...

****

100. ..The respondents in order to the achieve their goal of reallocating the offshore blocks have manufactured the reasons cited in the impugned annulment order dated 30.06.2016 clearly suffers from colourable exercise of power and legal malice..."

76. Sub-section (2) of Section 7 of the OAMDR Act confers a right to the holder of operating right to be afforded an opportunity of hearing. As can be seen from paragraphs 10 and 11 of the show-cause notice referred hereinabove, it is apparent that by the time of issuing the said notice itself, the Central Government, in consultation with the administering authority, had already decided to terminate the operating rights in respect of 62 offshore mineral blocks. Once the decision had already been taken by the Government, after consultation with the administering authority, the issuance of show-cause notice was empty formality. In this context, the ingredients of the principles of natural justice are required to be referred, which include bias and *audi alteram partem*. In case the authority is predetermined and had already decided to terminate the operating rights before the issuance of the show-cause notice, it attracts the principle of bias. If the

authority is biased, furnishing an opportunity of hearing is merely a formality for the sake of compliance.

77. The Hon'ble Supreme Court had an occasion to deal with a similar case in **Oryx Fisheries (P) Ltd. vs. Union of India**[25], wherein the authority in the show-cause notice had expressed its final view and decision, which was found vitiated by the principles of natural justice. The Hon'ble Supreme Court observed as thus:

> ***"27.*** *It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge-sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show-cause notice gets vitiated by unfairness and bias and the subsequent proceedings become an idle ceremony.*
>
> ***28.*** *Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness.* ***Its fairness is obviously to be manifested by the language in which charges***

[25] (2010) 13 SCC 427

are couched and conveyed to the person proceeded against.

(emphasis supplied)

78. Similarly, in the case of ***ONGC Ltd. v. Western Geco International Ltd.***[26], Hon'ble the Supreme Court has dealt with the issue of non-application of mind and held as thus:

> ***"38.*** *Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/**authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other**. **Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply embedded in our jurisprudence that it can be described as a fundamental policy of Indian law**."*
>
> ***(emphasis supplied)***

---

[26] (2014) 9 SCC 263

79. In addition to the aforesaid, the applicability of sub-section (2) of Section 7 of the OAMDR Act may be in a contingency as specified in sub-section (1) thereof. As per the discussion made hereinabove, the show-cause notice was given for conservation of the mineral resources. Once the said contingency itself does not subsist as discussed above, then issuance of the notice under sub-section (2) of Section 7 of the OAMDR Act is effectuated by bias, and affording an opportunity of hearing by issuing the show-cause notice is not in the letter and spirt of the principles of natural justice.

80. Further, on perusal of the show-cause notice and the reply so submitted by the petitioner as referred in the impugned order dated 06.11.2019, it reveals that the petitioner had taken six grounds, which have been narrated in the termination order. None of them has been dealt with while recording the finding against the petitioner terminating the licence. In fact, the reason of termination of the licence is solely based on the policy decision of the DAE dated 27.07.2019 regarding absolute prohibition of the exploration of the atomic minerals by the private parties. The said policy decision is apparently contrary to the object of the OAMDR Act and that too, prior to implementation of the Act by allowing the exploration done by the licence holders, bringing such a policy decision speaks volume about *mala fides* on the part of the

authorities in the facts of the present case in which after successfully litigating twice even upto Hon'ble the Supreme Court, the said policy decision on the non-existing contingencies has been introduced. Therefore, without dealing with the contentions advanced by the petitioner in the reply to the show-cause notice, the order impugned has been passed, referring such policy decision and under the guise of conservation of mineral resources. It is trite law that whenever the grounds have been raised in reply to show-cause notice not only on facts but in law also, it is the duty of the authority to deal with those contentions while arriving at a conclusion to pass a reasoned order, which is conspicuously missing in the present case.

81. As stated hereinabove, the Delhi High Court in para 73 of its judgment dated 06.02.2019, has observed that as per the minutes of the proceedings dated 14.07.2015, it was clear that the Government was predetermined to cancel the licence and it further held in para 75 that reasons were manufactured by the respondent No.1 to somehow cancel the grant so that the same could be re-allocated/re-granted. Therefore, the first order of the cancellation of icence dated 30.06.2016 was quashed and directed the authorities to execute the exploration licence deed within four weeks. Even after the confirmation of the said judgment by the Division Bench and direction for execution of exploration licence

within two weeks, the Central Government visited the Supreme Court where a policy decision dated 27.07.2019 was produced and relying upon the said policy decision and taking benefit of the expression 'conservation of mineral resources', the order dated 06.11.2019 has been issued again cancelling the grant, which, as discussed, is wholly arbitrary, violative of principles of natural justice and against the intent and object of the OAMDR Act. It also reflects that even after bringing the OAMDR Act, the officers of the Government want to make the said Act redundant for which they are predetermined to cancel the grant for reason one or the other, changing their stand at every stage of execution of exploration licence deed in favour of the petitioner. Such action is in violation of the principles of natural justice and not as per the spirit and object of the Act.

82. Thus, it is apparent that Section 7(2) of the OAMDR Act applies in the contingency as available in Section 7(1). As discussed, the cause to issue the show-cause notice is for conservation and regulation of the atomic minerals, which is unfounded. More so, the show-cause notice is biased and predetermined. In the said context, the judgments of Hon'ble the Supreme Court in **Malak Singh v. State of Punjab & Haryana**[27], **Justice K.S. Puttaswamy v. Union of India**

[27] (1981) 1 SCC 420

(supra), **Maneka Gandhi v. Union of India (supra)** and **Mohinder Singh Gill v. CEC (supra)** are of no help to the respondents.

83. As per the discussion made hereinabove, the impugned order dated 06.11.2019 cannot be sustained in the eye of law. The order dated 06.11.2019 suffers from non-application of mind, bias and colorable exercise of power and passed with predetermined mind in a mechanical manner and in violation of principles of natural justice. Even otherwise, once the order impugned is consequential to the notification dated 27.07.2019 which is found liable to be quashed, the consequential order dated 06.11.2019 is also liable to be quashed.

Question No.2 is answered accordingly.

<u>Question No.3</u>: Whether Rule 3A of the OAMC Rules, as notified on 23.08.2019, is *ultra vires* to Section 35 of the OAMDR Act, and having any sanction of law?

84. The OAMDR Act came into force with effect from 15.01.2010 i.e., after about 8 years of its enactment. This Act has been brought by the Parliament with intent to develop and regulate the mineral resources in the territorial waters, continental shelf, exclusive economic zone and other maritime zones of India. To carry out the purposes of the Act, as per Section 10 of the OAMDR Act, it is obligatory on the administering authority to declare the

offshore areas available for grant of reconnaissance permit, exploration licence and production lease, by way of notification, within a period of six months from the date of commencement of the Act. Prior to such notifying the offshore areas for grant of permit, licence or lease, the consultation is required to be made by the Ministry of Mines with the Ministry of Defence, Ministry of Environment and Forests, Ministry of Home Affairs, Ministry of Agriculture, Department of Ocean Development, Ministry of Shipping and Ministry of Petroleum and Natural Gas. It is not in dispute that the administering authority has issued the notification presumably after consultation as required under Section 10 of the OAMDR Act, on 07.06.2010 to carry out the purposes of the Act. The third proviso to Rule 3(2) of the OAMC Rules makes it clear that if any exploration licence is granted, then, for grant of production lease in terms of sub-section (1) of Section 13 of the OAMDR Act, separate notification as contemplated under Section 10 is not required to be issued. Section 5(1) of the OAMDR Act makes it clear that reconnaissance operation, exploration operation or production operation, if any, is undertaken by a person in the offshore area, it can be possible with the prescribed terms and conditions of the said permit, licence or lease under the Act and the Rules. The proviso to Section 5(1) makes it clear that the conditions so specified for grant for reconnaissance operation, exploration operation or production operation in the offshore areas

under Section 5(1) shall not apply where such exploration is undertaken by the Geological Survey of India, Atomic Minerals Directorate of Exploration and Research, Chief Hydrographer to the Government of India of Naval Hydrographic Office of the Indian Navy, National Institute of Oceanography, National Institute of Ocean Technology or any other agency duly authorized in this behalf by the Central Government, and then also a notification is not required to be issued as specified in sub-section (1) of Section 10 of the OAMDR Act. Therefore, with respect to the notification under Section 10(1) for grant of permit, licence or lease in connection with Sections 5, 8 and 13 for reconnaissance operation, exploration operation or production lease, Rule 3 of the OAMC applies.

85. Under the OAMC Rules, it has not been prescribed that who may be eligible for grant of reconnaissance permit, exploration licence and production lease of atomic minerals. The eligibility is governed by Section 6 of the OAMDR Act, clarifying who may be given the operating right. As per the said Section, it is clear that operating right can be given by the Central Government to any person who is an Indian national or a company as defined in Section 3 of the Companies Act, 1956, who satisfies the conditions as may be prescribed. The proviso to Section 6 of the OAMDR Act puts a rigour that at the stage of grant of production lease for

atomic minerals or prescribed substances, consultation with the Department of the Government of India dealing with the Atomic Energy is contemplated. Therefore, for the purpose of grant of operating right, which includes the reconnaissance permit, exploration licence and production lease, a private person or a private company are eligible and competent. The OAMC Rules were silent on the said issue.

86. Now, after the notification dated 27.07.2019, the Central Government amended the OAMC Rules and after Rule 3, Rule 3A has been added, which is reproduced as thus:

> *"2. In the Offshore Areas Mineral Concessions Rules, 2006, after rule 3, the following rule shall be inserted, namely:-*
>
> ***3A. Prohibition on grant of permit, licence or lease in respect of atomic minerals.-*** *No reconnaissance permit, exploration licence or production lease of atomic minerals shall be granted to any person, except the Government or a Government Company or a Corporation owned or controlled by the Government."*

87. On perusal of the aforesaid, it has been made mandatory that reconnaissance permit, exploration licence or production lease of the atomic mineral shall not be granted to any person except the Government or a Government company or a Corporation owned or controlled by the Government although as per Section 6(a) of the OAMDR Act, any person who is an Indian national or a

company as defined under Section 3 of the Companies Act, 1956, can be granted operating rights of atomic minerals.

88. Section 3 of the OAMDR Act makes it clear that the Act shall apply to all minerals in the offshore areas including any mineral prescribed by notification under clause (g) of sub-section (1) of Section 2 of the AE Act. Atomic minerals, as has been defined in the OAMDR Act, which is referred in the amended Rule 3A, means the minerals included in atomic minerals specified in Part B of the First Schedule to the MMDR Act. Therefore, it is clear that on Notification under Section 10(1) of the offshore areas and as per the proviso to sub-section 5(1), if exploration operation is not undertaken by the Departments so specified, the grant of operating rights can be given under Section 6 to any person of Indian national and company with respect to all the minerals that includes the atomic mineral. Thus, the legislative intent by the OAMDR Act does not debar the grant of reconnaissance permit, exploration licence, production lease of an atomic mineral to any private individual or a private company but by bringing Rule 3A, the private individual or private company has been debarred. Although, under Sections 5, 6 and 12 of the OAMDR Act, the word used is 'any person', which means any Indian national or a private company, but by Rule 3A of the OAMC Rules, ousting any Indian national or private company, the exploration licence and

production lease of atomic mineral has now been made available only to the Central Government or a Government company or the Corporation controlled or owned by the Government. It is relevant that the Secretary, DAE, in a sworn affidavit before Hon'ble the Supreme Court, admitted that until amendment in the provisions of the OAMDR Act is made, grant of exploration licence for offshore areas to private parties cannot be prohibited. But, without bringing any amendment in the OAMDR Act, abruptly by notifying amendment in the Rules by introducing Rule 3A, imposing prohibition on grant of permit, licence or lease in respect of atomic minerals in offshore areas to private parties, is against the statue and thus, arbitrary.

89. In addition, Rule 3A of the OAMC Rules, as brought, is contrary to the provisions of the OAMDR Act, although rule making power may be exercised under Section 35 of the OAMDR Act. If we have a glance at Section 35(1) of the OAMDR Act, it is clear that the Central Government may, by notification in the official gazette, make rules for the purpose of the OAMDR Act. Sub-section (2)(a) of Section 35 of the OAMDR Act clarifies that the terms and conditions of reconnaissance permit, exploration licence or production lease under sub-section (1) of Section (5) may be specified in the rules; sub-section 2(b) provides for making rules regarding conditions for grant of operating right under Section 6(b)

of the OAMDR Act; sub-section 2(c) provides for making rules regarding the substances to be prescribed under proviso to Section 6. Section 35 does not confer any power to the Central Government to debar any person for grant of atomic mineral. By the language of Section 6, it is clear that the Central Government shall not grant any operating to any person unless such person is an Indian national or a company as defined under Section 3 of the Companies Act, 1956. Section 35 of the OAMDR Act does not specify that for the purpose of Section 6(a), the Rules debarring any person who is an Indian national to grant the atomic minerals can be framed. Therefore, the power as exercised in the pretext of rule making under Section 35 of the OAMDR Act, ousting any private person in the matter of grant of operating right, is beyond the power of Section 35(2)(a), (b) and (c). Therefore, Rule 3A of the OAMC Rules is contrary to the provisions of the OAMDR Act and beyond the power of Section 35(2)(a), (b) and (c) and also contrary to the object of the OAMDR Act. Therefore, Rule 3A of the OAMC Rules is liable to be declared *ultra vires* to the OAMDR Act.

90. As per Section 35(3) of the OAMDR Act, amendment, if any, brought in the Rules can only be prospective and the notification dated 23.08.2019 regarding amendment in the Rules also makes it clear that the said amendment shall come into force on the date of their publication in the official gazette, i.e., prospectively. Looking

to the above and in view of the language engrafted in Section 35(3) of the OAMDR Act, it is clear that any modification or annulment made in the Rules shall be without prejudice to the validity of anything previously done under the Rules. Thus, the grant of exploration licence to the petitioner giving operating rights would not be adversely affected by bringing Rule 3A in the case at hand.

In terms of the above discussion, question No.3 is answered accordingly.

Question No.4: Whether the letter dated 01.04.2019 sent by respondent No.1 to the Director of Central Bureau of Investigation to reopen the Preliminary Enquiry bearing PE AC1 2012 A0005 already closed vide closure report dated 28.03.2013, after six years is tainted with *mala fide* looking to the facts of the case?

91. In the matter of grant of exploration licences, after the notification under Section 10 of the OAMDR Act by the administering authority, a Preliminary Enquiry bearing No. PE AC1 2012 A0005 was registered by the CBI on 21.09.2012 on the basis of the source information relating to the allegations of irregularities committed during the grant of exploration licences for allotment of offshore blocks by unknown public servants of the Indian Bureau of Mines, Nagpur and other unknown persons and companies. In the said enquiry, the allegation regarding procedural irregularities

in the selection process was made. After holding the enquiry, the CBI submitted the closure report dated 28.03.2013. The findings recorded by the CBI are reproduced as thus:

> *"No malafide intention could be associated with the Screening Committee in this regard. Enquiry has also revealed that the Screening Committee had only made recommendations for the grant of exploration licences which had to be accepted by the Competent Authority before they were finally issued to the selected applicants. However, these exploration licences could not be issued because of the fact that some unsuccessful applicants approached the Superior Court for legal remedy. It is also surfaced during enquiry that the Ministry of Mines has kept the entire process in abeyance and that the Ministry is considering re-evaluation of the applications in accordance with the criteria which is to be fixed by a Committee consisting of experts from various fields.* ***Nothing has come in evidence to suggest any financial loss to the public exchequer or any corresponding gain to any private person in this whole exercise undertaken by the Screening Committee. Similarly, no evidence of any Quid-Pro-Quo between the public servants and the private parties came to light during the enquiry.***
>
> ***Conclusion***
>
> ***In view of the facts mentioned above, no misconduct was found on the part of any public servant of Indian Bureau of Mines in this case.*** *However, it was found that no clear cut guidelines were formulated for shortlisting of the applicants and that the criteria for selection of the applicants for issuance of exploration licences was fixed after receipt of the*

applications, which is a serious procedural irregularity. It was also found that the Administrative Authority carried out the entire process without doing adequate preparation before issuance of notification calling applications for the exploration licences. They also did not resort to get the DPR through an international consultant. This exercise was being done for the first time in India, and the above mentioned measures would have resulted in more systematic and transparent process in the selection of applicants for exploration licences.

Therefore, it is recommended that the Ministry of Mines may take suitable remedial action to rectify the irregularities that have come to fore in selection of applicants for offshore exploration licences so that enough precautions are taken in future to prevent occurrence of such irregularities."

(emphasis supplied)

92. On perusal thereto, it is clear that there was no *mala fide* found on the part of the screening committee in making recommendation in the matter of grant of exploration licences. No misconduct was found on the part of any public servant or Indian Bureau of Mines in this case. Nothing came in evidence to suggest any financial loss to the public exchequer or any corresponding gain to any private person in the whole exercise of selection undertaken by the screening committee. Similarly, no evidence of any quid-pro-quo between the public servants and the private parties came to light during the enquiry. The CBI observed that the screening committee prepared the guidelines for the purpose of

grant of exploration licences after receipt of the applications, which was an irregularity and in future, the said irregularity may be rectified.

93. It is not out of place to mention here that the grant of exploration licences, including the issue of formulation of guidelines by the selection committee after receipt of the applications, was challenged before the Bombay High Court in W.P.No.1502 of 2011 by one of the applicant namely Rare (H) Minerals Private Limited. In the said case, respondent No.1-Ministry of Mines defended the guidelines so framed by the screening committee and urged, it was justified and opposed the claim of the said petitioner, justifying the grant of exploration licences. The Bombay High Court, in its judgment dated 17.09.2013, in paragraphs 14 and 15, observed as thus:

> *"14.....It is, therefore, clear that the guidelines dated 29-12-2010 prescribe points for such evaluation criteria which the administering authority is, even otherwise, required to take into account while selecting the applicants for grant of exploration licence on the basis of a comparative evaluation. Section 12(3)(b)(I) proviso itself prescribes matters of which there should be a comparative evaluation. These very matters have been utilized and treated in the guidelines dated 29-12-2010. Discussion little later will show that the challenge to these norms as arbitrary is without any substance. Petitioner, therefore, is not correct in contending that process prescribed by the guidelines dated 29-12-2010*

and the nature of evaluation criteria therein is something which is not consistent with Section 12(3)(b) of the Act of 2002.

15. It can thus, be seen that an applicant who seeks an exploration licence under Section 12 of the Act of 2002 is aware while making such application that the same would be considered by the administering authority in the manner prescribed by said Section. It is also clear to an applicant that if there are two or more applications in respect of the same area or substantially the same area, then the exploration licence would be granted on the basis of a comparative evaluation of various applicants. Similarly, the matters that would be taken into account while making a comparative evaluation of various applications is also stipulated in Section 12(3)(b) of the Act of 2002. What the guidelines dated 29-12-2010 have done is merely to allot points with regard to various criteria for the purposes of comparative evaluation. The guidelines merely stipulate the various points that are required to be given to an applicant based on the information which was required to be given along with the application as required by Section 12(3) of the Act of 2002. It, therefore, cannot be said that the administering authority while stipulating various points for the purposes of evaluation of applications has acted beyond the provisions of Section 12(3) of the Act of 2002. The administering authority having been granted the power to select an applicant for grant of exploration licence on the basis of comparative evaluation of various applications cannot be said to have acted in contravention of the provisions of Section 12(3)(b)(I) of the Act of 2002. For the same reason, the aforesaid guidelines dated 29-12-2010 allotting points as the basis for evaluation cannot be said to be de hors the Act of 2002. In so far as the celebrated decision

of Privy Council in the case of Nazir Ahmad (supra) relied upon by the learned Senior Counsel for the petitioner is concerned, there can hardly be any dispute about the proposition laid down therein. Section 12(3)(b)(I) proviso prescribes the grant of licence on the basis of a comparative evaluation of the applicants. As the guidelines merely seek to assist the administering authority in such comparative evaluation, it cannot be said that the administering authority has done something contrary to the manner in which the comparative evaluation is required to be done. The ratio of said decision, therefore, does not apply to the facts of the present case. Similarly, in so far as the Judgment of the Hon'ble Apex Court in the case of Parmeshwar Prasad (supra) is concerned, it has been laid down that the authority competent to make Rules or Regulations is alone competent to issue circulars in that regard. In the present case, the administering authority itself has been granted the power to make a comparative evaluation of various applications received by it. What has been done by the impugned guidelines is that the points have been allotted against various heads to evaluate various applications. It, therefore, cannot be said that in doing so, the respondent No.2 acted beyond its authority. It cannot be said that by doing so, it has attempted to fill in the gaps left in the Rules framed under Section 35 of the Act of 2002. Hence, ratio of said judgment is also inapplicable to the facts of the present case."

94. On perusal of the aforesaid, it is evident that the Bombay High Court has made it clear that the guidelines framed after receipt of applications is traceable to Section 12 of the OAMDR Act and explanatory in nature to avoid the arbitrariness and as such,

the screening committee had acted in accordance with law. Therefore, the observation of the CBI with respect to procedural irregularity stood overruled in the light of the judgment of the Bombay High Court, which was affirmed by the Supreme Court dismissing the S.L.P.(C).No.5530 of 2014 vide order dated 31.03.2014. Therefore, in the considered opinion of this Court, the selection process attained finality by judicial pronouncement and the observation of the CBI referred above lost its efficacy.

95. The report of the CBI was accepted by the Ministry of Mines and thereafter, acknowledged in the Parliament while giving answer to a question by the Minister of Mines on 21.02.2014. The relevant portion of the statement given by the Minister of Mines in the Parliament is reproduced as thus:

> *"THE MINISTER OF MINES (SHRI DINSHA PATEL)*
>
> *a) to d) : A total of 63 minerals bearing blocks were notified vide notification dated 07.06.2010, by the Controller General of Indian Bureau of Mines (IBM) who is the Administering Authority for the purposes of the Offshore Areas Mineral (Development and Regulation) Act, 2002 (OAMDR Act, 2002), for award of exploration licences. Out of a total 377 applications received against the said notification from 53 applicants, orders for grant of exploration licences were issued to 16 applicants for 62 blocks on 05.04.2011. However, some of the aggrieved parties moved the High Courts of Andhra Pradesh, Madras and Bombay (Nagpur*

Bench) against the grant of offshore exploration licences by Indian Bureau of Mines.

The Central Bureau of Investigation has conducted a Preliminary Enquiry to investigate alleged irregularities in grant of Exploration Licence in the offshore waters of Bay of Bengal and Arabian Sea and concluded that no misconduct was found on the part of any public servant of IBM in this case.

(e) Does not arise in view of (a) to (d) above."

Thus, after acceptance of the report of the CBI and the statement made by the Minister of Mines as noted above in the Parliament, it is seen that the Ministry of Mines was satisfied that there was no irregularity in the selection process for grant of exploration licences.

96. After dismissal of the S.L.P. against the judgment of the Bombay High Court by Hon'ble the Supreme Court on 31.03.2014 in terms of the grant of exploration licences, the execution of the exploration licence deed was required to be made. But, the Department did not execute the exploration licence deed and issued the order of cancellation of the exploration licence on 30.06.2016 in view of the CRZ notification dated 06.01.2011, which was in existence even prior to the grant on 05.04.2011. When the said action was challenged by the petitioner herein in the Delhi High Court by filing W.P.(C).No.7537 of 2018, the Court, vide its judgment dated 06.02.2019, recorded the findings

regarding the arbitrary and *mala fide* exercise of the power by the officials of the Department. For ready reference those findings have already been quoted in para 75 while dealing with Question No.2.

97. On perusal of those paragraphs, it is clear that the Department, after the minutes of the meeting dated 14.07.2015, was predetermined to cancel and re-grant the licences. The issue of overlapping of some blocks as shown was found false and based on afterthought and an attempt to mislead the Court. The reasoning given in the impugned order was not permissible and found erroneous, thus observed that the said order was issued to achieve their goal for re-allocating the blocks by manufacturing the reasons. It is not required to reiterate that the said findings remained untouched even by Hon'ble the Supreme Court in the S.L.P.

98. It is also not out of context to observe that despite the selection process for grant of exploration licence having attained judicial finality, respondent No.1 once again took the plea of procedural irregularity in the selection process before the learned single Judge of the Delhi High Court, which was rejected. Relevant portions of paras 93 and 94 of the judgment dated 06.02.2019 are reproduced as thus:

"93. In their attempt to justify the cancellation, the respondents have also sought to allege that in preliminary enquiry conducted by CBI, had found serious irregularities with the process of grant of exploration licenses. The respondent no.1 has suppressed the crucial fact that the said Preliminary Enquiry had been closed by CBI in early 2013 wherein it was concluded that no misconduct was found on the part of any public servant of IBM in the case. The relevant extracts of the answers given by the then Minister of Mines, Sh. Dinsha Patel while answering to a unstarred question in the Parliament on 21.2.2014 (page 480) is reproduced herein below.

> *"The Central Bureau of Investigation has conducted a Preliminary Enquiry to investigate alleged irregularities in grant of Exploration Licenses in the offshore waters of Bay of Bengal and Arabian Sea and concluded that no misconduct was found on the part of any public servant of IBM in the case".*

94. In addition to above after the said Preliminary Enquiry, the Ministry of Mines and IBM both defended the selection process before Hon"ble High Court of Bombay and vide its judgement dated 17.09.2013 in writ petition 1502 of 2011 upheld the process finding that the same was in accordance with law and that there was no infirmity with the allocation process."

99. After the Judgment of the single Bench of the Delhi High Court on 06.02.2019, a complaint dated 11.02.2019 (Annexure-P19) was made to the Central Vigilance Commission (CVC) by the then administering authority, Mr. Ranjan Sahai, against whom a

departmental enquiry had been initiated on the date of his superannuation, i.e., on 27.04.2018, for signing the deed for exploration licence pursuant to order dated 09.11.2017 by the High Court of Delhi in W.P.No.5734 of 2016, with the petitioner therein, U.A. Minerals Private Limited, seeking action against the officials of Ministry of Mines including Mr. Niranjan K. Singh, for their acts of commission and omission. Relevant extract of the prayers in the said letter dated 11.02.2019 are reproduced as thus:

> *"A) That a Vigilance Enquiry may kindly be initiated against officials of Ministry of Mines namely Sh. Arun Kumar (Retired), the then Secretary (Mines), Sh. Niranjan Kumar Singh, Joint Secretary (Mines) cum CVO, Smt. Venna Kumari Dermal, Director (Mines), Sh. Adhir Kumar Malik, Under Secretary for misleading the Hon'ble Minister of Mines and new Secretary (Mines) on multiple occasions by highlighting wrong things and suppressing facts, just to help some private parties for extraneous considerations. Competent authority in Ministry of Mines may kindly be directed to appoint a senior officer of the ministry, who has nothing to do with IBM as on date, to conduct an enquiry under supervision of CVC to be completed within a fixed period so that correct facts emerge for taking an appropriate actions against these errant officers;*
>
> *B) Dr. Niranjan Kumar Singh, Joint Secretary and CVO may kindly be suspended with immediate effect and divested of any charge in the Ministry so that he is not able to exert influence on junior officials of the ministry and also to ensure that he does not tamper with documents and files till an inquiry is conducted and completed. He should also be divested of the charge of CVO of the Ministry till the inquiry is completed and facts emerge about his acts of omission and commission regarding misleading the higher authorities including Hon'ble Minister of Mines, trying to file multiple affidavits with different facts and trying to mislead the High court of Delhi (as pointed out*

in the judgement) and suppressing CVO HCL report deliberately;

C) Smt. Veena Kumari Dermal, Director may also be kindly suspended with immediate effect and divested of any charge in the Ministry so that they do not tamper with facts and documents while the inquiry is being conducted about their acts of commission and omission;

D) Ministry of Mines may kindly be advised to immediately withdraw the charge sheet issued against me as the very basis of charges has been quashed by the Hon'ble High Court with further direction to release my retirement benefits forthwith so that some dignity returns to me for having served the government."

100. In view of the seriousness of the findings made by the Delhi High Court against the officials of the Ministry of Mines, the CVC vide OM dated 15.03.2019 (Annexure-P20) ordered an independent investigation against the officials including Mr. Niranjan Kumar Singh, Joint Secretary, Ministry of Mines. The officials of the Ministry of Mines became perturbed by the action of the CVC and therefore, the said officer, namely Niranjan Kumar Singh wrote a letter on 01.04.2019 to the CBI for reopening of the PE bearing No. PE AC1 2012 A0005 which had been closed earlier on 28.03.2013, after lapse of six years on the ground that the award of exploration licences to the applicants based on a criteria designed by the screening committee needed further enquiry and that Mr. Ranjan Sahai had signed the exploration licence deed with undue haste. The reasons so mentioned in the letter for seeking reopening of the closed PE are not tenable. It is relevant to

mention that the Delhi High Court, vide order dated 06.02.2019 passed in W.P.(C).No.7537 of 2018, has also observed that the deed was signed by Mr. Ranjan Sahai in furtherance to the order dated 09.11.2017 in W.P.No.5734 of 2016 and found no irregularity therein. Relevant portion of para 107 of the judgment is reproduced as thus:

> *"107. It is pertinent to mention here that the Administering Authority i.e. Controller General, Indian Bureau of Mines had already considered the above issues pertaining to implication of CRZ notification dated 6.10.2017, overlapping of certain blocks with onshore areas and grant of mineral concessions to private parties for atomic minerals and the same is evident from its report dated 11.12.2017. It is only after considering of the aforesaid issues, the respondent no.2 herein has executed the deed for exploration licences with one M/s. U.A. Minerals Pvt. Ltd. on 30.11.2017 and till date there is no stay on the said order."*

101. It is also not out of context that the learned single Judge of the Delhi High Court, in the judgment dated 06.02.2019, had directed the authorities to execute the deed for exploration licence within a period of four weeks and similarly, the Division Bench of the Delhi High Court had directed the authorities for executing the same within a period of two weeks. Therefore, the issue of undue haste in signing the deed on 30.11.2017 i.e., within 21 days of the order of the High Court dated 09.11.2017, has no merit.

102. Regarding the letter dated 01.04.2019 of respondent No.1, the Division Bench of Delhi High Court has also observed in para 73 of its judgment dated 25.04.2019 as under:

> *"73. We may also take note of the fact that the alleged CBI enquiry in the past was taken note of by the learned Single Judge and even after filing of this appeal now, it is stated that on 01.04.2019 i.e. after the judgment was rendered by the learned Single Judge on 06.02.2019 and after this Court had issued notice on 29.03.2019, the CBI, it is said, is proposing to re-investigate the matter from the date of issuance of the notification dated 07.06.2010. We cannot lose sight of the fact that the whole process of evaluation and allotment has been subjected to strict judicial scrutiny not only by this Court but also by various Courts as is indicated by us hereinabove upto the Supreme Court and after a lapse of more than six years what is now being done is nothing but an act to prejudice the Court and we find lack of bona fides on the part of the appellants in dealing with the matter pertaining to re-opening of the CBI enquiry. Once, the matter has been taken up on the judicial side and after judicial scrutiny the entire selection process has been upheld, the act of the appellants in trying to point out that there are serious allegations against the officers and the proceedings conducted and therefore the CBI enquiry is being conducted is, in fact, a method to somehow indicate to this Court that all is not well and therefore an enquiry should be conducted. However, for arriving at such a conclusion, no material has been provided. We are even not aware as to whether the CBI has taken note of all the relevant factors before proceeding to consider re-investigation into the matter. The bona fides of the appellants in filing the affidavit in this regard on 15.04.2019 and the act of re-opening the enquiry on 01.04.2019 for re-*

investigation into the matter may be a device to somehow get over all the judicial pronouncements made by various courts including this Court with regard to the selection process and the issue in question. It prima facie seems to be an act that is not at all bona fide but a device or method to somehow deny benefit of Court's orders to the respondents."

103. In view of the foregoing, it is clear that the Delhi High Court, referring the letter dated 01.04.2019, had observed that the request for re-investigation into the matter is a device to somehow get over all judicial pronouncements made by various Courts. Such an act, *prima facie,* seems to be an act not at all bona fide but a device or method to somehow deny benefit of Court's order to the respondents therein. Thus, it is clear that the writing of letter by Mr. Niranjan Kumar Singh, Joint Secretary, Ministry of Mines, fly on the face of the various orders, viz., the order dated 17.09.2013 of the Bombay High Court, confirmed by Hon'ble the Supreme Court on 31.03.2014, order dated 06.02.2019 of the learned single Judge of the Delhi High Court, order dated 25.04.2019 of the Division Bench of the Delhi High Court and the order dated 29.07.2019 of Hon'ble the Supreme Court, confirming the findings of the Delhi High Court. The said action is nothing but *mala fide* and colourable exercise of power because the CVC had earlier directed investigation against Mr. Niranjan Kumar Singh and other officers on 15.03.2019. It is to further observe that the CBI cannot take any action to derogate the findings made by the Division Bench of

the Delhi High Court in reference to the same letter referred hereinabove, which stood confirmed by Hon'ble the Supreme Court. Simultaneously, there is no explanation why for a period of six years, the Ministry of Mines was not interested in reopening of the CBI enquiry if any irregularity was there and chose to wake up only after the orders of the Delhi High Court passing strictures against the officers of the Ministry of Mines and CVC directing to hold an enquiry against them. This action taken by the officers of the Ministry of Mines after six years making a request to re-open the closed PE is not only *mala fide* but to save themselves from the consequences of the investigation ordered into the illegal actions taken by them.

104. It is also relevant to note that Mr. Niranjan Kumar Singh intentionally in his letter dated 01.04.2019, concealed crucial material facts in order to ensure that the closed PE is reopened. Those are, the order dated 17.09.2013 of the Bombay High Court, whereby no irregularity was found in the selection process, the order dated 31.03.2014 of Hon'ble the Supreme Court confirming the said order of the Bombay High Court as well as the crucial fact of CVC ordering an independent investigation on 15.03.2019 against the officers of the Ministry of Mines including Mr. Niranjan Kumar Singh, which were conveniently concealed and suppressed in the letter dated 01.04.2019. This is nothing but abuse of power by Mr.Niranjan Kumar Singh apart from being an act of *mala fide*.

In view of the foregoing discussion, the letter dated 01.04.2019 is vitiated on account of *mala fide* and cannot be permitted to stand and all consequential actions taken on the basis of the said letter are also liable to be quashed.

Question No.4 is answered accordingly.

105. **Conclusions:-**

i) As per the discussion made while answering Question No.1, it is clear that the notification dated 27.07.2019 issued by the DAE in exercise of the power under Sections 3 and 14 of the AE Act is beyond competence, since Sections 3 and 14 of the AE Act apply in connection with the production, development, use or disposal of the atomic energy or to carry out the research into any matters connected therewith. The said provisions do not confer power to the DAE to prohibit grant of exploration licence of the atomic mineral to any private person permissible under the provisions of the OAMDR Act. As per the provisions of Section 6 of the OAMDR Act, it is clear that the operating right can be granted to any person who is an Indian national or a company as defined in Section 3 of the Companies Act, 1956, regarding the atomic minerals specified in Part-B of the First Schedule to the MMDR Act. The OAMDR Act applies to all the minerals in the offshore areas, including any mineral prescribed by notification in clause (g) of sub-section (1) of Section (2) of the AE Act. For the purpose of

reconnaissance operation, exploration operation or production operation, grant may be made to any person. It does not prohibit the grant to a private person. In the matter of grant of operating right, it may be given to any person or private company for the atomic minerals but at the stage of giving the production lease for atomic mineral or prescribed substance, the consultation with the Department of the Government of India dealing with the Atomic Energy is required. The role contemplated for DAE is under the proviso to Rule 18(1)(iv)(b) of the OAMC Rules applied in the event of discovery of any atomic mineral during exploration which was not specified in the exploration licence, the approval of the DAE to be taken for its inclusion in the exploration licence. The notification dated 27.07.2019 is, therefore, beyond the power as specified in Sections 3 and 14 of the AE Act and *ultra vires* to the statutes and dehors the provisions of both the Acts, and issued arbitrarily with lack of bona fides. Accordingly, the notification dated 27.07.2019 is quashed.

ii) The order dated 06.11.2019 issued for cancellation of exploration licence is without due application of mind, in violation of principles of natural justice, and merely relying upon the notification dated 27.07.2019, which already stands quashed. The cancellation of exploration licence taking the plea of conservation of mineral resources is flimsy and against the spirt of the definition

of conservation of the mineral resources as prescribed in the National Mineral Policy, 2019. Thus, the order dated 06.11.2019, being biased and not in consonance with the provisions of Section 7 of the OAMDR Act, is bad in law and is accordingly, quashed.

iii) Rule 3A of the OAMC Rules, as notified on 23.08.2019, is against the intent and object of the OAMDR Act and also beyond the power as specified in Section 35 of the OAMDR Act. Therefore, the Rule 3A of the OAMC Rules, having no sanction of law, is declared *ultra vires* to the OAMDR Act.

iv) The letter dated 01.04.2019 issued by Mr. Niranjan Kumar Singh, Joint Secretary of the Ministry of the Mines, for re-opening the PE bearing No. PE AC1 2012 A0005 already closed vide closure report dated 28.03.2013 is tainted with *mala fide* and it is an act in retaliation to stall an enquiry by the CVC against him. More so, in view of the discussion made in Question No.4 and the findings of the Bombay High Court and the Delhi High Court, duly upheld by Hon'ble the Supreme Court, any action on the letter dated 01.04.2019 is contemptuous and vitiated which cannot be permitted to stand. Therefore, the letter dated 01.04.2019 for reopening the said PE after six years of its closure by the CBI and consequential actions taken on the basis of the said letter stand quashed.

106. In terms of the conclusions drawn hereinabove and as a consequence of the quashment of the impugned notification dated 27.07.2019 and the order dated 06.11.2019 and declaring the Rule 3A of the OAMC Rules as *ultra vires* to the OAMDR Act and as the letter dated 01.04.2019 addressed by Mr. Niranjan Kumar Singh, Joint Secretary of the Ministry of the Mines, for re-opening the PE bearing No.PE AC1 2012 A0005 after six years of its closure by the CBI and consequential action on the basis of the said letter stand quashed, we direct that the deed for the exploration licence dated 05.04.2011 be now executed by the respondents in favour of the petitioner within a period of four weeks from the date of communication of this order.

Accordingly, this writ petition is hereby allowed. In the facts and circumstances of the case, parties are directed to bear their own costs.

As a sequel to the decision of the case finally, all the pending miscellaneous applications shall stand closed.

Sd/- K.TATA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Secretary, Union of India, Ministry of Mines, Shastri Bhawan, New Delhi-110001
2. The Additional Director General and Administering Authority, Geology Survey of India, GSI Complex, Seminary Hills Nagpur-440006
3. The Secretary, Department of Atomic Energy, Anushakti Bhawan, Mumbai-440001
4. One CC to SRI S.VIVEK CHANDRA SEKHAR, Advocate [OPUC]
5. One CC to SRI N.HARINATH, Asst.Sol.General[OPUC]
6. One CC to SRI PASALA PONNA RAO, SC for Central Govt. [OPUC]
7. Two C.D. Copies.

MRC

HIGH COURT

DATED:18/09/2020

ORDER

WP.No.8410 of 2020

ALLOWING THE WRIT PETITION

8
Sd/-Hr 18/9/2020.