(2019) 04 RAJ CK 0085

In the Rajasthan High Court

Case No : Civil Writ No. 5305, 8274, 9772, 9774, 9796, 9800, 10257, 10281, 13101, 13103, 13757 Of 2017, 56, 643, 671, 1219, 1392, 2892, 2894, 2901, 3719, 3775, 9086, 9101, 14320, 14324 Of 2018

M/s. Rana Marble And Ors APPELLANT

Vs

State Of Rajasthan And Ors RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Mines And Minerals (Development & Regulation) Act, 1957 — Section 3, 10A(c), 15, 15(1)
Rajasthan Minor Mineral Concession Rules, 2017 — Rule 3, 4, 5, 5(1), 5(2), 5(2A), 5(4), 16(2), 16(3), 16(4), 16(5), 17, 89
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 3, 4(10), 5, 7(3), 8, 8(1), 11, 11(1)
Tamilnadu Minor Mineral Concession Rules, 1959 — Rule 8C
Rajasthan Land Tax Rules, 2006 — Rule 2(h), 24(1), 24(2)
Constitution Of India, 1950 — Article 14, 141, 226

Citation : (2019) 04 RAJ CK 0085

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta, J

Bench : Division Bench

Advocate : Vikas Balia, Dinesh Pal Singh, Kuldeep Vaishnav, D.D.Thanvi, Amit Vyas, Arvind Shrimali, Rajesh Panwar, Ayush Gehlot, Sandeep Shah, Abhimanyu Singh, Utkarsh Singh, Aarohi Ojha, Sanjeet Purohit

Final Decision : Dismissed

Judgement

1. By way of these writ petitions, the petitioners have challenged the vires of Rule 5 and Rule 89 of Rajasthan Minor Mineral Concession Rules, 2017 (for short "the Rules of 2017"). Some of the petitioners, who are Letter of Intent (LoI) holders, under the Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules of 1986"), have also challenged the legality of communication of the Assistant Mining Engineer, whereby they are informed that the applications preferred by them for grant of mining lease of free hold strip land are deemed to be rejected under Rule 89 being not covered by Rule 4 and 5 of the Rules of 2017.

2. The petitions involving the common issues, were heard together and are being decided by this common judgment.

3. For appreciation of the controversy raised, it would be appropriate to notice the essential facts giving rise to filing of the present petitions by the petitioners. For this purpose, we take up D.B.C.Writ Petition No.13757/2017, which was argued before us as lead case.

4. The grant of quarry licenses, mining leases and other mineral concessions in respect of minor minerals in the State of Rajasthan were governed by Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules of 1986"), framed by the State Government in exercise of power conferred by Section 15 of the Mines and Minerals (Development & Regulation) Act, 1957 (for short "the Act of 1957").

5. Initially mining lease No.285/1991 ad measuring 1 hectare situated near Village & Tehsil-Savar, District-Ajmer, for excavation of mineral marble was granted in favour of Shri Ramesh Chandra s/o Shanker Lal for a period of 10 years, vide order dated 12.12.91, which was later transferred in favour of the petitioner-Rajendra Agarwal vide order dated 14.3.95 for the remaining period of time. A lease deed executed in his favour on 4.4.95 was registered on 10.4.95. The period of lease was further extended vide order dated 23.4.99 for a period of 10 years and thereafter, vide order dated 17.2.12, it was further extended for a period of 10 years and thus, the lease deed executed is valid upto 3.3.2022.

6. The State Government by way of Rajasthan Minor Mineral Concession (Amendment) Rules, 2011 inserted fourth proviso to sub-rule (1) of Rule 11 of the Rules of 1986, whereby it was provided that 30 meter wide strip of Government land shall be kept reserved around the existing mining lease for allotment to adjoining lessees to enhance size of lease for scientific and safe mining. The area of strip was proposed to be allotted on an application submitted by the lessee to the Mining Engineer/Assistant Mining Engineer concerned. The existing lessee in whose lease the strip is added was required to pay premium equivalent to four times of dead rent of the area to be added, in addition to the dead rent as per the rules.

7. The petitioner made an application dated 26.12.14 for the grant of 30 meter free hold strip land to be added in his existing mining lease as per fourth proviso to Rule 11 of the Rules of 1986 and deposited the prescribed fees and necessary documents. The application preferred by the petitioner was forwarded by the Assistant Mining Engineer to the Director, Mines, Government of Rajasthan on 25.5.15, which was duly approved by the Director, Mines, vide order dated 27.7.15.

8. On 20.7.15, the petitioner made yet another application before the Assistant Mining Engineer, Department of Mines, Savar for granting another 10 meter free hold strip land for excavation of mineral marble as per fourth proviso to Rule 11 of the Rules of 1986. The said proposal was also forwarded to the Director, Mines, who granted the approval vide communication dated 4.8.15.

9. Pursuant to the approval granted as aforesaid, formal approval letters dated 27.7.15 and 4.8.15 were issued in favour of the petitioner by the Superintending Mining Engineer, Ajmer Circle, Ajmer directing him to submit modified mining plan and environmental clearance within a period of 12 months. Indisputably, on account of non fulfillment of the conditions of LoI dated 10.8.15 issued by the Superintending Mining Engineer, the mining lease was not granted in favour of the petitioner and the matter remained pending at the stage of LoI.

10. In the meantime, the State Government vide notification dated 28.2.17, issued in exercise of the powers conferred under Section 15 of the Act of 1957 promulgated the Rajasthan Minor Mineral Concession Rules, 2017 (for short "Rules of 2017") for regulating the grant of quarry licenses, mining leases and other mineral concessions in respect of minor minerals and for the purpose connected therewith. The Rules of 1986 were repealed. However, "Repeal and Saving" clause as contained in Rule 3 of the Rules of 2017, provides that anything done or any action taken under the provisions of the rules so repealed shall be deemed to have been done or taken under the provisions of the Rules of 2017. Rule 3 of the Rules of 2017 reads as under: "Rule 3. Repeal and Savings:-

The Rajasthan Minor Mineral Concession Rules, 1986 are hereby repealed.

Provided that anything done or any action take under the provisions of the rules so repealed shall be deemed to have been done or taken under the provisions of these rules."

11. However, by way of Rule 89 of the Rules of 2017, the provision was incorporated in respect of the status of the applications pending on the date of commencement of the rules, which reads as under:

"Notwithstanding anything contained in these rules, all the pending applications except saved under rule 4 and rule 5, on the date of notification of these rules shall be deemed to have been rejected:

Provided that on and after the commencement of these rules, all applications including those rejected under the Rajasthan Minor Mineral Concession Rules, 1986 or rejected under notification dated 3rd April 2013 or subsequently restored shall be deemed to have been rejected and such applicant shall have no locus standi under these rules."

12. Thus, all pending applications except saved under Rule 4 and Rule 5 on the commencement of the Rules of 2017, are deemed to be rejected and by virtue of proviso to the said rule, the right of the applicants whose applications were rejected under the Rules of 1986 or under notification dated 3rd April, 2013 or subsequently restored are also deemed to have been rejected and their rights to claim the mining lease under the Rules of 2017 stand ceased.

13. Vide Rule 5 of the Rules of 2017, inter alia the rights of the applicants who were issued LoIs after determining premium or auction under the Rules of 1986 were protected to the extent specified. Rule 5 of the Rules of 2017 originally

framed reads as under:

"5. Rights of a holder of letter of intent to obtain a mining lease.- (1) Where the competent authority has issued a letter of intent before commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 for grant of a mining lease under the Mineral Concession Rules, 1960, notwithstanding anything contained in these rules, such application shall be considered as if received under these rules subject to payment of difference of application fee and premium amount equal to two and half times of the dead rent or as may be prescribed by the Government, from time to time, which shall be payable every year in advance and shall not be adjusted against dead rent or royalty. Such application shall be disposed off by the competent authority as per the provisions of sub-rule (2), (3), (4) and (5) of rule 16:

Provided that premium amount shall stand revised automatically on enhancement of the dead rent and the lessee shall be liable to pay such enhanced premium.

Provided further that where letter of intent has been issued in khatedari land, registered consent deed of khatedar shall be submitted within a period of three months from the date commencement of these rules, if such consent deed is not submitted within a period of said three months, the application shall be rejected and application fees, premium amount and performance security deposited shall be forfeited, after providing an opportunity of being heard by issuing notice of thirty days.

(2) Where the letter of intent has been issued after determining premium through tender or auction under the Rajasthan Minor Mineral Concession Rules, 1986 notwithstanding anything contained in these rules, such application shall be considered as if received under these rules and shall be disposed off by the competent authority as per the provisions of sub-rule (2), (3), and (4) of rule 16:

Provided that such letter of intent holder shall deposit remaining amount of premium as per the conditions of notice inviting tender before execution of lease deed.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the competent authority shall reject the application and forfeit the application fees, premium amount and performance security deposited, after providing an opportunity of being heard by issuing notice of thirty days.

(4) All cases covered under this rule shall be protected subject to fulfillment of the conditions of the letter of intent within a period of one year from the date of commencement of these rules and this period of one year shall include execution and registration of mining lease, failing which the right of such applicant shall be forfeited and in such cases, it would not be mandatory for the Government to issue any order in this regard."

14. Rule 5 of the Rules of 2017 was amended vide notification dated 20.6.17. By inserting sub-rule (2A) in Rule 5, the rights of the applicants who were issued LoIs through lottery or in khatedari land under the Rules of 1986 were also protected to the extent specified. The amended Rule 5 of the Rules of 2017 may also be beneficially quoted:

"5. Rights of a holder of letter of intent to obtain a mining lease.-

(1) Where the competent authority has issued a letter of intent before commencement of the Mines and Minerals (Development and Regulation)Amendment Act, 2015 for grant of a mining lease under the Mineral Concession Rules, 1960, notwithstanding anything contained in these rules, such application shall be considered as if received under these rules subject to payment of difference of application fee and premium amount equal to two and half times of the dead rent or as may be prescribed by the Government, from time to time, which shall be payable every year in advance and shall not be adjusted against dead rent or royalty. Such application shall be disposed off by the competent authority as per the provisions of sub-rule (2), (3), (4) and (5) of rule 16:

(1) Where the competent authority has issued a letter of intent before commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 for grant of a mining lease under the Mineral Concession Rules, 1960, notwithstanding anything contained in these rules, such application shall be considered as if received under these rules subject to payment of difference of application fee and one time premium equal to two and half times of the dead rent which shall be payable in advance and shall not be adjusted against dead rent or royalty. Such application shall be disposed off by the competent authority as per the provisions of sub-rule (2), (3), (4) and (5) of rule 16:

Provided that where letter of intent has been issued in khatedari land, registered consent deed of khatedar shall be submitted before grant of mining lease, if such consent deed is not submitted the application shall be rejected and applications fees, premium amount and performance security deposited shall be forfeited, after providing an opportunity of being heard by issuing notice of thirty days.

(2) Where the letter of intent has been issued after determining premium through tender or auction under the Rajasthan Minor Mineral Concession Rules, 1986 notwithstanding anything contained in these rules, such application shall be considered as if received under these rules and shall be disposed off by the competent as per the provisions of sub-rule (2), (3) and (4) of rule 16:

Provided that such letter of intent holder shall deposit remaining amount of premium as per the conditions of notice inviting tender before execution of lease deed.

(2A) Where the letter of intent has been issued through lottery or in khatedari land under the Rajasthan Minor Mineral Concession Rules, 1986 and the application was deemed rejected as per the provisions of Rule 89 of these rules, notwithstanding anything contained in these rules, such application shall be considered as if received under these rules subject to licence fee which shall be payable in advance and shall not be adjusted against dead rent or royalty or rent. Such application shall be disposed off by the competent authority as per the provisions of rule 16 or by the Mining Engineer or Assistant Mining Engineer concerned as per the provisions of rule 17, as the case may be.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the competent authority shall reject the application and forfeit the application fees, premium amount and performance security deposited, after providing an opportunity of being heard by issuing notice of thirty days.

(4) All cases covered under this rule shall be protected subject to fulfillment of the conditions of the letter of intent within a period of one year from the date of commencement of these rules and this period of one year shall include execution and registration of mining lease, failing which the right of such applicant shall be forfeited and in such cases, it would not be mandatory for the Government to issue any order in this regard."

15. Precisely, the petitioners herein, who have been issued LoI for grant of mining lease of adjoining strip of Government land applied for by adding the same to his existing mining lease in conformity with fourth proviso to Rule 11 of the Rules of 1986, are aggrieved by the action of the respondents mining authorities in treating their applications preferred for grant of strip land as deemed to have been rejected.

16. Mr. Vikas Balia, learned counsel appearing for the petitioners contended that there is no rational or logic behind saving all the LoIs except issued for strip land. Learned counsel submitted that as a matter of fact, the respondents are proceeding on absolutely wrong premise in treating the applications of the petitioners as pending and deemed to have been rejected as on the date of commencement of the Rules of 2017 by virtue of Rule 89 thereof. Learned counsel would submit that once LoI is issued in favour of the applicant for the grant of mining lease, the application gets disposed of and therefore, so far as the petitioners are concerned, there were no pending applications and thus, the provisions of Rule 89 are not attracted. Learned counsel submitted that under Rule 8 of the Rules of 1986, grant of LoI is envisaged when precise area is determined to be allotted to the applicant. An LoI is issued to put allottee to certain conditions before the lease can be executed but, nonetheless, on LoI being issued, the vested right is created in favour of LoI holders, which cannot be adversely affected by promulgation of the new rules. Learned counsel submitted that even under Mineral Policy, 2011, it is specifically provided that the day of grant of consent letter (LoI) is to be reckoned as the date of disposal of the application for grant and thus, the question of the petitioners applications being

treated pending and deemed to have been rejected by virtue of Rule 89 on the commencement of the Rules of 2017, does not arise. Learned counsel would submit that as a matter of fact, the right of LoI holders stand saved under Rule 3, which categorically saves all action taken under the Rules of 1986 including under Rule 8 thereof and thus, the provisions of Rule 5 cannot be read and deserves to be treated as otiose and if the same is allowed to stand, it deserves to be declared ultra vires being illegal, arbitrary and unreasonable. Learned counsel submitted that Rule 5(1), (2), (2A) being otiose and illegal, there is no question of Rule 5(4) being operational and therefore, the time frame as provided in Rule 5(4) also cannot operate. Learned counsel submitted that under Rule 5, the rights of the applicants who were issued LoIs through tender, auction, lottery as well as in khatedari land though not through auction, are saved but the LoIs granted for strip land for the purpose of scientific mining have been left out and thus, Rule 5 as framed being ex facie illegal, arbitrary and unreasonable, deserves to be declared ultra vires. Learned counsel submitted that the mining lease could not be executed in favour of the petitioners, LoI holders, for want of EC, the grant whereof is exclusively in the domain of the State and thus, the respondents cannot be permitted to take advantage of their own wrong or delay. In support of the contention, learned counsel relied upon decisions of the Hon'ble Supreme Court in the matters of "Mritunjoy Pani & Ors. vs. Narmanda Bala Sasmal & Ors.", AIR 1961 SC 1353 and "Ashok Kapil vs. Sana Ullah (Dead) & Ors.", (1996) 6 SCC, 342. Learned counsel submitted that in view of Rule 3, all the LoIs granted under the Rules of 1986 would now be governed by Rule 16 and under the third proviso to Rule 16(2), the LoI holders are entitled to seek extension for fulfillment of the conditions of LoI on payment of late fee and thus, the petitioners' right as LoI holders to claim the mining lease cannot be treated to be forfeited. Learned counsel submitted that Rule 5 of the Rules of 2017 is arbitrary and unconstitutional for yet another reason inasmuch as, it makes the provision for forfeiture of application fee etc. for no fault of the applicants/LoI holders. Learned counsel submitted that Section 15 of the Act of 2017 provides for powers of the State Government to make rules in respect of the enumerated issues and a close look at the scheme of Section 15 of the Act of 1957 makes it abundantly clear that the exercise of the powers under Section 15 regulate processing of application and do not envisage a right to be assumed by the authorities to automatically reject application without any fault with the applicants and refusing to process it and thus, Rule 5 and Rule 89 of the Rules of 2017 as framed being beyond the scope of the parent statute i.e. Section 15 of the Act of 1957 deserves to be declared ultra vires for this reason also.

17. On the other hand, Mr. Rajesh Panwar, Additional Advocate General, at the outset, submitted that the vires of Rule 89 of the Rules of 2017 has already been upheld by Jaipur Bench of this court vide judgment dated 11.7.18 rendered in the matter of "Neta Khandelwal vs. State of Rajasthan & Ors." (D.B.C.Writ Petition No.9049/17) & other connected petitions and therefore, the same cannot be reopened on the premise that some of the grounds which could have been

raised were not raised and considered by the court. Learned AAG submitted that it is well settled that binding effect of a decision does not depend upon whether a particular argument was considered or not and therefore, the argumentative novelties cannot be a ground for reopening the point already decided. In support of the contention, learned AAG relied upon the decision of the Supreme Court in the matter of "M/s. Kesho Ram & Co. & Ors. vs. Union of India & Ors.", (1989) 3 SCC 151. Learned AAG submitted that when the writ court decides about a provision of law whether the same is ultra vires or intra vires, it will be applicable to public at large since such Act is made for all and not for an individual and therefore, nothing turns on the question that the petitioners herein were not party to the writ petitions decided by Jaipur Bench of this court vide judgment rendered in Neta Khandelwal's case (supra). Learned AAG submitted that the argument advanced on behalf of the petitioners that Rule 3 of the Rules of 2017 which has repealed Rules of 1986, saves all the actions taken under the rules so repealed and the same are deemed to have been done or taken under the provisions of Rules of 2017 and therefore, the provisions of Rule 89 of the Rules of 2017 are not attracted, is absolutely fallacious. Learned AAG submitted that Rule 3 is a general rule dealing with 'Repeal and Savings' but Rule 89 is a specific provision dealing with status of the pending applications which is a non obstante clause, makes the provision incorporated therein operative notwithstanding anything contained in the Rules of 2017 which obviously includes Rule 3 as well and therefore, the provision incorporated therein providing for deemed rejection of all the pending applications except saved under Rule 4 and 5 on the date of the notification of the rules, shall be operative and the applications which are not specifically saved shall be deemed to have been rejected. In support of the contention, learned AAG relied upon decision of this court in the matter of "CIT Jodhpur vs. O.N.G.C.", (2003) 1 WLN 74 and a decision of the Supreme Court in the matter of "Gajraj Singh Etc. vs. STAT", AIR 1997 SC 412.

18. Learned AAG submitted that the contention of the counsel for the petitioners that once the LoI is issued, the application stands disposed of and a right is vested in the LoI holders to obtain the mining lease on fulfillment of the conditions specified, is absolutely incorrect. Learned counsel submitted that Rule 5 of the Rules of 2017 recognizes only two categories i.e. "existing mining concession holders" and "applicants" and thus, it is evident that unless mining lease is executed, the applications shall be treated to be pending including LoIs with only possibility of some inchoate rights. It is well settled that grant of mining lease is not a vested right and therefore, the question of LoI holders having vested right for granting mining lease does not arise. Relying upon decisions of the Apex Court in "State of Tamil Nadu Vs. M/s. Hind Stone and Ors." 1981 (2) SCC, 205, "Dresser Rand S.A. Vs. Bindal Agro Chem Ltd." 2006 (1) SCC, 751, "Rishi Kiran Logistics Pvt. Ltd. Vs. Kandla Port Trust" 2015 (13) SCC, 233 and "Bhushan Power & Steel Vs. S.L. Seal Additional Secretary Steel and Mines, State of Odisha", 2017 (2) SCC, 125, learned AAG submitted that LoI is not a vested right and it is merely an intention to enter into contract. In

absence of any vested right in anyone, an application for lease necessarily to be dealt with according to the rules in force on the date of disposal of the application despite the fact that there is long delay since making of the application. In this regard, reliance is placed upon decision of the Supreme Court in the matter of "Monnet Ispat and Energy Limited Vs. Union of India and Ors." 2012 (11) SCC, 1. Learned AAG submitted that even if it is assumed that Rule 89 is made operative retrospectively, it is well settled that the amendments which bring procedural changes in the statutes are categorically retrospective, unless, there is an expressed bar on retrospectivity in the enactment itself. Reliance in this regard is placed on a decision of the Supreme Court in "Rajendra Kumar Vs. Kalyan" 2000 (8) SCC 99. Learned AAG submitted that the Rules of 2017, provides for allotment of the mining leases, after delineation, only by way of auction to achieve the object of systematic and scientific mining and for this reason only the applications on the delineated plots of minor minerals in Government land are saved i.e. LoI issued by the process of auction, tender, lottery, khatedari land and the minerals which are brought in from major minerals to minor minerals category by notification dated 10.2.15. Learned AAG submitted that the exclusion of the LoI holders under the Rules of 1986 in respect of the strip land, is based on rational basis and cannot be said to be illegal, arbitrary or unreasonable. It is submitted that under the Rules of 2017, the reservation of the strip land for the mining lease holder in the adjoining mining area, is not envisaged under the Rules of 2017 and obviously, the auction of the strip land shall generate multiple times more revenue to the welfare State which is one of the prime objectives of the Mines and Minerals (Development and Regulations) Amendment Act, 2015 ("Amendment Act, 2015"). Learned AAG further submitted that the State Government has acted in consonance with law and in pursuit of bringing about fairness and transparency in the procedure of grant of mining lease in light of the decision of the Supreme Court and in consonance with the Amendment Act, 2015. Regarding the Legislative competence, learned AAG submitted that Section 15 (1) of the Act of 1957 empowers the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of the minor minerals and for the purposes connected therewith and obviously, the power to grant includes the power of rejection and therefore, it cannot be said that the rules framed by the State Government providing for deemed rejection of the pending applications as on the date of commencement of the Rules of 2017 are ultra vires the provisions of the Section 15 of the Act of 1957. Learned AAG submitted that even otherwise, no LoI holder can claim extension of time for fulfillment of the conditions of the LoI for an indefinite period and thus, keeping in view the change of the policy and the substitution of the Rules of 1986 by Rules of 2017 wherein the reservation of the strip land is not envisaged, the provision incorporated regarding deemed rejection of the applications in respect of the strip land by virtue of Rule 89 of the Rules of 2017 cannot be said to be arbitrary, unreasonable, discriminatory so as to violative of Article 14 of the Constitution of India.

19. Replying the arguments of the learned AAG, Mr. Vikas Balia, learned counsel appearing for the petitioners submitted that undoubtedly, power to grant includes power to reject, but the rejection must be supported by reasons and it cannot be automatic by operation of the rule without consideration. Learned counsel reiterated that the LoI holders have different status than the applicants, whose applications are pending consideration. Learned counsel submitted that the legitimate expectation of the LoI holders to have the mining lease on fulfillment of the conditions of LoI, could not have been set at naught by making a provision closing their right under LoI, presuming their applications to be pending and treating them deemed to be rejected. Learned counsel submitted that it is settled law that the subordinate legislation cannot be made operative retrospectively unless permitted by the parent Act and thus, the provisions of Rule 89 of the Rules of 2017 which rejects the applications preferred under the Rules of 1986 by retrospective operation, is ex-facie illegal, arbitrary and unconstitutional. Learned counsel submitted that the contention of the State that the vires of Rule 89 of the Rules of 2017 having been upheld by a Coordinate Bench of this Court, would operate as res-judicata and cannot be reopened on any other grounds at the instance of the petitioners herein who were not party to the proceedings wherein the vires of the provisions were upheld, is absolutely misconceived. Learned counsel would submit that the principle of res-judicata shall operate in personam and it cannot be extended in rem. According to the learned counsel, the decision of the Hon'ble Supreme Court only restricts the right of party to the proceedings at whose instance vires of the provision was examined and upheld, to question the same all over again on additional grounds and not the rights of the persons who were not party to the proceedings. Learned counsel submitted that while examining the validity of the provision of Rule 89 in Neta Khandelwal's case (supra), the provisions of Rule 3 of the Rules of 2017 were not brought to the notice of the Coordinate Bench of this Court and the decision being per incuriam, cannot be deemed to be a law declared to have binding effect. Learned counsel submitted that the additional ground raised by the petitioners questioning the vires of Rule 89 of the Rules of 2017 goes to the root of the matter and therefore, there is no reason why this Court should not examine the question of the vires afresh so as to avoid an error to be perpetuated. In support of the contention, learned counsel has relied upon decisions of the Apex Court in the matter of "Punjab Development & Reclamation Ltd. Vs. Presiding Officer, Labour Court, Chandigarh & Ors." 1990 (3) SCC, 682, "State of U.P. & Anr. Vs. Synthetics and Chemicals Ltd. and Anr." 1991 (4) SCC 139, "Govt. of A.P. and Anr. Vs. B. Satyanarayana Rao (Dead) by LRs and Ors." 2000 (4) SCC 262, and "Mayuram Subramanian Srinivasan Vs. CBI" 2006 (5) SCC, 752. Learned counsel submitted that in the matter of "Federation of Sand Stone Mining Industries Association and Ors. Vs. State of Rajasthan and Ors." (D.B.Civil Writ Petition No.4241/13) decided on 31.7.13, a Bench of this Court declared sub-rule (10) of Rule 4 and sub-rule (3) of Rule 7 of the Rules of 1986 ultra vires to the extent of rejection of the pending application and directed consideration thereof in accordance with law prevailing prior to issuance of the

notification making the provisions for rejection of the pending application and thus, the said decision of this Court has also binding effect which could not have been ignored. In support of the contention, learned counsel has relied upon decisions of the Supreme Court in "Sandeep Kumar Bafna Vs. State of Maharashtra & Anr." 2014 (16) SCC, 623 and "Medical Council of India Vs. State of Kerala" (Writ Petition (C) No.231/2018) decided on 12.9.18. Learned counsel submitted that Rule 5 of the Rules which protects all the LoIs except LoIs issued in respect of strip land is discriminatory as it imposes fetters which are not encompassed in Section 10A (c) of the Act of 1957. Learned counsel submitted that the provision with regard to reservation of 30 meters wide Government land for adjoining quarry holder was incorporated so as to ensure effective and scientific mining and thus, the exclusion of the LoIs holders in respect of the strip land from consideration for grant of mining lease frustrates the very object of scientific and safe mining.

20. Learned counsels appearing for other petitioners in the respective writ petitions have adopted the arguments advanced by Mr. Vikas Balia, learned counsel appearing for the petitioners.

21. We have considered the rival submissions and perused the material on record.

22. The principal ground raised by the petitioner is that the respondents are proceeding on absolutely wrong premise in treating the application of the petitioners, LoI holders, as pending and deemed to have been rejected as on the date of commencement of the Rules of 2017, by virtue of Rule 89 thereof.

According to the petitioner, once LoI is granted in favour of the applicant for grant of mining lease, the application gets disposed of and therefore, the petitioners' applications being not pending as on the date of commencement of the Rules of 2017, the provisions of Rule 89 are not attracted. According to the petitioner, the right of the LoI holders to claim the mining lease on the strength of LoIs issued in their favour being saved under Rule 3 and thus, Rule 5 as framed is also redundant.

23. Undoubtedly, Rule 3 of the Rules of 2017, which is 'Repeal and Saving' clause, while repealing the Rules of 1986 specifically provides that anything done or any action taken under the provisions of the Rules so repealed shall be deemed to have been done or taken under the provisions of the Rules of 2017. The plain reading of the provision of Rule 3 of the Rules of 2017 reflects that the LoIs issued in favour of the applicants under the Rules of 1986, being a concluded action shall stand saved and the rights of the LoI holders for grant of mining lease are required to be dealt with appropriately under the Rules of 2017. But, Rule 89 of the Rules of 2017, is a non obstante clause, which gives the enacting part of the said rule an overriding effect over other provisions of the Rules of 2017, which includes the provisions of Rule 3 as well and therefore, by virtue of Rule 89, all pending applications including wherein LoIs had already been issued, which would have been otherwise saved under Rule 3 of the Rules,

shall be deemed to have been rejected. In other words, Rule 3 would not operate independent of Rule 89 of the Rules of 2017, inasmuch as the overriding effect of Rule 89, shall have its full operation and would cover Rule 3 as well within its ambit. The intention of the rule making authority in incorporating the provisions of Rule 89 giving it overriding effect while protecting the applications which are saved under Rule 4 & 5 of the Rules of 2017, is apparent and a conjoint reading of these provisions suggest unambiguously that no pending applications except the applications covered by Rule 4 & 5 may be treated to be saved under Rule 3 of the Rules of 2017. Thus, the contentions raised by the learned counsel for the petitioners that LoIs issued in their favour were saved under Rule 3 of the Rules of 2017 and the provisions of Rule 89 of the Rules are not operative in respect of the LoIs issued in their favour is devoid of any merit.

24. The next contention raised on behalf of the petitioners that on LoIs having been issued, a vested right is created in their favour inasmuch as the issuance of LoIs amounts to acceptance of the offer, the application gets disposed of and consequently, there being no application pending, the provisions of Rule 89 of the Rules are not attracted, is also devoid of any merit.

25. It cannot be disputed that the LoIs issued in favour of the petitioners by the competent authority demonstrate the intention of the State to grant mining lease subject to fulfillment of conditions specified. But it is not the case of the petitioners before this Court that the conditions of LoIs were fulfilled by them and only formal lease deed remained to be executed. Rather it is an admitted case of the petitioners that they could not obtain the requisite EC from Ministry of Environment and Forest ('MoEF') and therefore, the mining lease could not be executed in their favour.

26. As laid down by Apex Court in 'Dresser Rand S.A. Vs. Bindal Agro Chem Ltd.' AIR 2006 SC 871, a letter of intent merely indicates a party's intention to enter into contract with other party in future. A letter of intent is not intended to bind either party ultimately to enter into a contract.

27. The view taken in Dresser Rand's case (supra) was reiterated by the Hon'ble Supreme Court in the matter of "Rishi Khan Logistics Private Ltd. Vs. Board of Trustees of Kandla Port Trust", (2015) 13 SCC 233.

28. The nature of the right created under LoI issued and the consequences of non-fulfillment of the conditions contained therein for undue long time is considered by the Supreme Court in the matter of "Bhushan Power and Steel Limited Vs. S.L. Seal & Ors.", 2017 (2) SCC 125. The Court held :

"40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter.

When the LoI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the Respondent had a right to cancel the process which had not resulted in a concluded contract." (emphasis supplied)

29. In "State of Tamilnadu vs. M/s. Hind Stone & Ors.", (1981) 2 SCC 205, relied upon by the learned AAG appearing for the State, wherein the applications preferred seeking renewal of the mining lease were kept pending for a long time and later rejected on the strength of the Rule 8C inserted in Tamilnadu Minor Mineral Concession Rules, 1959, imposing restriction on grant of the lease for quarry black granite to the private persons, while dealing with the issue of the vested right of the lease holders for renewal of the lease, the Apex Court held:

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O. Ms. No.1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No.1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant of renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of G.O. Ms. No.1312 should be dealt with as if

Rule 8-C did not exist." (emphasis supplied)

30. In Neta Khandelwal's case (supra), while examining the vires of Rule 89 of the Rules of 2017 regarding the right of the LoI holders under the Rules of 1986, a coordinate Bench of this court observed:

"In the instant cases, mining leases were not granted in favour of the petitioners. If mining leases would have been granted and a provision to cancel is brought, a challenge could have been made on the ground of vested and existing right. Mere issuance of consent letter by the Government does not create a existing or vested right in favour of the petitioners. Rule 89 save those applications where letters of intent have been issued or permission for prospecting of the mines has been granted. The applications have not been saved at any stage prior to it. Mere registration of the applications and consent letters do not create rights in favour of the petitioners.

The words "vested or existing right" have been defined by the Apex Court in the case of S.B. International Ltd. and Ors. Vs. Asstt. Director General of Foreign Trade and Ors., reported in (1996) 2 SCC 439. It was held that vested and existing right can be claimed only when a right has already been conferred and not a right which is claimed. In view of the judgment of the Apex Court in the case (supra), we cannot accept even second ground raised by the petitioners." (emphasis supplied)

31. In the backdrop of position of law settled as aforesaid, it can be safely concluded that the issuance of LoIs in favour of the petitioners expressing the intention of the State to grant mining lease in their favour on fulfillment of the conditions within the time frame does not create any vested right in their favour, which could be said to be adversely affected on account of deemed rejection of the application by virtue of provisions of Rule 89 of the Rules of 2017.

32. In any case, the reference of pending applications under Rule 89 of the Rules of 2017 has to be read in context of Rule 4 and 5 of the Rules of 2017 inasmuch as, in terms of Rule 89, all pending applications except those saved under Rule 4 and 5, on the date of the notification of the rules are deemed to have been rejected. Rule 5 (1) and 5 (2) make provision for consideration of the application of LoI holders under the Minor Mineral Concession Rules, 1960 and the Rules of 1986 respectively as if such applications are received under the Rules of 2017. Further, there is specific provision made that such applications pending shall be disposed of as per the provisions of sub-rule (2) (3) and (4) of Rule 16. Similar is the position under Rule 5 (2A), where the LoI has been issued through Lottery or in Khatedari land under the Rules of 1986. Thus, from perusal of the aforesaid provisions, in no manner, it could be inferred that issuance of LoI amounts to disposal of the application, rather, till the mining lease is executed on fulfillment of the conditions of the LoI, all proceedings shall be treated to be the proceedings pending application and the application for mining lease shall stand disposed of only after the execution of the mining lease.

33. Much emphasis is laid by the petitioners on Clause 10.8 (D) of Mineral Policy, 2011 which provides that where approved mining plan and environment clearance from MoEF is pre-requisite before sanction, the issue of consent letter confirming decision to grant the precise area shall be considered as the date of disposal. It is pertinent to note that the Mineral Policy, 2011 stands superseded by Rajasthan Mineral Policy, 2015 which had come into force much prior to commencement of the Rules of 2017, which does not contain any such provision. In any case, on account of the said provision being incorporated in Mineral Policy, 2011, the unequivocal provisions incorporated in the Rules of 2017 suggesting that notwithstanding issuance of LoI, the application remains pending till execution of the mining lease, cannot be ignored.

34. This takes us to consideration of challenge to the vires of Rule 5 and Rule 89 of the Rules of 2017.

35. In this regard, in the first instance, it would be appropriate to consider the preliminary objection raised on behalf of the State that Rule 89 of the Rules of 2017 having been already declared intra vires by this court in Neta Khandelwal's case (supra), the petitions filed challenging the validity of Rule 89 all over again, even on additional grounds, cannot be entertained by this court.

36. Indisputably, the doctrine of res judicata is founded on public policy that the parties cannot be permitted to re-agitate an issue judicially determined finally between the parties by a court of competent jurisdiction, in subsequent proceedings between the same parties. The principle of res judicata operates on the court. It is the courts which are prohibited from trying the issue in earlier proceedings between the same parties provided that the Court in subsequent proceedings is satisfied that the earlier Court was competent to dispose of the earlier proceedings and the matter had been heard and finally decided by such Court. But then, where after adjudication, there is declaration of law by the High Court or Supreme Court, obviously, the declaration of law would be declaration in rem, applicable to the public at large. The question with regard to challenge to the validity of the provision of a statute all over again which had already been declared intra vires by the court was examined by the Supreme Court in the matter of Kesho Ram's case (supra). The court held:

"10. Before we consider the submissions made on behalf of the tenants we would like to point out that some of the tenants who were unsuccessful before this Court in Punjab Tin Supply Company case, have again filed petition challenging the validity of Section 3 and the impugned notification on additional grounds. In our opinion the petitions by such tenants are not maintainable as the same are barred by principles of res judicata. Once the petitioners challenged the validity of the impugned notification dated September 24, 1974 in earlier proceedings they ought to have raised all the grounds which could have been raised in impugning the validity of Section 3 and the notification, if they failed to raise a ground in earlier petition they cannot raise that ground now in the present proceedings. Finality in litigation and public policy both require that a litigant should not be permitted to challenge validity of the provisions of the Act or notification at different times on different grounds. Once petitioners' challenge to Section 3 and the impugned notification was considered by the court and the validity of the same was upheld it must be presumed that all grounds which could validly be raised were raised and considered by the court. Learned counsel for the petitioners urged that the questions which are being raised in the present proceedings were neither raised nor considered by this Court in Punjab Tin Supply Company case, therefore, it is open to them to question the validity of Section 3 and the Notification dated September 24, 1974. This submission is contrary to the principles of res judicata and it further ignores the binding effect of a decision of this Court under Article 141 of the Constitution. The binding effect of a decision of this Court does not depend upon whether a particular argument was considered or not, provided the point with reference to which the argument is advanced subsequently was actually decided in the earlier decision, see Smt. Somavanti v. State of Punjab, T.Govindaraja Mudaliar v. State of Tamil Nadu and Anil Kumar Neotia v. Union of India. It is therefore no longer open to the petitioner-tenants to challenge the validity of Section 3 of the Act and the impugned Notification dated September 24, 1974 on the ground that some points had not been urged or considered in Punjab Tin Supply Company case. On the principles of res judicata, and also in view of Article 141 of the Constitution, the law declared by this Court in Punjab Tin Supply Company case is binding on the petitioners. But even otherwise the submissions made on their behalf in impugning the validity of Section 3 and the Notification dated September 24, 1974 are devoid of any merit as we shall presently discuss the same."

(emphasis supplied)

37. In 'Hindustan Zinc Limited Vs. State of Rajasthan & Ors.' (D.B. Civil Writ Petition No.9994/10 and other connected petitions) where the vires of Rule 2(h) and Rule 24(1) & (2) of the Rajasthan Land Tax Rules, 2006 was questioned, a Bench of this Court of which one of us was member, vide judgment dated 9.11.12, while noticing that the vires of the Rajathan Finance Act, 2006 and the Rules made thereunder had already been upheld by a Coordinate Bench in 'GKW Limited and another Vs.State of Rajasthan' 2008 (3) WLC (Raj.)162 held that the same cannot be re-challenged. The Court opined :

"26. Suffice it to say that the vires of the Act and the Rules framed thereunder having been upheld by a Coordinate Bench of this Court as aforesaid, the petitioners cannot be permitted to question the vires of the provisions of the Act and the Rules all over again even on the additional ground. It is settled law that every new discovery or argumentative novelty cannot undo or compel reconsideration of a binding precedent [vide Ambika Prasad Mishra v. State of U.P., 1980(3) SCC, 719]. It is equally well settled that if an enactment is held to be intra vires, it is presumed that the validity of the enactment stands examined by the court on all aspects of the matter and the question with regard to vires cannot be reopened on any additional or new grounds and therefore, in considered opinion of this court, the vires of the provisions of the Act and the Rules generally having been upheld by this court in GKW Limited's case (supra), the petitioners cannot be permitted to rechallenge the same." (emphasis supplied)

38. In view of position of law settled by the Apex Court and this Court as aforesaid, the petitioners cannot be permitted to challenge the vires of Rule 89 of the Rules of 2017, all over again even on additional grounds.

39. It is pertinent to note that while insisting for reopening and reconsideration of the question of vires of Rule 89 of the Rules of 2017, the contention of the petitioners is that the provisions of Rule 3 of the Rules of 2017 was not brought to the notice of the court in Neta Khandelwal's case and thus, the decision therein being per incuriam, cannot have binding effect. The effect of provisions of Rule 3 vis-a-vis Rule 89 of the Rules of 2017 has already been examined by us in the preceding paras and thus, keeping in view the conclusions arrived at as aforesaid in terms that Rule 3 of the Rules of 2017 shall not operate independent of Rule 89 and the Rule 89 being non obstante clause, only those applications of LoI holders shall stand saved for consideration which are covered by Rule 4 and 5 of the Rules of 2017, the question raised regarding the decision of this court in Neta Khandelwal's case being per incuriam is not required to be delved into by us any further and the same deserves to be repelled.

40. Coming to the question of a Bench decision of this Court in Federation of Sand Mining Industries Association's case being not considered by the Coordinate Bench while examining the vires of Rule 89 of the Rules of 2017 in Neta Khandelwal's case, to say the least, is based on the premise factually incorrect. A bare perusal of the decision of this Court in Neta Khandelwal's case reveals that the decision in Federation of Sand Mining Industries Association (supra) was duly considered by the coordinate Bench and it was categorically observed that the consideration of the validity of Rule 89 of the Rules of 2017 cannot be made on same parameters as were taken for challenge to the notification dated 3.4.13 under the Rules of 1986. The Court observed that the examination of the issue in the said decision was with reference to Rules of 1986 and not under the Rules of 2017. That apart, while dealing with the retrospective effect of the provision as contained in Rule 89 of the Rules of 2017, the Court held:

"The last question raised by learned counsel for petitioner is in reference to the proviso to Rule 89 of the Rules of 2017 and its retrospective effect. We do not find that Rule 89 of the Rules of 2017 has retrospective effect because it rejects all the pending applications. Hence, Rule 89 of the Rules of 2017 can be inferred to be prospective in nature. The pending applications on the date when Rules of 2017 were brought can be dealt with by the provisions, as existed. In view of the aforesaid, Rule 89 of the Rules of 2017 can be said to have its retrospective application and even if it is so, we find no illegality therein. The State has competence for it."

41. Thus, the question with regard to the retrospective operation of Rule 89 also stands settled by this court.

42. As discussed hereinabove, the LoI issued in favour of the petitioners for grant of mining lease does not create any vested right in their favour and the law which only affects procedural rights is presumed to be retrospective unless such construction is textually inadmissible. Thus, as a mater of fact, the question with regard to the vested right being adversely affected by retrospective operation of the provision of Rule 89, also does not survive for consideration.

43. Coming to the vires of Rule 5, the contention of the petitioners is that the rights of the applicants who were issued LoIs through tender, auction, lottery as well as in khatedari land though not through auction, are saved and therefore, the exclusion of the LoI granted for strip land for the purpose of scientific mining is illegal, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. According to the learned counsel, admittedly, the mining lease could not be executed in favour of the petitioners for want of EC, the grant whereof was exclusively in domain of the State and thus, the respondents cannot be permitted to take advantage of their own wrong.

44. In Mritunjoy Pani's case (supra), relied upon by the learned counsel, the Hon'ble Supreme Court while holding that the trustee ought not to be permitted to make a profit out of the trust referred to the principle comprising latin maxim commodum ex injuria sua nemo habere debet that is, convenience cannot accrue to a party from his own wrong.

45. In Ashok Kapil's case (supra), while referring yet another maxim observed:

"8. If the crucial date is the date of allotment order, the structure was not a building as defined in the Act. But can the respondent be assisted by a court of law to take advantage of the mischief committed by him? The maxim "Nulls commode copier potest de injuries sua propriety" (No can take advantage of his own wrong) is one of the salient tenets of equity. Hence, in the normal course, respondent cannot secure the assistance of a court of law for enjoying the fruits of his own wrong."

46. Admittedly, the petitioners were issued LoIs for the grant of mining lease of mineral marble for addition of strip land applied for in existing mining lease in conformity with fourth proviso to sub-rule (1) of Rule 11 of the Rules of 1986. It is not in dispute that as per sub-rule (1) of Rule 8 of the Rules of 1986, the petitioners as applicants for grant of mining lease were required to submit the mining plan alongwith progressive mine closure plan to the Authorised Officer of the State Governments for its approval within a period of three months. But by virtue of first proviso to Rule 8(1), the competent authority was empowered to seek such other documents as he may deem fit and where there was requirement of EC to be submitted, the period of submission was prescribed as twelve months, which as per second proviso to Rule 8(1) could have been further extended by the competent authority, subject to payment of late fees at the rate

of six percent of annual dead rent for every month or part thereof of such extended period. It is not in dispute that the petitioners could not satisfy the conditions of LoI within a period of twelve months as prescribed under first proviso to Rule 8(1) of the Rules of 1986, however, the right under the LoI issued was treated to be extended on account of their depositing the late fee in terms of second proviso to Rule 8(1) of the Rules of 1986. But, in any case, under the said provision, the petitioners, LoI holders, could not have claimed the extension of time for fulfillment of the conditions specified under LoI as a matter of right inasmuch as, the power of the Competent Authority under the said rule while considering the prayer for extension of time includes the authority to reject the extension prayed for as well. Suffice it to say that neither the issuance of LoI created any vested right in favour of the petitioners nor the petitioners could have claimed the extension of time for fulfillment of the condition of the mining lease as a matter of right.

47. Indubitably, under fourth proviso to sub-rule (1) of Rule 11 of the Rules of 1986, the mining lease holder were given right to apply for allotment of the strip land to be added to their existing mining lease on payment of premium equivalent to four times of dead rent straight away and there was no question of consideration of competitive claim by adopting any procedure like tender, auction or lottery etc. It is also not disputed that the reservation of the strip land for allotment to the adjoining mining lease holder is not envisaged under the Rules of 2017 and thus, the petitioners, who were applicants for allotment of the mining lease of strip land by making an appropriate application cannot be treated to be similarly situated vis-a-vis LoI holders whose rights are protected under sub-rule (1), (2) and (2A) of Rule 5 of the Rules of 2017.

48. As a matter of fact, to overcome a haphazard pattern of mining prevailing in the State of Rajasthan under the Rules of 2017, the allotment of the mining lease is permissible only after delineation by way of auction which would ensure systematic and scientific mining and therefore, the action of the State Government in protecting the rights of only the LoI holders in respect of delineated plots of minor minerals cannot be said to be arbitrary and unreasonable. It is always open for the petitioners to participate in auction for grant of mining lease in respect of delineated strip land which under the Rules of 2017 is permissible to be allotted by way of auction.

49. There is yet another aspect of the matter. The petitioners were issued LoIs in the year 2015, however, for want of EC, the mining lease could not be executed in their favour. The applications seeking mining lease in the terms of LoI cannot be kept pending for an indefinite period so as to enable the petitioners to obtain the mining lease on the terms settled under the LoI at any time in future. The decision of the Government in switching over to allotment of strip land after delineation also by way of auction so as to ensure transparency and protect the larger interest of revenue would clearly fall in realm of policy decision which could not be considered to be illegal, irrational, arbitrary, unreasonable and

discriminatory so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

50. For the aforementioned reasons, the challenge to the vires of Rule 5 and Rule 89 of the Rules of 2017 fails. The writ petitions preferred by the petitioners being devoid of any merit, are hereby dismissed. No order as to costs.

