(2013) 08 RAJ CK 0098

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5944 of 2009

Kalani Industries (P) Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 06-08-2013

Acts Referred:

Electricity Act, 2003 — Section 61, 62, 86(1)(b)
Rajasthan Land Revenue Act, 1956 — Section 100

Citation : (2013) 08 RAJ CK 0098

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Dinesh Mehta, for the Appellant; Sundeep Bhandawat, Govt. Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—The petitioner-company, Kalani Industries Pvt. Ltd., was allotted 30 hectares (74.13 acres) of land situated at Bara Bagh, Jaisalmer, by the respondent, State Government for a period of 30 years for setting up a wind farm project on 27.12.2000 under the provisions of Rajasthan Land Revenue (Industrial Area Allotment) Rules, 1959 (for short, hereinafter referred to as ''Rules of 1959'') and a lease-deed was executed in favour of petitioner-company on 09.04.2001 registered on 10.04.2001 with the Sub-Registrar, Jaisalmer. The possession of the land was delivered to the petitioner-company on 31.03.2001. The petitioner-lessee agreed to pay the lease rent for the said area of land @ Rs. 1.50 per acre per year amounting to Rs. 11,120/- per annum, besides the payment of premium @ Rs. 12,000/- per Bigha for the said 30 hectares (185 Bighas and 6 Biswas) of Rs. 22,23,960/-, which is said to have been deposited with the Tehsildar, Jaisalmer vide the allotment letter (Annex. 1) of the District Collector, Jaisalmer dated 27.12.2000.

2. At the time of allotment of the said land to the petitioner-company, no statutory rules were framed by the State Government for allotment of the land

for setting up of wind farm for production of wind energy, a renewal energy source in the year 2000 and, therefore, the said allotment was made under the Rules of 1959, applicable for allotment of agricultural land for industrial purposes. However, the State Government enacted Rajasthan Land Revenue (Allotment of Land for Setting Up Wind Farms) Rules, 2006, which were further replaced by the Rajasthan Land Revenue (Allotment of Land for Setting up of Power Plant Based on Renewal Energy Source) Rules, 2007 (for short, hereinafter referred to as ''Rules of 2006'' and ''Rules of 2007'' respectively).

3. The controversy in hand and the cause of action for filing the present writ petition has arisen because the respondent Revenue Department demanded the enhanced lease charges prescribed under the Rules of 2006 and Rules of 2007. In this regard, demand of Rs. 2,11,859/- and interest thereon of Rs. 47,574/- for the years 2007-08 and 2008-09 was notified to the petitioner vide the communication Annex. 3 dated 04.02.2009 of Tehsildar, Jaisalmer; and vide the communication Annex. 6 dated 24.03.2009, the said authority returned the Demand Draft No. 972671 dated 29.01.2009 for Rs. 11,120/- for the year 2008-09 and demanded the outstanding amount of lease rent @ Rs. 1,89,619/- with interest, failing which coercive process for recovery by way of attachment was also informed to the petitioner. The petitioner made a representation against such demand before the learned District Collector, Jaisalmer vide Annex. 7 dated 02.06.2009 and contended that the Rules of 2006 are not applicable to the case of the petitioner as the lease-deed was executed much prior to coming into force of these Rules of 2006; and Clause (VIII) of the lease-deed stipulates that annual rent as prescribed in the lease-deed will be subject revision after 30 years and on terms and conditions, which the State Government shall prescribe from time to time. Since, the petitioner could not get favourable response from the District Collector on the representation, it has approached this Court by way of present writ petition, which was filed on 15.06.2009, inter-alia, for praying quashing of the impugned demand notice issued by the Tehsildar, Jaisalmer vide Annex. 3 dated 04.02.2009 and Annex. 6 dated 24.03.2009.

4. The respondents have filed a reply to the writ petition and have justified the impugned demand against the petitioner-company in view of statutory Rules being enforced in the year 2006 and later on in the year 2007; and have contended that the said demand is in consonance with these statutory rules and annual lease-rent fixed in the lease-deed would stand revised and enhanced as per these Rules as per Clause (VIII) of the lease-deed, whereby the petitioner-lessee had agreed to pay such enhanced lease-rent to the lessor as a result of revision thereof, as per terms and conditions which the State Government can prescribe from time to time and, therefore, the present writ petition deserves to be dismissed.

5. Mr. Dinesh Mehta, learned counsel for the petitioner-company vehemently urged that the lease-deed duly executed between both the parties is binding on both the parties and the said lease-deed executed under the provisions of Rules

of 1959 cannot be unilaterally modified by the State Government and the lease rent agreed in the said lease-deed cannot be enhanced unilaterally by the respondent-State Government. He further submitted that the Repeal and Saving Clause (14) of the Rules of 2006 saved the lease-deeds already executed before coming into force of these Rules of 2006 and since the enhanced lease-rent is being demanded under the new Rules of 2006, the repugnancy or inconsistency caused by these Rules of 2006 shall not prevail and the terms and conditions of the lease-deed already executed in favour of petitioner-company shall prevail and the respondents are not entitled to realize the enhanced lease-rent by unilaterally increasing the same. In support of his contentions, he relied upon the following case-laws:-

1. Assistant Excise Commissioner and Others Vs. Issac Peter and Others,

2. Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh,

3. Indian Aluminium Company Vs. Kerala State Electricity Board,

4. Prontos Ltd. Vs. State of H.P. and Others,

6. On the other hand, Mr. Sundeep Bhandawat, learned Government Counsel supported the impugned communication and demand of enhanced lease-rent and relied upon two decisions of Hon''ble Supreme Court in the case of Transmission Corporation of Andhra Pradesh Ltd. and Another Vs. Sai Renewable Power Pvt. Ltd. and Others etc. etc., , and ITC Ltd. Vs. State of Uttar Pradesh and Others,

7. I have heard learned counsel for the parties and given my thoughtful consideration to the rival submissions and the judgments cited at the bar.

8. The legal position of the lease-deeds between the private parties on the one hand and between a private party and the State Government on the other hand, have to be seen in the light of law laid down by the Hon''ble Supreme Court in the case of ITC Ltd. (supra). Dealing with the allotment of land in NOIDA for hotel/tourism industries, which allotments were later on sought to be cancelled by the State Government and the matter was taken up to the Hon''ble Supreme Court in an appeal filed by the appellant - ITC Ltd., the Hon''ble Apex Court held as under:-

If after affecting a transfer, the transferor finds that he had stipulated a lesser consideration (sale price or lease premium) for the transfer, due to a mistake of fact or wrong understanding or misreading of any law (and such mistake was not caused on account of any fraud, coercion of misrepresentation by the transferee) what is the remedy of the transferor? In private law, the transferor may have no remedy, as completed transactions of transfers cannot be reopened or cancelled.

The position is however different in public law. Breach of statutory provisions, procedural irregularities, arbitrariness and mala fides on the part of the Authority (transferor) will furnish grounds to cancel or annul the transfer. But before a completed transfer is interfered on the ground of violation of the regulations, it will be necessary to consider two questions. The first question is whether the transferee had any role to play (fraud, misrepresentation, undue influence etc.) in such violation of the regulations, in which event cancellation of the transfer is inevitable. If the transferee had acted bona fide and was blameless, it may be possible to save the transfer but that again would depend upon the answer to the further question as to whether public interest has suffered or will suffer as a consequence of the violation of the regulations:

(i) If public interest has neither suffered, nor likely to suffer, on account of the violation, then the transfer may be allowed to stand as then the violation will be a mere technical procedural irregularity without adverse effects.

(ii) On the other hand, if the violation of the regulations leaves or likely to leave an everlasting adverse effect or impact on public interest (as for example when it results in environmental degradation or results in a loss which is not reimbursable), public interest should prevail and the transfer should be rescinded or cancelled.

(iii) But where the consequence of the violation is merely a short-recovery of the consideration, the transfer may be saved by giving the transferee an opportunity to make good the short-fall in consideration.

Explaining the difference between the private leases and leases granted by the State Government as aforesaid, the Hon''ble Supreme Court further held that an equitable solution in these situations would be to give an opportunity to the lessee to pay the difference of premium, which the State Government intended to charge from such allottee(s) instead of cancelling the leases itself. In para 110 to 112 of the judgment, the Hon''ble Apex Court observed as under:-

110. In these cases the allotment of commercial plots to Appellants is valid and legal. The violation is in making such allotment on fixed allotment rate which is less than the rate the plots would have fetched by calling for tenders or by holding auctions. Therefore the equitable solution in these cases is to give an opportunity to the lessees to pay the difference thereby in consideration which arose on account of wrong interpretation instead of cancelling the leases.

111. According to the State Government, the commercial plots would have fetched a premium at rate of Rs. 70,000 per sq.m at the relevant time (October 2006 to January 2007) and NOIDA had been denied the benefit of that allotment rate, by reason of allotment of the plots at Rs. 7400/- per sq.m. Therefore if the Appellants are wiling to pay the balance of premium as claimed by Respondents, the leases need not be interfered.

112. In this case the violation of the policies of NOIDA in making allotments has resulted in a lesser premium being charged than what would have been applied for commercial plots. According to Respondents the premium that would have been charged was Rs. 70,000/- per sq.m as against Rs. 7,400 per sq.m.

Therefore, the violation of the guidelines in regard to disposal of commercial plots has resulted only in a loss of revenue by way of premium and if this could be made up, there is no reason why the leases should not be continued.

9. In the case of Transmission Corporation of Andhra Pradesh Ltd. (supra), where the Andhra Pradesh Electricity Regulatory Commission, undertook a review of tariff applicable and payable to the producers of electricity from the non-conventional energy resources, where the Commission vide its order dated 20.06.2001 fixed the price at Rs. 2.25 per unit and also made a provision for 5% escalation per annum with 1994-95 as the base year with a restriction on the producers on electricity from non-conventional energy resources to sell such electricity only to Andhra Pradesh Transmission Corporation/Discom of Andhra Pradesh, and not to any third party but later on in the year 2003, the Commission undertook such a review of the tariff and contrary to the expectations of the producers instead of enhancing, reduced the amount of tariff. The said action was challenged by the producers of the electricity on the ground of promissory estoppel that the Commission could not go back on its promise and reduce the tariff instead of increasing the same but the Hon''ble Supreme Court negatived such challenge by holding as under:-

The Commission discharging its statutory functions within the ambit of Sections 11, 12 and 26 of the Andhra Pradesh Electricity Reform Act, 1998 as well as Sections 61, 62 and 86(1)(b) of the Electricity Act, 2003 renders advisory functions to the State. All these provisions, examined and analysed cumulatively, do not support the approach adopted by the Tribunal that the functions of the Regulatory Commission in fixing tariff/purchase price were contrary to or derogated from the said policy. This cannot be supported either on the basis of the statutory provisions of the various Acts as well as within reference to the various documents on record including the order dated 20.6.2001 and PPAs signed by the parties at different stages.

It is also not possible to accept the view of the Tribunal that the Regulatory Commission has acted in contradiction or conflict with the State policy. The State was not intending to provide incentive and concessions with assurance of buy-back to enable the non-conventional energy developers/generators to sell generated power to third parties. The policy of the Government of India as well as the State of Andhra Pradesh was for encouraging the developers/generators of non-conventional energy to generate electricity for the benefit of public at large with buy-back of power being one of the basic features of this policy. Such parameters are obviously subject to change in larger public interest. All these issues, in fact, lose much significance because of the fact that the parties have, by and large, entered into the field of contract simpliciter and their rights are controlled by the contracts executed between them. There is no challenge to these contracts and permit questioning of the statutory jurisdiction vested in the Regularly Commission.

Upholding the power of Commission to revise the tariff and turning down the contention raised on behalf of power producers, the Apex Court further held that once the parties entered into a contract or PPA(s) (Public Partnership Agreement), they cannot refuse to adhere to the terms of the contract merely because a term of contract later on is not found to be beneficial to them at a subsequent stage and the Court held that such conduct of the party would be hit by principle of ''allegans contraria non est auidendus''.

In para 86 of the said judgment, upholding the order dated 20.06.2001 of the Andhra Pradesh Electricity Regulatory Commission, the Court observed as under:-

The order dated 20th June, 2001 was fully accepted by the parties without any reservation. After the lapse of more than reasonable time, of their own accord they voluntarily signed the PPA which contained a specific stipulation prohibiting sale of generated power by them to third parties. The agreement also had renewal clause empowering TRANSCO/APTRANSCO/Board to revise the tariff. Thus, the documents executed by these parties and their conduct of acting upon such agreements over a long period bind them to the rights and obligations stated in the contract. The parties can hardly deny the facts as they existed at the relevant time, just because it may not be convenient now to adhere to those terms. Conditions of a contract cannot be altered/avoided on presumptions or assumptions or the parties having a second thought that a term of contract may not be beneficial to them at a subsequent stage. They would have to abide by the existing facts, correctness of which, they can hardly deny. Such conduct, would be hit by allegans contraria non est audiendus.

10. The clause (VIII) of the lease-deed in question in the case before this Court, clearly stipulates that annual rent as fixed in the lease of Rs. 11,120/- would be payable on the terms and conditions, which the State Government may prescribe from time to time and the lessee hereby agrees to pay such enhanced rent to the lessor as a result of revision aforesaid. The Clause (VIII) is reproduced herein below for ready reference:-

Clause (VII): The annual rent as aforesaid shall be subject to revision after thirty years and on terms and conditions which State Govt. shall prescribe time to time. The lessee hereby agrees to pay such enhanced rent to the lessor as result of the revision aforesaid.

The Clause (VIII) provides that annual rent shall be subject to revision after 30 years but if by statutory enactment the annual lease-rent is increased, as has been done by the State Government in the present case by enacting the Rules of 2006, the same would be governed by the agreement in Clause (VIII) "on the terms and conditions which the State Government shall prescribe time to time." The word "annual rent" also signifies that the rent is payable only annually and extension of lease every year depends upon the payment of such annual rent, therefore, revision of such annual rent before the expiry of period of lease of 30 years, is clearly envisaged and is permissible by the said Clause (VIII) of the agreement itself. The word ''and'' between the two phrases, ''after thirty years'' and ''on terms and conditions which the State Government shall prescribe time to time'', makes both these phrases liable to be read with ''subject to revision'' which can be made in the annual rent. The said Clause (VIII) does not rule out such revision of rent before the expiry of period of 30 years from the date of grant of lease and such revision of lease-rent, if not made earlier, shall be subject to revision after expiry of 30 years and that is what was agreed between the parties and the intended meaning of Clause (VIII) of the lease-deed. Even otherwise, the law laid down by the Hon''ble Supreme Court in the aforesaid two judgments clearly permits the revision of annual rent in larger public interest by statutory intervention for such a revision of rent and the same cannot be challenged either on the ground of promissory estoppel or otherwise.

11. The contention of the learned counsel for the petitioner, Mr. Mehta, that Rules of 2006 are not applicable to the petitioner''s also does not have any merit. The Repeal and Saving clause (14) of the said Rules of 2006 clearly provides that all lands allotted for wind farms and lease-deeds executed therefore in accordance with "administrative decision or otherwise", shall be deemed to have been allotted and executed under the provisions of these rules. The allotment in question under the Rules of 1959 is clearly covered by word "otherwise" in Clause (14)(2) of the Rules of 2006. The enactment of Rules of 2006 is obviously a special law for setting up of wind farms and allotment of land for that purpose framed under the powers conferred u/s 100 of the Rajasthan Land Revenue Act, 1956, under which power, Rules of 1959 were also framed and, therefore, this special law will obviously override and supersede the Rules of 1959 also qua the lease-deed executed in favour of the petitioner for setting up the wind farms.

12. Equally devoid of merit is the contention raised by the learned counsel for the petitioner that such new statutory Rules of 2006 or 2007 cannot prevail as it will be repugnant or inconsistent with the terms of the lease-deed in favour of the petitioner in the year 2001. There is no question of any repugnancy or inconsistency as far as the fixation of lease-rent or amount of premium is concerned. The requirement to pay the enhanced rent by the petitioner-lessee is not only covered by Clause (VIII) of the lease agreement between the parties but is also supported by statutory intervention, as has been done by the Rules of 2006, which is a special law for wind farms; and the same cannot be said to be repugnant or inconsistent with the terms of the lease-deed. The term ''repugnancy'' has been defined in Black''s Law Dictionary as under:-

Repugnancy:- An inconsistency, opposition, or contrariety between two or more clauses of the same deed, contract, or statute, or between two or more material allegations of the same pleading, or any two writings.

13. Since there is no conflict or repugnancy between the two or more clauses of the same deed or same statute, it cannot be said that the lease-deed in the case of the petitioner executed under the Rules of 1959 will override and saved as it is contrary to the provisions of Rules of 2006.

14. Now, let the case laws relied upon by the learned counsel for the petitioner be dealt with.

15. The judgment of the Hon''ble Apex Court in the case of Assistant Excise Commissioner & Ors. Vs. Issac Peter (supra) relied upon by the learned counsel for the petitioner was a case arising under the Kerala Abkari Act and the question was whether the State is under an obligation to supply the additional quantity of ''Arrack'' to the licencee as per the demand under the licence terms for supply on monthly quota or minimum guarantee quota. The Apex Court held that supply on monthly quota or minimum guarantee quota by the State was obligatory but the supply of additional quantity under Rule 8(1) was discretionary and in view of express provision to the contract under Rule 8(3), such application cannot be read as an implied term of the contract merely because discretionary supply of additional quantity appears to the licencee unrealistic and onerous. The Court negatived the invoking of the doctrine of promissory estoppel as well as legitimate expectation of the licencee in the following terms in para(s) 24 and 25 of the judgment. In the opinion of this Court, the said judgment is of little avail to the petitioner in the case in hand.

24. Learned Counsel for the Respondents sought to invoke the Rule of Promissory estoppel and estoppel by conduct. The attempt is a weak one for the said Rules cannot be invoked to alter or amend specific terms or contract nor can they avail against statutory provisions. Here, all the terms and conditions of contract, being contained in the statutory Rules, prevail.

25. Learned Counsel for the Respondents also sought to rely upon the Rule of legitimate expectation which the licencees entertained in view of the practice during previous years. Firstly, the Rule cannot be invoked to modify or vary the express terms or contract, more so when they are statutory in nature. No decision has been brought to our notice supporting the said proposition. Secondly, in view of the scarcity that had developed during the last two months of the previous excise year (i.e., during February and March, 1981), the plea of legitimate expectation sounds quite weak. That the bidders were apprehensive and highly sceptical of alleged official assurances is proved by the repeated adjournment of auction and the fact pleaded by the licencees themselves that during the said excise year (1981-82) half the shops in the State remained unsold. It is inconceivable that the licencees yet expected legitimately that additional supplies equal to the previous year''s additional supplies would be supplied during this year. The plea is unacceptable.

16. In the case of Shri Vijaylakshmi Rice Mills (supra), where the rice millers who were to be paid the price for the rice supplied by them to the State Government as per the provisions of Rice (Andhra Pradesh) Price Control Order, 1963, demanded the enhanced price as notified by the Rice (A.P.) Price Control (3rd Amendment) Order, 1964, the Hon''ble Apex Court held that the millers are not entitled to the benefit of enhanced rate specified in the amendment order and cannot claim recovery of difference between the controlled price specified in the

1963 Order and the Amendment Order of 1964 was not retrospective in operation and, therefore, the millers were not entitled to the benefit of the same. The relevant extract of the said judgment in the head note of AIR reports is quoted below for ready reference:-

The sales in the instant cases having been made by the Millers before the coming into force of Rice (Andhra Pradesh) Price Control Order (Third Amendment) Order, 1964, and the property in the goods having passed to the Government of Andhra Pradesh on the dates the supplies were made, the Millers had to be paid only at the controlled price obtaining on the dates the sales were effected and not at the increased price which came into operation subsequently. The sales having been made before the coming into force of the Rice (Andhra Pradesh) Price Control (Third Amendment) Order, 1964, the Millers cannot justifiably claim the benefit of the increased price specified in the Amendment Order of 1964.

It cannot be said that as the prices fixed by the Government are meant for the entire season, the Millers have to be paid at the controlled price as fixed vide the Rice (Andhra Pradesh) Price Control (Third Amendment), Order, 1964, regardless of the dates on which the supplies were made. It cannot also be said that the controlled prices fixed by the Central Government for sale of rice are seasonable prices not being based upon any cogent material.

17. In the case Indian Aluminum Company (supra), where the petitioner-company challenged the issuance of the notification by the Kerala State Electricity Board enhancing the tariff rate for high tension power supply by which under the notification dated 28.11.1969 on the ground that there was pre-existing agreement between the petitioner and the State, which agreement was agreed to be binding on the State of Kerala when it was formed on 01.11.1956 under the provisions of State Re-Organization Act, 1956, the Hon''ble Supreme Court held in para 25 of the judgment that the Board was not entitled to enhance the charges in derogation of stipulations as the charges contained in the agreements with the appellant company and the notification dated 28th November, 1969 fixing the tariff for extra high tension consumer was not enforceable against the appellant. The relevant para from paras 17 and 20 of the judgment are quoted below for ready reference:-

17. Now in the present case, as we have already pointed out above, the stipulations as to charges contained in the agreements entered into with the appellant were made in exercise of the statutory power to fix special tariffs conferred under Sub-section (3) of Section 49 and, therefore, there could be no Question of such stipulations being void as fettering or hindering the exercise of the statutory power under that provision. These stipulations did not divest the Board of this statutory power or fetter or (hinder its exercise: in fact, they represented the exercise of this statutory power. Once the agreements were made containing these stipulations, it was not competent to the Board to override these stipulations which were binding as having been validly made in exercise of statutory power. The Board could not enhance the charges in breach

of these stipulations. To hold that the Board could unilaterally revise the charges notwithstanding these stipulations would mean that the stipulations had no binding effect, or in other words, the Board had no power to enter into such stipulations. That would negate the existence of statutory power in the Board under Sub-section (3) of Section 49 to fix the charges for a specific period of time, which would be contrary to the plain meaning and intendment of the section. The Board was also not competent to enhance the charges under the guise of fixing uniform tariffs for all high tension consumers, including the appellant under Sub-section (1) of Section 49 because Sub-section (1) is on its plain language, subject to Sub-section (3) of Section 49 and once special tariffs were fixed for the appellant under Sub-section (3) of Section 49 there could be no question of fixing uniform tariffs applicable to the appellant under Sub-section (1) of Section 49. The power to fix uniform tariffs under Sub-section (1) of Section 49 could not be exercised in derogation of the stipulations fixing special tariffs made under Subsection (3) of Section 49. Moreover, if the stipulations as to charges were not binding and the Board could enhance the charges unilaterally in disregard of them, it is difficult to see how the agreements, of which the stipulations formed a term as well as consideration, could be sustained. We can understand an argument that the whole of the agreements were void. But strangely, the claim of the Board was that the appellant should be held to the agreements, though, at the same time the Board should be free to repudiate the stipulations which formed the consideration or part of the consideration. That is a claim which is highly illogical and we find it difficult to appreciate it. The stipulations as to charges are in severable from the rest of the agreements and if these stipulations are disturbed and the charges are revised unilaterally by the Board, how could the agreements continue to bind the appellant? On the view contended on behalf of the Board, it would be impossible for a consumer to enter into an agreement with the Board for supply of electricity at a certain specified tariff. That surely could not have been intended by the Legislature. Far from promoting the object of electrical development and industrial growth in the State, it would act as a regressive factor. It may be pointed out that the Board also did not contend that the agreements entered into with the appellant were wholly void. The attack was only against the validity of the stipulations as to charges and that attack must, for reasons which we have given, fail in so far as it is based on Section 49.

20. We are, therefore, of the view that the Board was not entitled to enhance the charges in derogation of the stipulations as to charges contained in the agreements with the appellant and the notification dated 28th November 1969 fixing tariffs for extra high tension consumers was not enforceable against the appellant. We accordingly issue a writ quashing and setting aside the notification dated 28th November 1969 in so far as it seeks to make the tariffs specified in it applicable to the appellant and declare that the Board is not entitled to claim from the appellant anything more than the charges specified in the agreements. We also issue a writ restraining the Board from enforcing the notification dated

28th November, 1969 against the appellant or claiming from the appellant anything more than the charges specified in the agreements. The appeal is accordingly allowed. The 1st respondent will pay the costs of the appeal to the appellant.

18. The aforesaid case is distinguishable on the facts of the present case as this Court has found that Clause (VIII) of the lease-deed permitted the revision of annual rent by the State Government the the lessee (petitioner) is bound to pay such enhanced rent and such revision of rent was permissible by statutory intervention even during the period of lease of 30 years; and therefore, when the special Rules of 2006 were brought in force, the allotment made to the petitioner under the Rules of 1959 would be deemed to have been made under the new Rules of 2006 and will be subject to the provisions of Rules of 2006 and there was no repugnancy if the new lease-rent under the Rules of 2006 was being demanded from the petitioner for the lease executed by the State in its favour prior in 2001. Clause (VIII) of the lease-deed executed between the petitioner and the State which was not the case before the Hon''ble Supreme Court in the Indian Aluminum Company (supra) exists in the present case and, therefore, the said case is distinguishable from the case in hand.

19. The decision of learned Single Judge of Himachal Pradesh High Court in the case of Protons Ltd. Vs. State of H.P. & Ors. (supra) relied upon by the learned counsel for the petitioner in fact helps the respondents here, rather than the petitioner on the issue involved before this Court in the controversy in hand. Interpreting the Clause (2)(i) of the lease-deed, which provided that the lessee shall pay within such time, such additional sum or sums, towards the premium, as may be, decided upon the lessor on account of compensation award by the Land Acquisition Collector being enhanced on reference or in appeal or both and the decision of the lessor in this behalf shall be final and binding on the lessee. The Himachal Pradesh High Court held that the premium already paid by the petitioner/allottee of land is liable to be revised and increased upon the land compensation paid by the State to the land holders and which land was allotted to the present petitioner for setting up of industries.

20. Likewise, in the present case, Clause (VIII) of the lease-deed permits the revision of annual rent by the State and the annual rent fixed in the lease-deed is liable to be upwardly revised by statutory Rules of 2006. Therefore, the said judgment is also of little help to the petitioner''s case.

21. In view of aforesaid legal position discussed, this Court is of the opinion that demand of increased lease-rent under the new Rules framed for allotments made in 2006 Rules applicable to the wind farms, under which the allotment of land made in favour of petitioner and the lease-deed executed under the old Rules of 1959, will be deemed to have been made under the Rules of 2006, the petitioner is liable to pay the increased lease rent and the demand notices issued by the respondent-Tehsildar, Jaisalmer, are justified and the same cannot be validly assailed by the petitioner. The present writ petition, therefore, is liable to be

dismissed and the same is accordingly dismissed with no order as to costs. A copy of this order be sent to the concerned parties and the Chief Secretary of the State Government forthwith.

