
(2010) 07 GAU CK 0042
In the Gauhati High Court
Case No : Writ Petition (C) No. 3397 of 2009

Calcom Cement India Ltd. and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115

Citation : (2011) 4 GLR 833

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : M. Hazarika, Ms. A. Ajitsaria, Ms. A. Goswami and Ms. J. Hazarika, for the Appellant; A.K. Phookan, Ms. H.M. Phukan, M. Bhuyan, M. Choudhury, A.M. Mazumdar, S.K. Upadhyaya, M. Nath, D.P. Borah, B.D. Das and Mr. D. Nath, for the Respondent

Final Decision : Dismissed

Judgement

Smt. Anima Hazarika, J.—This petition under article 226 of the Constitution of India has been filed by the Petitioners praying for setting aside and quashing the Memorandum of Understanding ("MoU") entered into between Assam Mineral Development Corporation ("AMDC") (respondent No. 6) and M/s. Jayprakash Associates Ltd. (respondent No. 8) in so far as it relates to utilization of limestone and coal deposits available in the mines of the AMDC at New Umrangshu and North Cachar Hills district and further for restraining the Respondents from giving effect to the MoU entered into by the said Respondent No. 6 with Respondent No. 8 without first making available limestone and coal to the Petitioners from the mines of AMDC at New Umrangshu and North Cachar Hills district on requirement basis and also for direction to the Respondents to make available limestone and coal to the Petitioners from the mines of AMDC at New Umrangshu and North Cachar Hills District respectively on requirement basis pursuant to the cabinet decision and commitments said to be made by the State Government.

2. Heard Mrs. M. Hazarika, learned senior counsel assisted by Ms. A. Ajitsaria, Learned Counsel appearing for the Petitioners. Also heard Mr. A.K. Phookan, learned Advocate General, Assam assisted by Ms. H.M. Phukan, learned State counsel appearing for the State-respondents, i.e., Respondent Nos. 1, 2, 3, 4 and 5, Mr. M. Bhuyan, Learned Counsel appearing for Respondent Nos. 6 and 7, Mr. A.M. Mazumdar and Mr. S.K. Upadhyaya, learned senior counsel assisted by M. Nath, Learned Counsel appearing for Respondent No. 8 and Mr. B.D. Das, Learned Counsel appearing for Respondent No. 9.

3. The pleaded case of the Petitioners is that the Petitioner No. 1 is a public limited company incorporated under the Companies Act, 1956 and in terms of the MoU dated 8.9.2004 entered into between Assam Industrial Development Corporation Ltd. ("ArDC") and another company, namely, Vinay Cement Ltd. for the purpose of setting up a cement manufacturing project. At para 6.1 of Clause 6 of the MoU it was stipulated that AIDC would be the Co-Promoter in the proposed project to the extent of 10% of equity participation in the new company. Petitioner No. 2 is said to be the Chief of Corporate Communication as well as a shareholder and authorised signatory of the Petitioner No. 1-company.

It is the case of the Petitioners that pursuant to discussions held between the authorities of Government of Assam as well as the various instrumentalities under it and the Vinay Cement Ltd. a MoU was entered into between AIDC and Vinay Cement Ltd. on 8.9.2004 for setting up a 4-5 million metric tons per annum capacity cement manufacturing plant on the terms and conditions enumerated therein.

4. The Petitioners have also annexed a copy of the Cabinet Memorandum as Annexure 3 to the writ petition which is said to be adopted by the Cabinet in connection with the joint venture envisaged under the aforesaid MoU dated 8.9.2004. Clauses 11 and 12 of the said Cabinet Memorandum which was pointed out and pressed on behalf of the Petitioners in course of argument being relevant are quoted hereunder:

11. CCIL also wanted to avail limestone and other mineral additives including higher-grade limestone with a total limestone deposit of 400 MT for CCIL project. The matter was taken up with the Mines and Minerals Department. Their views are reproduced below vide their letter No. PEM.88/05/33i dated 16.11.2005 -

The mining lease area of AIDC will be sufficient to cater to the need of CCIL project at present.

12. Further, CCIL requested that the existing coalmines of AMDC in Umrangshu should be allowed to be operated by Job Sirdars as is being done now with a condition that CCIL will buy 80% of this coal at reasonable rates fixed mutually between Mines and Minerals Department and CCIL. Further, CCIL requested permission to operate captive coalmines from new coal deposits. The matter was also taken up with Mines and Minerals Department. They have given their views as below vide their letter PEM. 88/05/33, dated 16.11.2005 -

CCIL may purchase coal from Assam Mineral Development Corporation Ltd. on long term agreement basis on mutually agreed terms based on reasonable prices and a firm time schedule indicating clear requirements of coal over a period of time so as to enable appropriate capital investment. CCIL may be considered for grant of mining lease for coals with the approval of the Government of India to meet the additional requirements of its own project only in case mineable reserve of coal of suitable grade is identified in North Cachar Hills District of Assam in future in the course of investigation for coal carried out by the Directorate of Geology and Mining, Assam. At present, CCIL may procure coal from Assam Mineral Development Corporation Ltd., on mutually agreed terms, which is producing coal from its mines in North Cachar Hills District.

5. It is the further case of the Petitioners that on 6.5.2005 another agreement was entered into between the Petitioner No. 1 and the Government of Assam represented by the Additional Chief Secretary to the Government of Assam, Department of Industries and Commerce wherein the following were agreed between the parties:

(i) AIDC would be the Co-Promoter in the proposed project to the extent of 10% of equity participation in CCIL. Government of Assam would provide necessary fund to AIDC through budgetary support.

(ii) The Government of Assam/AIDC would assist CCIL in making available suitable land measuring about 850 Bighas for establishing the project under reference. The location would be decided based on techno economic feasibility, infrastructure support and other related aspects.

(iii) The Assam Industrial Development Corporation Ltd. will be the requiring department for the purpose of acquisition of land and Vinay Cements Ltd. or CCIL would assist in the acquisition process. CCIL would bear the expenditure to be incurred by AIDC in the process of acquisition of land totaling about 850 bighas.

(iv) The mining lease held by AIDC at Umrangshu would be transferred to CCIL. CCIL would compensate AIDC for the past expenditure made by AIDC on the said mining lease. A Chartered Valuer would be engaged to assess the present value of the works carried out by AIDC in the past. CCIL would immediately make the necessary payment of the "dead rent" for starting the process of transfer of mining lease.

(v) The Government of Assam would extend cooperation in granting additional mining leases in New Umrangshu area in order to enhance the production capacity to 5 million metric tones and to sustain the quality of cement manufactured.

(vi) CCIL would seek due cooperation from the State Government in formulating a special package for making the Project competitive to investments coming up in neighbouring States.

(vii) The land affected people would be suitably compensated by the CCIL as per the provisions of Land Acquisition Act, 1894.

(viii) AIDC with the support of the Government of Assam shall endeavour to extend all necessary support for getting clearances in an expeditious manner for ensuring timely completion of the Project.

(ix) AIDC would draw a suitable rehabilitation programme for the families to be displaced as a result of acquisition, in consultation with the State Government.

It has further been stipulated in the aforesaid agreement that the agreement would remain valid for a period of 3 years and can be further extended on mutually agreed terms. In fact, the validity of this agreement dated 6.5.2005 was extended by further period of 3 years by the agreement dated 31.7.2008, a copy of which is annexed as Annexure 35 to the writ petition. The Mining Lease of the AMDC mines stood transferred to the Petitioner No. 1 on 7.1.2009 upon payment of assessment amount by the authorities in terms of the subsisting agreement between the Petitioner No. 1 and AIDC. The Petitioners claim that by means of a letter dated 20.6.2005 (Annexure 6) addressed to the Principal Secretary to the Government of Assam, Department of Mines & Minerals, it proposed that AMDC has a deposit of high grade limestone located next to the deposit of the Petitioner which was of medium grade and as AMDC mines were opened with a view to cater to the limestone needs of Paper Mills and Ors. but as these have not worked out and for a number of years there are practically no operations in the mines, the Petitioner company should be allowed to get into a partnership with AMDC which in the words of the Petitioners "...will go a long way in the development of the region as well as revival of AMDC's limestone mining operation in Umrangshu.

6. In connection with the aforesaid proposal of the Petitioners the Managing Director of AMDC wrote a letter dated 9.8.2005 (Annexure 7) to the Additional Chief Secretary to the Government of Assam, Industries and Commerce Department requesting the Government to take necessary decisions for proposal of partnership with AMDC on limestone mining. This was followed up by another letter dated 18.8.2005 (Annexure 8) to the same context. The Petitioners have annexed a copy of the minutes of meeting of the Public Investment Board dated 6.12.2005 (Annexure 10), contents whereof do not reveal any intelligible nexus to the issue of grant of AMDC's Mining Lease to the Petitioners. The Petitioners have annexed copy of another letter dated 18.2.2006 (Annexure 11) issued by Additional Chief Secretary, Industries and Commerce Dept., to the Principal Secretaries of Public Enterprises Dept., Power Dept. and Mines and Minerals Deptt., Commissioner and Secretary Finance (Taxation) Deptt. and Managing Director, AIDC, inter alia, stating that Government have approved the proposals mentioned in the letter for Industry linked policy initiatives with special reference to Large Cement project being setup by Calcom Cement India Ltd. The proposals, so approved, relevant to the case in hand are quoted here in below:

...(viii) Grant of mining lease area of AIDC to the unit was noted.

Limestone from AMDC mines will be made available on requirement basis and on mutually agreed terms.

(ix) The unit may purchase coal from AMDC in the manner indicated by Power Deptt. vide their Letter No. PEM.88/05/33, dated 16.11.2005....

7. The contents of another letter dated 3.6.2006 (Annexure 13) issued by the Managing Director, AMDC to the Petitioner No. 1-company on the subject of supply of limestone and coal to the Petitioner No. 1 company, is reproduced hereunder:

...This is to acknowledge with thanks the receipt of your above letter on 29th May, 2006. In this context, I would like to refer to the Government letter No. MI. 59/2005/74, dated 18th February, 2006 through which Government of Assam conveyed its approval on following:

I. Limestone from AMDC s mine will be made available on requirement basis and on mutually agreed terms to Calcom Cement India Ltd.

II. M/s. Calcom Cement India Ltd. may purchase Coal from AMDC @ 80% of its total produced from its two collieries.

It may be mentioned that AMDC has not received any directives from Government so far for sub-leasing of its mine to M/s. Calcom Cement India Ltd. So, AMDC is not in a position to take any action on your draft agreement at this stage...."

8. Meanwhile through various letters including the one dated 21.8.2006 (Annexure 14) the Petitioner company kept on urging the AMDC for long term partnership in respect of limestone and coal to which the Managing Director, AMDC wrote back to the Petitioner company on 24.8.2006 (Annexure 15) asking the company to intimate its requirement of limestone and coal along with lifting schedule urgently for further necessary action. The content of this letter dated 24.8.2006 is in parity with the subsequent letters dated 19.9.2006 (Annexure 16) and 7.11.2006 (Annexure 17) issued respectively by the Joint Secretary Industries and Commerce Department and Managing Director, AMDC wherein it was reiterated that limestone from AMDC mines will be made available to the Petitioners on requirement basis and on mutually agreed terms, rates whereof were being re-assessed by the. AMDC. The contents of these letters are reproduced here in below:

Letter dated 24.8.2006:

.....In inviting a reference to above, I would like to request you to intimate your requirement of limestone and coal along with lifting schedule urgently for further necessary action from ours end."

Letter dated 19.9.2006:.

...With reference to your letter cited above on the subject, I am directed to enclose herewith the extract of Cabinet Memorandum pertaining to the proposal for Industry linked policy initiatives with special reference to large cement project being set up by Calcom Cement India Ltd.

The Cabinet in its meeting held on 27.1.2006 had approved, inter alia, the following clauses of the memorandum:

(a) Grant of Mining lease area of AIDC unit was noted. Limestone from AMDC Mines will be made available on requirement basis and on mutually agreed terms.

(b) The Unit may purchase Coal from AMDC in the manner indicated by the Power Department vide their letter No. PEM.88/05/33, dated 16.11.2005.

Letter dated 7.11.2006:

....This is to acknowledge with thanks the receipt to your above letter dated 21st August, 2006. In this context, I would like to confirm that we would be able to supply your required quantity of limestone with an average quality of 46.5% CaO which may be the best quality for manufacturing cement. As you are aware that the current base price of our R.O.M. cement grade limestone is fixed at Rs. 140 per MT at pit head which you intend to procure at a landed price of Rs. 159.26 at your factory site that includes Base price, Loading Charges, Transportation from pit head, Royalty and VAT. So, we are re-assessing our rates considering those parameters with your bulk quantity requirements.

The rates being intimated to you after confirmation.

9. The Petitioners have annexed a number of letters issued by them to the various Government authorities repeating their prayer for long term partnership in respect of supply of coal and lime stone with AMDC. However, the Petitioners could not show any positive response in this connection from any authority of the Government on the basis of any document on record reflecting grant of such prayer for long term partnership with the Petitioner in respect of supply of coal and limestone from AMDC. Rather a letter dated 13.12.2006 (Annexure 19) issued by the Managing Director, AMDC to the Petitioner company only indicates a request to the Petitioner for a discussion regarding such long term supply of coal and limestone from AMDC.

10. When the matter rested as, thus, the Government of Assam, Mines and Minerals Department issued a Notification No. PEM.33/2007/14 dated 12.06.2007 inter alia inviting Expression of Interest from investors for settings up mineral based industries as a joint venture with AMDC. The mineral blocks involved are of coal, cement grade limestone, kaolin (China Clay), granite, etc., with their estimated reserve and location offered for allotment by the said notification were listed in the said notification itself. A limestone block of AMDC with an area of 2 square kilometer situated at N.C. Hills District with a reserve of 157.00 million tone located at".....lat 25°31'22" to 25°32'40" N and long 92°47'50" to 92°47'20" E..." is enlisted at Block No. 4 of erial No. I of the aforesaid list

annexed to the notification.

The Petitioner wrote to the Principal Secretary, Government of Assam, Department of Mines & Minerals on 6.8.2007 (Annexure 23) requesting for withdrawal of the words "limestone" and "coal" from the aforesaid notification inviting Expression of Interest meaning thereby that the AMDC block of "limestone" and "coal" offered for allotment by the Notification dated 12.06.2007 should be kept out of the purview of offer of allotment. Similar prayers were made to the Chief Secretary on 6.8.2007, 10.8.2007, 25.9.2007 (Annexures 24, 25 and 26 respectively) as well as several other letters, copies of which are annexed to the writ petition. However, the only response in this subject is discernable from a letter dated 6.9.2008 (Annexure 36) issued by the Commissioner and Secretary to the Government of Assam, Industries and Commerce Department addressed to the Chairman of the Petitioner No. I company wherein at paragraph 7 it has been stated as follows:

...7. Grant of mining lease area of Assam Industrial Development Corporation Ltd. to the unit was noted. Lime stone from AMDC mines will be made available on requirement basis and on mutually agreed terms....

11. On the basis of the aforesaid pleadings, the Petitioners claim that all along the Government of Assam has assured the Petitioner No. I that the limestone from AMDC mines would be made available to the Petitioner No. I and acting on such assurances of the State Government the Petitioners took several steps including ordering of machineries to be designed in a manner which requires the use of 25% of limestone from the AMDC mines and 75% from AIDC mines in order to provide good quality cement, thus, making the Petitioner No. I changing its position to its detriment and expended huge amount of time, money, labour and energy. The learned senior counsel appearing for the Petitioners endeavoured to make out a case of promissory estoppel against the Respondent authorities for justifying the prayer made by the Petitioner in the writ petition. To buttress the case of the Petitioners reliance on following judgments of the Apex Court was placed by the learned Senior Counsel appearing on behalf of the Petitioners:

1. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others,
2. Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI),
3. Assistant Commissioner of Commercial Taxes (Asst.) Dharwar and Others Vs. Dharmendra Trading Company and Others,
4. Vij Resins Pvt. Ltd. and Others Vs. State of Jammu and Kashmir,
- 5 Amrit Banaspati Co. Ltd. and another Vs. State of Punjab and another,
6. State of Orissa and Others Vs. Mangalam Timber Products Ltd.,
7. State of Punjab Vs. Nestle India Ltd. and Another,

12. The petition has been contested by the Respondents by filing their respective affidavits.

13. The Respondent No. 2, i.e., the Principal Secretary to the Government of Assam, Department of Mines and Minerals has filed an affidavit-in-opposition taking a categorical stand that the Government of Assam had never committed to the Petitioner No. 1-company that the State will provide them monopolistic environment for cement manufacturing in the state of Assam. While taking a stand that as per the technical report submitted by the Directorate of the Geology and Mining, Assam the quality of cement grade limestone available in the AIDC Block of mines with a reserve of 390 million tones leased out to the Petitioner Company is at par in quality with the AMDC Block of minerals. It has further been contended that the Petitioner company has deliberately ignored the decision taken in the meeting dated 29.3.2008 by the State Government in total concurrence and approval of their joint venture partner, AIDC, specifically in respect of their proposed cement project that the mineable reserve of limestone in the AIDC Block of mines leased out to the Petitioner company would be able to sustain a cement plant of 5 million tones per annum capacity for a period of about 40 years. While setting out different technical details as well as the background of setting up of the joint venture company, i.e., the Petitioner No. 1 company, the Respondent No. 2 has stated that the total reserve of limestone available with the Petitioner No. 1-company at the lease hold area of AIDC Block can sustain the proposed cement plant of the Petitioner No. 1 company for a period of about 40 years. Accordingly, the State Government in the Mines and Minerals Department was of the clear view that there was absolutely no need to grant any additional mining lease of limestone mines to the proposed cement plant of Petitioner No. 1 company. The issue regarding grant of additional mining lease was in respect of coal only. The aforesaid stand taken by the Respondent No. 2 is also reflected in the minutes of meeting dated 29.3.2008 between the Chief Secretary, Government of Assam and the officers of Mines and Minerals Department and Industries Department. The pleading of Respondent No. 2 would reveal that the Petitioner No. 1 had never specifically expressed any interest in respect of any of the blocks mentioned in the notification dated 12.6.2007 and had never submitted any bid in terms of the Notification dated 12.6.2007. The respondent No. 2 further contends that in response to the aforesaid Notification dated 12.6.2007 inviting "Expression of Interest", a number of parties had submitted their "Expression of Interest" for the following limestone blocks, namely, Juripahar (A), Juripahar (B), Juripahar (C) and AMDC block and a total of 23 parties had submitted their bids for different mineral blocks notified for allotment vide Notification dated 12.6.2007. Amongst those who submitted their Expression of Interest for the aforesaid limestone blocks were, National Mining Company Ltd., Jayprakash Associates Ltd. (respondent No. 8), Jindal Exports Ltd., Meghabond Cements Ltd., Birla Corporation Ltd., Sainik Mining and Allied Services Ltd., Transasia Drilling International Ltd., Rohit Ferrotech Ltd., North East Trade and Investment (P.) Ltd., South Asia Petrochem Ltd., ACC, etc.

Besides others, the Respondent No. 8 had submitted its bid within the stipulated time in compliance of Notification dated 12.6.2007 expressing their interest specifically for the AMDC mines limestone block as mentioned at Serial No. 1, Item No. 4 of the List of Mineral Blocks in Assam for Allotment, appended to the Notification having an area of 2.00 sq. km. with essential reserve of 175 million tones.

14. It has also been contended by Respondent No. 2 that for comparative assessment and evaluation of the bids submitted in response to the Notification dated 12.6.2007, the State Government had constituted a Committee called "Committee for Development of Mineral Resources of Assam." The prominent members of the said Committee headed by the Respondent No. 2, are the Principal Secretary to the Government of Assam, HAD Department; the Commissioner and Secretary to the Government of Assam, P and D (PPP) Department, the Secretary to the Government of Assam, Finance Department; the Director of Geology and Mining, Government of Assam and the Managing Director, AMDC. The Committee after detailed comparative assessment and evaluation of the bids received in respect of the limestone block of the AMDC, mentioned at Serial No. 1, Item No. 4 of the List of Mineral Blocks in Assam for Allotment, appended to the Notification dated 12.06.2007, had found the bid submitted by the Respondent No. 8 as the best amongst the bid submitted for the said block and accordingly the committee has selected Respondent No. 8 as the joint venture partner of the AMDC for the limestone block under reference. The selection of Respondent No. 8 as joint venture partner of Respondent No. 6, AMDC for setting up of the cement plant had also been approved by the Cabinet of the Government of Assam. Pursuant to the approval of the Cabinet, the Respondent No. 6 and the Respondent No. 8 had been asked to enter into a MoU at the Conference Hall of the Chief Minister, Assam at 5.00 p.m. on 31.7.2009. Accordingly, the MoU had been entered into between the respondent No. 6 and the Respondent No. 8 on 31.7.2009 in presence of the Chief Minister, Assam and in witness of the Respondent No. 2, i.e., the Commissioner and Secretary to the Government of Assam, Mines and Minerals Department. In terms of the MoU dated 31.7.2009, the Respondent No. 8 had deposited an amount of Rs. 3.15 crores towards earnest money, equivalent to 1% of the total equity base, to the Respondent No. 6, AMDC.

15. While reiterating it is stand that the State Government had given approval only to the effect that limestone from AMDC s mines would be made available to the Petitioner company only requirement basis and on mutually agreed terms as well as the position reflected in the minutes of meeting dated 29.3.2008, the Respondent No. 2 has categorically denied that there was ever any promise made by the Government to allot the AMDC limestone mines to the Petitioner No. 1, more specifically the block of mines settled out in favour of the Respondent No. 8. The Respondent No. 2 has contended that the representations submitted by the writ Petitioners had no basis and the same were clearly misrepresentations and misleading. While asserting that public interest has been

the prime consideration in selecting Respondent No. 8, the Respondent No. 2 has also produced a comparative chart showing therein the benefits that will flow to the State of Assam from the proposed cement plants of the Petitioner No. 1 as well as the Respondent No. 8.

Particulars

Jayprakash Associates * (Respondent No. 8)

Calcom Cement (Petitioner No. 1)

Joint Venture between

AMDC & Jayprakash Associates

AIDC & Vinay Cements Ltd.

Proposed Capacity of Cement Plant

2.00 Million MT per year

1.40 Million MT per year

Investment

Equity of Government of Assam

Ks. 1,050 crores 18% (Free to AMDC)

Rs. 450 crores

10% (To be contributed by AIDC, already paid Rs. 10 crores)

Project completion time

30 months

7 years

Lease rights retained with

AMDC

Calcom

Earnest money received on signing of MoU

Rs. 3.15 crores by AMDC

Nil

Fixed facilitation fee to be received

Rs. 125 per MT of limestone extracted by AMDC

Nil

Total facilitation fee to be received by AMDC in full capacity utilization

Rs. 37.50 crores per year

Nil

Royalty to the State

Rs. 13.50 crores

Rs. 9.45 Crores

Dividend

18% on free equity

10% on contributed equity

Net Income per year

Rs. 51 Crores + Taxes + 18% Dividend (on free equity) provided by the promoter.

Rs. 9.45 crores + Taxes + 10% Dividend (on contributed equity) provided by the Government.

16. Respondent Nos. 6 and 7, i.e., the AMDC and its Managing Director have also filed an affidavit-in-opposition, in substance adopting the stand of Respondent No. 2. While categorically asserting that there was no assurance from the Government of Assam to the Petitioners for providing limestone from limestone mine of AMDC, it is asserted that understanding, if any, in terms of the MoU dated 8.9.2004 entered into between AIDC and Vinay Cement Ltd. is limited to the extent of transfer of mining lease of AIDC mines and not AMDC mines. It has been contended by Respondent Nos. 6 and 7 that the Government of Assam had only agreed to supply limestone to the Petitioner No. 1 company from the Respondent Corporation on requirement basis and on mutual agreed terms, but not on terms and conditions set forth by the Petitioner No. 1 and unacceptable to the Respondent-Corporation. However, the Petitioners had been seeking to impose its own terms to the Respondent-Corporation to comply with but conspicuously avoiding any direct discussion in the matter which makes it clear that they have not approached this Court with clean hands.

17. Respondent No. 8, Jayprakash Associates Ltd. has filed its affidavit-in-opposition, inter alia, adducing a profile of the company which was taken into consideration by the authorities while selecting said Respondent No. 8 in the process of grant of settlement in respect of the AMDC block of limestone mine at N.C. Hills with a reserve of 157 million tone which was included in the schedule of mineral blocks put up for allotment by the Mines and Minerals Department of Government of Assam vide its Notification No. PEM.33/2007/14 dated 12.06.2007. The Respondent No. 8 has pleaded that it has widest experience, expertise and capability in the field of the related mineral exploitation and running of related industry and, thus, it offered its bids in terms of the Notification dated 12.6.2007 specifically in respect of the aforesaid AMDC block of limestone mine. Further case of Respondent No. 8 is that its bid was found to

be by far the best in terms of merit and accordingly the authorities shortlisted the Respondent No. 8 and upon further scrutiny at the appropriate level of the Government of Assam the Respondent No. 8 was finally selected for allotment of the aforesaid AMDC block of limestone mine. The said selection was subsequently approved by the Cabinet of the Government of Assam and consequently in terms of the approval of the Cabinet, MoU in terms of the stipulation of the Notification dated 12.6.2007 was signed and executed by the Respondent No-8 and AMDC on 31.7.2009. It has further been disclosed that in terms of the MoU dated 31.7.2009 it had already deposited an amount of Rs. 3.15 crores by way of Demand Draft dated 31.7.2009 on the date of signing of the MoU itself which has since been acknowledged by the Managing Director of AMDC through his letter dated 1.8.2009. The MoU signed between the Respondent No. 8 and AMDC stipulates the following:

...(a) That the Respondent No. 8, i.e., Jayprakash Associates Ltd. being a large sized public limited company listed on various Stock Exchanges having sound financial position with successful track record in implementation of projects including Cement Plant, Hydro Power Projects, etc., involving substantial experience in mining operation and setting up of relevant mineral based industries in different regions of the country would form a Joint Venture Company with AMDC as a Joint Venture Partner.

(b) That the AMDC shall grant the Joint Venture Company the exclusive right for exploitation/exploration of the Mineral deposits in the "AMDC Block" measuring 2 square kilometers in North Cachar Hills District having a reserve of 157 Million Tones of Limestone and the Joint Venture Company would also set up a 2 Million Tone per annum capacity cement plant within the State of Assam.

(c) That in terms of the proposal submitted by the Respondent No. 8 company, the indicative project cost was calculated to be approximately Rs. 1,050 crores out of which 30%, i.e., Rs. 315 crores will be raised by equity while the remaining 70% would be raised by Debt. In terms of the stipulations in the Notice dated 12.6.2007, the Respondent No. 8 company was also required to pay 1% of the aforesaid Equity cost of Rs. 315 crores amounting to Rs. 3.15 crores (Rs. 3 crores 15 lakhs only) as Earnest Money in favour of AMDC.

(d) That the proposed Cement Plant is also stipulated to be commissioned by the Joint Venture Company within 30 months with effect from 31.7.2009 failing which the AMDC reserves the right to withdraw from the Joint Venture.

18. On the background of the aforesaid factual matrix, the Respondent No. 8 has challenged the contention of the writ Petitioners on the ground that the writ Petitioners have no legal or constitutional rights to claim priority ground of mining lease with reference to the limestone which is owned by the State and Regulation of the provisions of Mines and Minerals (Regulation and Development) Act, 1957. Limestone being a mineral which is a property of the State, it is for the State to decide as to how and to whom the mining lease should be granted

to serve greater public interest. It is the further case of the Respondent No. 8 that it had been granted the settlement of the block of minerals by way of a transparent open bidding system which is not under challenge and the writ petition has been filed with a purpose of blocking the entry of any company including Respondent No. 8 in the field of cement manufacturing in the state of Assam so as to secure future monopoly of the writ Petitioners. The Respondent No. 8 further contends that even if the face value of the documents referred to and annexed with the writ petition is taken note of, the same do not in any manner disclose any decision or promise of the authorities to grant mining lease of the AMDC mines to the writ Petitioners. Fact remains that even after long 5 years of their agreement with AIDC, the writ Petitioners company has failed to commission their cement plant within the validity of the original agreement dated 6.5.2005, validity period whereof had to be extended again on 31.7.2008. Accordingly, on the basis of the aforesaid grounds and other challenges contained in their affidavit the Respondent No. 8 has prayed for dismissal of the writ petition.

19. Although, the AIDC was not originally impleaded as a party Respondent, the same was subsequently arrayed as Respondent No. 9 in the proceeding. Respondent No. 9 has also filed an affidavit-in-opposition through its Manager, Technical denying the allegation of the writ Petitioners that AIDC had delayed in transferring its mining lease to the Petitioner company. It has claimed that the AIDC had transferred the mining lease to the writ Petitioners as soon as it received necessary approval from the competent authority. As regards the payment of assessment amount as stated by the writ Petitioners in paragraph 8 of the writ petition, it is stated that the writ Petitioner has been issued only equity shares of the assessment amount relating to the past expenditures incurred by the AIDC for its mines and not for the cash amount as stated by the writ Petitioners. It is further contended that the equity contribution of AIDC in Petitioner No. 1 company is Rs. 11.71 crores and not Rs. 17.11 crores, as mentioned by the writ Petitioners. It is the further categorical stand of AIDC that although the Agreement signed between the Government of Assam and Petitioner No. 1, Clause 6.5 thereof provided that the Government of Assam would extend necessary cooperation by granting additional mining lease in New Umrangshu area in order to enhance the production capacity to 5 million metric tones and to sustain the quality of the cement, there was no commitment in the said agreement that AMDC's mines limestone would be made available to the Petitioner No. 1 and that the project report reveals that the first phase of the Petitioner's project is to be commissioned on the basis of the existing mines of the promoter companies of Calcom Cement India Ltd. as well as from AIDC's lease area only. It is further stated that the AIDC had since released an amount of Rs. 10.25 crores to the Petitioner company as equity towards expenses relating to land acquisition expenses for setting up of the cement project in question and that the Petitioner company had issued equity shares to the AIDC amounting to Rs. 67,84,225 only towards the expenses incurred by the AIDC in

respect of its mining lease and the same includes 10% of the Government's/AIDC's equity component. The Respondent No. 9 also contends that the writ Petitioners have failed to make out any case against Respondent No. 9.

20. I have heard the Learned Counsel appearing for the parties. Also perused the pleadings set forth by the parties and the record of the case placed before this Court by the learned State counsel.

21. Mr. Phookan learned Advocate General Assam, appearing for the State authorities has submitted that the State has never made any promise to the writ Petitioners for supply of limestone from AMDC mines to the writ Petitioner company on any preferential basis. He has taken a categorical stand that there being no promise made by the State at any point of time, there is no question of its being estopped under any circumstances from settling the AMDC blocks of mines in question in favour of Respondent No. 8 in the manner which according to him has been most transparent and flawless. Mr. Bhuyan, Learned Counsel appearing for Respondent Nos. 6 and 7 while adopting by and large the submissions made by the learned Advocate General, Assam has also filed a written argument on behalf of Respondent No. 6 denying all the claims made by the writ Petitioners. Mr. Das, Learned Counsel appearing for the Respondent No. 9 has drawn the attention of this Court to paragraph 8 of their affidavit and submitted that so far the agreement executed between the Petitioner company and the Government of Assam is concerned, there is no commitment in the said agreement that AMDC limestone will be made available to the Petitioner No. 1 company.

22. Mr. Mazumder as well as Mr. Upadhyaya, learned Senior counsel appearing for Respondent No. 8 while taking this Court through the pleadings made in the writ petition as well as other contesting parties, have drawn the attention to the abovementioned comparative chart prepared by Respondent No. 2 and mentioned in its affidavit showing the benefit that is likely to flow to the State of Assam from the proposed cement plant of Respondent No. 8. While submitting that the writ Petitioners have failed to show any iota of promise made by the State in their favour in specific reference to the AMDC block of mines which have been settled in favour of Respondent No. 8, Mr. Mazumder has further submitted that mines and minerals being State property which has to be dealt with and used by the State in terms of statutory provisions enacted by the Legislature, the principle of Promissory Estoppel is wholly inapplicable in the present case. Placing strong reliance on the law laid down by the Apex Court in the Case of Jagdish Mandal v. State of Orissa and Ors., (2007) 14 SCC 517, Mr. Mazumder has drawn the attention of this Court to para 22 of the said judgment:

22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne

in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interference, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and many increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached;

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealership and franchises) stand on a different footing as they may require a higher degree of fairness in action.

23. Mr. Mazumder, learned Senior counsel has further submitted that in view of the interim order passed by this Court, further steps as envisaged under the MoU executed between the Respondent No. 8 and the AMDC could not be made in its usual expected pace and the Respondent No. 8 in spite of investing large sum towards the project is open to face the peril of non-commissioning of the project within the promised period of 30 months from the date of signing of the MoU dated 31.7.2009 thereby injuring greater public interest. In this context, Mr. Mazumder has placed reliance on the law laid down by the Apex Court in the case of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, While submitting that when intervention of the court results in delay in execution of the project having public interest many adverse consequences follow there from which can be substantial set back to the country's economic development. It is submitted that the decision to award particular mineral block of AMDC to the

Respondent No. 8 having been taken bona fide and the choice having been exercised on legitimate consideration which is not shown to be arbitrary, there is absolutely no reason why this Court should continue to interfere the instant petition under article 226 of the Constitution of India, more so at the instance of a party who preferred to be a fence sitter during the entire period w.e.f. issuance of the Notification inviting Expression of Interest dated 12.6.2007 by the Government till the process of final settlement of the particular block of AMDC limestone in favour of Respondent No. 8, ultimately culminating in signing of the MoU dated 31.7.2009 between the Respondent No. 8 and AMDC. Mr. Mazumdar has further submitted that although the Petitioners have prayed for quashing the MoU, said to be entered into between the Respondent Nos. 6 and 8, no such copy of the MoU or text thereof is produced along with the writ petition.

24. Mr. Upadhaya, the learned senior counsel also appearing for the Respondent No. 8 while candidly summing up the submissions made on behalf of the Respondent No. 8 has pointed out that the burden to prove the factum of promise on the part of the State lies heavily on the writ Petitioners and the writ Petitioners having failed to discharge the same, there is no question of estoppel operating against any of the Respondents inasmuch as, having not challenged the Notification inviting Expression of Interest and not participating in the tender process, it is the Petitioners who are estopped from challenging the MoU executed between the Respondent No. 8 and the AMDC which is the outcome of the long drawn process initiated by the tender committee in terms of the abovementioned Notification dated 12.6.2007 inviting Expression of", Interest issued by the Government of Assam.

25. From the pleadings on record and the submissions made on behalf of the contesting parties the following issues arise for the consideration and decision of this Court:

1. Whether the Respondent State had promised that the limestone mine of AMDC block which has now been settled in favour of the Respondent No. 8 on the basis of which the AMDC and the Respondent No. 8 have entered into the MoU dated 31.7.2009 would be first made available to the writ Petitioners?
2. Whether the MoU dated 31.7.2009 entered into between AMDC and the Respondent No. 8 is liable to be interfered with as prayed for by the writ Petitioners?
3. Whether the State Respondents are under any legal obligation to make available limestone and coal to the Petitioners from the mines of AMDC at New Umrangshu and North Cachar Hills on requirement basis pursuant to any cabinet decision or commitment on its part?

26. The learned senior counsel appearing for the writ Petitioners has urged upon the court to invoke and enforce the Petitioners' right based on the theory of promissory estoppel. Pointedly relying on various documents starting from the minutes of the meeting between the authorities of Government of Assam and the

officials of Vinay Cement Ltd. contained in the Memorandum dated 9.1.2004, the MoU dated 8.9.2004, the consequent cabinet memorandum in File No. MI.59/2005, especially clauses 11 and 12 thereof, the Agreement dated 6.5.2005, the letters dated 9.8.2005 and 18.8.2005 issued by the Managing Director, AMDC to the Additional Chief Secretary, Industries and Commerce Department, contents of Memorandum No. MI.59/2005/74 dated 18.2.2005 with special emphasis on Clauses (viii) and (ix) thereof, letters dated 3.6.2006 and 24.8.2006 issued by the Managing Director, AMDC, letter dated 19.9.2006 issued by the Joint Secretary, Industries and Commerce Deptt. Government of Assam to the Under Secretary, Government of Assam (Power) (Elect) Mines and Minerals Deptt. up to the letter dated 7.11.2006 issued by the Managing Director, AMDC to the Petitioner No. 1, it has been argued that the contents of the aforesaid documents demonstrate promise on the part of the Respondent State and its authority to make available limestone and coal to the Petitioners exclusively from the mines of AMDC at New Umrangshu and North Cachar Hills Districts on priority basis and, hence, the action of the Government in settling the particular AMDC block of mines having reserve of 157 million tone of limestone in favour of the Respondent No. 8 and further entering into MoU with the Respondent No. 8 is a consequence of such settlement in terms of the Notification requesting Expression of Interest as contained in No. PEM.33/2007/14 dated 12.6.2007 clearly demonstrates breach of promise made by the Respondent State authorities towards the writ Petitioners thereby making out a clear case of promissory estoppel against the Respondent State and its instrumentalities justifying grant of the prayers made in the writ petition.

27. At this point, we can gainfully recall the brief development of the theory of promissory estoppel in the realm of public law domain. Lord Denning in his celebrated judgment in *Central London Property Trust Ltd. v. High Trees House Ltd.* (1956) 1 All ER 256 sitting as a trial Judge, asserted:

....the promise, intended to be binding, intended to be acted on and in fact acted on is binding....

28. In our country, with the dawn of the Constitution, Supreme Court through hon"ble Bose, J laid down three essential conditions for invoking the doctrine of estoppel in the case of *Dhiyan Singh and Another Vs. Jugal Kishore and Another*, as under:

...first, a representation "of an existing fact as distinct from a mere promise de future made by one party to the other; second, that the other party, believing it, must have been induced to act on the faith of it, and third, that he must have so acted to his detriment.

29. This position was reiterated by the Supreme Court in the case of *Gyarsi Bai and Others Vs. Dhansukh Lal and Others*, on the background of Section 115 of the Evidence Act. However, in the field of enforcement of rights which may not be purely contractual but partly contractual and partly statutory thereby bringing

a dispute within the realm of writ jurisdiction, the Supreme Court of India in the case of *Union of India v. Indo-Afghan Agencies* AIR 1968 SC 718 laid down prominently that the theory of promissory estoppel has been adopted in its fullness in our country and it has been recognized as affording a cause of action to the person to whom the promise is made. Public bodies and the State were made equally responsible and bound alike private individuals to carry out obligations incurred by them because parties seeking to bind the authorities had altered their position to their disadvantages or had acted to their detriment on the strength of such promise or representation made by such authorities. This view was followed consistently by the Supreme Court in the cases of *Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another*, ; *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, ; *Union of India (UOI) and Others Vs. Godfrey Phillips India Ltd.*, ; *Shri Bakul Oil Industries and Another Vs. State of Gujarat and Another*, ; *D. Navinchandra and Co. and Others Vs. Union of India (UOI) and Others*, ; *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, ; *Kasinka Trading and another, etc. etc. Vs. Union of India and another*, ; *Sharma Transport Rep. by D.P. Sharma Vs. Government of Andhra Pradesh and Others*, and various other judgments with an occasional note of dissent by a two-Judges Bench in the case of *Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others*, only to be corrected by the three-Judges Bench in *Godfrey Phillips (supra)*.

30. The Principles laid down in the aforesaid decisions of the Supreme Court can be summarized to the effect that an estoppel can not legitimate an action which is ultra vires and the doctrine can not be invoked if it is found to be inequitable/ and unjust in its enforcement or to compel the Government or public authority to carry out a promise which is contrary to law or which is out side the authority or power of the Officer of the Government or the public authority. A promise or representation must be clear and unambiguous for being enforced and not tentative or uncertain. To invoke the doctrine of Promissory Estoppel clear, sound and positive foundation must be laid by the party seeking its enforcement in the petition itself with clear supporting material to demonstrate that the doctrine of promissory estoppel is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government. However, this being an equitable doctrine, the court enforcing it in a given circumstance must also satisfy itself that it would not be inequitable to hold the Government or public authority to the promise or representation made by it or that such a course would not render the mandatory provisions of any statutory enactment redundant. While reiterating all these principles, the Supreme Court in one of the recent judgments in the case of *State of Arunachal Pradesh Vs. Nezone Law House, Assam*, held that in a case where the then Law Minister of the State had reportedly assured a book supplier through its proprietor to purchase books and had given green signal for publishing and printing the books by means of some alleged departmental notes, the principles of promissory estoppel could not be applied against the State to compel the State to purchase the said books.

31. Promise made by the State or its authority must be unambiguous and apparent on the face of the materials produced before the court. The party seeking enforcement of estoppel has to discharge the burden to show that such promise was made to it by an authority empowered to make such promise and that such promise is not contrary to any legal provision and enforcement of the same against the State and/or its instrumentalities would not be against public interest, public policy or inequitable; If only this initial burden is discharged by the Petitioner, then the court will further determine to its satisfaction whether the Petitioner had really altered its position or acted through its detriment in terms of the said promise.

32. Even a most generous reading of the pleadings and documents pressed to service by the writ Petitioner, as noted above, could not persuade the court to read any word of promise from the Government of Assam or its instrumentalities including the AMDC so far as it relates the claim of the Petitioners to get preferential supply of limestone and coal from any AMDC block of mines. The subsisting agreement of the Petitioners with the AIDC for transfer of lease hold possession of AIDC mines has been already undisputedly fulfilled. So far as, supply of limestone from AMDC mines are concerned, the best that can be deciphered is that "limestone from AMDC mines would be made available on requirement basis and on mutually agreed terms". There is no material on record to unambiguously project any promise by either any authority of the State Government or the AMDC to give any preferential or monopoly treatment to the Petitioners in respect of any AMDC owned mines, be it coal or limestone. No promise is discernable from any of the materials available on record so as to prompt this Court to enforce the principle of promissory estoppel against the State in the matter of settlement of the particular AMDC block of limestone mines which has now been settled in favour of the Respondent No. 8. Rather mineral like limestone is a precious public property which has to be mandatorily used for public welfare and any process of settlement of such public wealth in favour of any private party must necessarily be done by following the legally accepted process of distribution of public larges. It is important to be noted herein that although the Notification inviting Expression of Interest for settlement of the particular AMDC block of limestone mines with a reserve of 157 million tones was issued on 12.6.2007, the Petitioners opted to wait for long two years and come to court only in the month of August 2009, that too after the settlement process was finalized in favour of the Respondent No. 8 and the MoU was signed between the State Authority and the Respondent No. 8 in pursuance whereof the Respondent No. 8 has also made considerable investment as quoted above. Other than submitting representations, some of which are not even related to the issue at hand or the prayers made in the writ petition, the writ Petitioners have chosen to maintain an indolent attitude. In fact, estoppel, if any operates against the writ Petitioners who had preferred not to participate in the process of settlement in terms of the Notification dated 12.6.2007 in spite of having full knowledge of the same and keep on submitting representation and

come to the court at this belated stage in a round about manners with the prayers which if granted would amount to nullifying and quashing the settlement made in favour of the Respondent No. 8.

33. Accordingly, I decide issue Nos. 1 and 2 against the writ Petitioners holding that no case of enforcement of promissory estoppel has been made out by the writ Petitioners against the Respondents in respect of the AMDC block of limestone mine which has been settled in favour of Respondent No. 8 and on the basis of which a MoU dated 31.7.2009 has been entered into between the AMDC and the Respondent No. 8.

34. As regards the issue No. 3, it is the pleaded stand of the responder Nos. 6 and 7 that it had never in any manner committed supply of any minerals from its mines on any unilateral demand or term set by the writ Petitioners and that no agreement on mutually agreed terms and reasonable prices with delivery time schedule on requirement basis has been entered into by the AMDC and the writ Petitioners. Even by not delving into the question of relative quality of the reserves of AIDC and AMDC mines and as to whether a prima facie appreciation of Clause 6.5 of the Agreement between the Government of Assam and the writ Petitioner No. 1 would entitle the writ Petitioners to claim any further grant of additional mining lease on its failure even to set up their promised cement plant for the initial envisaged production capacity, the writ court is not a forum for adjudication of such canvassed rights which are neither contractual in the absence of an agreement to that effect nor statutory in nature. Accordingly, the issue No. 3 is also decided against the writ Petitioners.

35. In view of the decision arrived at by this Court on the averments made in the pleadings and materials available on record as indicated above, the decisions cited by the Learned Counsel appearing for the Petitioners have not been referred to elaborately, which even otherwise would not effect the merit of the case.

36. Under the facts and circumstances as mentioned above, this Court is not inclined to entertain the writ petition by invoking power under article 226 of the Constitution of India. Accordingly, the same is dismissed.

37. The interim order passed earlier stands vacated.

38. The parties to bear their own costs.