
(2008) 07 DEL CK 0004
In the Delhi High Court
Case No : Writ Petition (C) 6288 of 2006

MSPL Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-07-2008

Acts Referred:

Companies Act, 1956 — Section 617
General Clauses Act, 1897 — Section 6
Mineral Concession Rules, 1960 — Rule 15(1), 21(2), 26(1), 31(1), 40(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 13, 17(2), 17(4), 17A

Citation : (2008) 104 DRJ 545

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Krishnan Venugopal, S. Udaya Kumar Sagar, Bina Madhavan and Hemal K. Sheth, for the Appellant; G.N. Reddy, Anoop Bose, B.R. Marthy for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—The Petitioner in these writ proceedings seeks a direction for quashing of an order dated 24.2.2006, issued by the Central Government and a further direction that Section 17-A of the Mines and Minerals (Development & Regulations) Act, 1957 (hereafter "the Act") is mandatory, and that all reservations made prior to and after the coming into force of that provision and contrary to it, are void. A consequential direction to the Central Government to grant the Petitioner, mining leases in terms of its application is also sought.

2. Briefly the facts are that the Central Government issued the Industrial Policy Resolution in 1956. In terms of the policy, mining was an industry listed in the Schedule (to that Policy) meant for exclusive responsibility of the State but without precluding private sector participation. Soon after this policy document was issued Parliament passed the Act; it was brought into force on 1.6.1958. Section 2 of the Act declared Parliamentary intention, that it was expedient in the

public interest that the Union should take under its control, the regulation of mines and development of minerals. Section 17 enacted special powers enabling the Central Government to undertake mining operations on land in which the minerals vested on the Government of a State. On 7.4.1972 the Government of the State of Andhra Pradesh (hereafter called "the State") issued GOMS No. 428 reserving certain areas in the Ongole, Addanki, Kandukur and Darsi Taluks in Prakasham District for exclusive exploitation of Iron Ore in the Public Sector.

3. The Central Government had framed rules, known as the "Minerals Concession Rules" in 1960 (hereinafter called "the Rules"). Rule 58 as it originally stood, provided that no area which was previously held or which was being held under a prospecting license or a mining lease or in respect of which an order for grant had been made but the applicant had died before the application of lease or license or in respect of which the license has been revoked in exercise of the power under Rule 15(1) and Rule 31(1) could be available for grant unless an entry to that effect was made in the register under Rule 21(2) or Rule 40(2) and the date from which such area was to be available for grant was notified in the official gazette at least 30 days in advance.

4. Rule 59 as it originally stood, provided that in case any land, otherwise, available for a prospecting license or mining lease but for which the State had refused such grant on the ground that it should be reserved for any purpose, the State Government had to, as soon as such land became available again for grant of such a lease or licence, grant it, after following the procedure prescribed under Rule 58.

5. The Rules were amended in 1980, with effect from 16.1.1980. The amended Rules which are material for the purpose of present proceeding read as follows:

58.Reservation of areas for exploitation in the public sector, etc:

The State Government may, by notification in the official Gazette, reserve any area for exploitation by the Government, a Corporation established by any Central, State or Provincial Act or a Government company within the meaning of Section 617 of the Companies Act, 1956 (1 of 1956).

59. Availability of area for regrant to be notified:

(1)No area -

(a) which was previously held or which is being held under a prospecting license or a mining lease; or

(b) in respect of which an order had been made for the grant of a prospecting license or mining lease, but the applicant has died before the grant of the license or the execution of lease, as the case may be; or

(c) in respect of which the order granting a license or lease has been revoked under Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31; or

(d) in respect of which a notification has been issued under Sub-section (2) or Sub-section (4) of Section 17; or

(e) which has been reserved by Government under Rule 58 shall be available for grant unless --

(i) an entry to the effect that the area is available for grant is made in the register referred to in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40 as the case may be, in ink; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favor of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired :

Provided further that where an area reserved under Rule 58 is proposed to be granted to a Government company, no notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of Sub-rule (1) in any special case.

6. The Act was amended by Act 37 of 1986. The amending Act introduced Section 17-A, enabling reservation of area for the purposes of conservation. By this provision the Central Government was empowered to, with the objective of surveying any mineral and after consultation with the State Government reserve an area not already held under a prospecting license or mining lease. In case the Central Government proposed to so reserve any area it also had to specify the boundaries of such area and the minerals in respect of which the area would be reserved, in the Official Gazette. Section 17-A(2) read as follows :

(2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting license or mining lease, for undertaking prospecting or mining operations through a Government company or Corporation and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the minerals or minerals in respect of which such areas will be reserved.

Soon after enactment of Section 17-A, in 1988, Rule 58 was deleted.

7. It is averred that with effect from 24.7.1991, the Central Government issued the new statement of Industrial Policy substantially going back on its earlier policy of giving prominence to the public sector. Later the National Mineral Policy was formulated in 1993; it confirmed that private sector would have an equal role in mining. The Petitioner claims to be a leading player in the mining industry. It is recipient of several awards and credits itself with several successors. It filed

eight applications dated 24.12.2003 covering 12 survey numbers in the Prakasam District for grant of mining leases, over an extent of 957.175 Ha. The State, on 21.6.2004 issued a show cause notice asking why the petitioner's applications should not be rejected as the areas were reserved for exploitation by the public sector and that three applications covering three survey numbers overlapped with areas recommended for grant to the Kudremukh Iron Ore Company Ltd.

8. On 3.11.2004 State issued another notice under Rule 26(1) to the Petitioner asking it to show cause why the applications should not be rejected. The Petitioner adverts to resisting both the notices. In the meanwhile, the Andhra Pradesh Mineral Development Corporation ("APMDC") issued an advertisement in August, 2004 inviting expression of interest for exploitation of Iron Ore in the Ongole region. The Petitioner had apparently relied upon its pending applications at that stage. The APMDC finalised a joint venture with a private concern for exploitation of reservations in the Ongole area in February, 2005. It is claimed that according to this arrangement, 89% of the equity in the joint venture was to be held by the private concern and the balance was to be with the public sector. The joint venture was publicly announced in March, 2005. Subsequently on 4.5.2005 the State by its order rejected the Petitioner's applications, inter alia, on the ground that they were pre-mature under Rule 60 as the Notification contemplated by Rule 59 (releasing lands in respect of the area reserved for exploitation by the public sector) had not been issued. Feeling aggrieved, the Petitioner sought revision of the order u/s 30 of the Act. The Petitioner as well as the respondents were heard and permitted to file written submissions.

9. By the impugned order the Central Government rejected the revision application holding that;

(i) prior to introduction of Section 17-A reservation of lands in favor of Central or State Public Sector Undertakings was permissible without approval of the Central Government;

(ii) under Rule 59, an area earlier held under prospecting license or mining lease and areas reserved for Public Sector Undertakings had to be renotified before they could be thrown open for exploitation by the general public. Since such measure had not been undertaken, the Petitioners applications were pre-mature;

(iii) the State was competent to reserve the area and was not obliged to seek prior approval of the Central Government.

10. The material part of the Central Government's order reads as follows:

12. Reservation of area before introduction of Section 17A in the MMDR Act, 1957 was governed under Rule 58 of MCR, 1960 which stipulated for reservation of area in favor of Central/State PSU by State Government itself without seeking approval of the Central Government. u/s 17A of the MMDR Act which presently governs the reservation of area for Central/State PSUs, areas can be reserved for

Central/State PSUs after approval by the Central Government. However, under the provisions of Rule 59 of MCR, 1960, any area earlier held under PL/ML and those areas which were reserved in favor of PSUs, notification by concerned State Government is required before the area is thrown open for exploitation by general public.

13. Since the area was reserved in favor of PSU which is still valid and Therefore, prior notification for the area in question was required which was not done by the State Government and Therefore any application filed by a private party in respect of the area under impugned order is premature. Also since the State Government were then competent to reserve areas on their own for Central as well as State PSUs, the question of seeking prior approval of the Central government does not arise.

14. In view of the foregoing R.A. Is rejected and order of the State Government dated 4.5.2005 is upheld. The R.A. Is disposed of accordingly.

11. The Petitioner alleges that the impugned order is grounded on unsupportable findings. It contends that the Central Government failed to see that the reservation in this case, made in 1972 was not in terms of Rule 58 which was introduced later. According to the Petitioner, such reservation is not clothed with any legal authority and the State cannot also draw sustenance from the Industrial Policy Resolution of 1956. The Petitioner contends that the State Government had to seek approval of the Central Government and had to publish a fresh Notification, after the enactment of Section 17A. It is claimed that even if the grant were to be construed as such, on the basis of the 1972 Notification, its legality was suspect in the absence of compliance with the standards prescribed u/s 17A, after its insertion.

12. The Petitioner contends that after the coming into force of Section 17A the State Legislatures were denuded of the power to notify lands in favor of the Public Sector except in accordance with the procedure provided. Parliamentary intention was to regulate all manner of grants by the State, including those in favor of the Public Sector. Therefore, Section 17A had the effect of overriding all other statutes, rules and orders inconsistent with it. Since the amending Act did not contain a savings clause, the 1972 grant made by the State Government cannot be enforced.

13. The Petitioner also alleges that the reservation through the 1972 Notification cannot be utilised by a Government Corporation to give effect to a lease for exploitation through a private party. It is averred that the participation through 89 % equity by such private party cannot be characterized as exploitation of the minerals for the purposes u/s 17-A, by the Public Sector. The State Government's action is, Therefore, attacked as malafide.

14. Mr. Krishnan Venugopal, learned Counsel urged that the reservation made by the Notification dated 7.4.1972 was rendered a nullity with the advent of Section 17A. In support of this submission he relied upon Rule 58 which was introduced

in 1980 and subsequently the replacement of such power in its enactment in Section 17A. It was contended that Rule 58 for the first time expressly clothed the State with power to reserve mining areas for exploitation by the Government or a Corporation. Before this the State did not possess such power. Counsel, however, submitted that the power to issue the Notification of 1972 to an extent is covered by a decision reported as *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, where it was held the State possesses the power to grant or make arrangements for exploitation of such minerals which belong to it. He, however, contended that once such power is regulated through statute, as in this case by Section 17A, the control of the Union as expressed in Section 2 extends to such regulation too. Therefore, such power, --(held to be implied or inherent, in the absence of express provision) - was denuded and taken away after insertion of Section 17-A. The corollary, Therefore, was that, arrangements made previously through grants or Notifications could not stand and had to necessary follow the mandate of approval by the Central Government if they have to be given effect. The impugned order, to the extent, it holds otherwise, is in clear error of law.

15. Learned Counsel relied upon three Constitution Bench judgments of the Supreme Court reported as *State of Orissa Vs. M.A. Tulloch and Co.*, ; *Bajinath Kadio Vs. State of Bihar and Others*, ; and *Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others*, . It was submitted that the effect of the declaration originally made by Section 2 of the Act was with the intention of assuming control of mines and minerals and the subject of their regulation. Even if Parliamentary intervention was limited in regard to matters enacted originally, once the Act was amended and a fresh set of Regulations imposing additional obligations, were introduced, the declaration of control was attached to such additional Regulations also. As a consequence any arrangement which conflicted with or did not fulfill the enacted standards or comply with the criteria prescribed, stood eclipsed. On an application of these principles the grant of 1972 could not be given effect to, unless approval mandated u/s 17A is obtained. In this case undeniably such approval was not forthcoming. As a result, the impugned order was in error of law.

16. Counsel contended that Rule 59 only prescribes a procedural limitation and does not substantially deal with the right of the Government to reserve any area for mining by a public sector corporation. The combined effect of Rule 59(1)(e) (after amendment of the Rules in 1988) and Section 17A was that prior grants or reservations such as the Notification of 1972 were repealed by legal implication. Learned Counsel submitted that Section 6 of the General Clauses Act cannot save such reservations because the Notification in question does not fall within the definition of "Law" under the General Clauses Act, 1897. It also did not fructify into an actual allotment to a Public Sector Undertaking, by 1980. Therefore, the reservation Notification was neither with "transaction" nor a "thing done" within the meaning of Section 6 of the General Clauses Act, 1897. In support of this submission reliance was placed on the judgment reported as *Kolhapur Canesugar*

Works Ltd. and Another Vs. Union of India and Others, .

17. Learned Counsel submitted that rejection of the Petitioner's application on the ground that APDMC had entered into a MOU with M/s Gempex Ltd to exploit the Iron Ore deposits in the Ongole Taluks, through a joint venture is a sham and a pretence. It was submitted that public sector participation is only to the extent of 11% free ride equity and that the Government's claim of substantial revenue is a mockery since APMDC is merely providing a shield to what is essentially a private mining lease. The Central Government's order can, Therefore, be justified only on the ground of abuse of power and legal malafides.

18. Mr. R. Venkatramani, learned senior counsel submitted that prior to the insertion of Section 17A in the Act, the authority to make reservations for any purpose had been conferred upon the State Government under Rule 59. That provision was not merely procedural; it enabled the State Government to make reservations "for any purpose". It was also contended that Rule 58 as it was before amendment (in 1980) stipulated that no area could be available for grant unless it was notified in the Gazette. Rule 59 spelt out the discretion with the State to grant a license or a mining lease on the ground that the land should be reserved for any purpose. Counsel also relied upon the decision in Amrit Lal's case where the Court particularly dealt with the contention that the declaration u/s 2 deprived the State of executive power to make reservations without observing the contents prescribed by the Act and the Rules. The Respondents relied upon the observations in that decision by the Supreme Court's findings that the field of reservation by Parliament u/s 2 of the Act did not cover the entire subject and the State Government's property rights in regard to minerals vesting in it within its territory, could not be impaired.

19. Learned Counsel contended that neither amended Rule 59(e) nor Section 17A supported the theory of repeal by implication of pre-existing Notifications. It was submitted that the text of neither of these provisions support the contention. Counsel also contended that both amended Rule 59(e) and Section 17A are prospective. Section 17A, which was enacted in the Statute, could not have invalidated, retrospectively, transactions in lawful exercise of powers conferred upon the State under the pre-existing rules. It was submitted that the extension of the declaration u/s 2 by virtue of the amendment in 1986 attached itself to the executive and legislative powers of the State to the extent they were provided for after the enactment. In these circumstances, the question of implied repeal and the grants not being saved as contended by the Petitioners did not arise.

20. Learned Counsel submitted that the arrangement entered into by APMDC cannot be attacked as sham or a pretence since the Corporation was entitled to exploit the minerals by virtue of reservations either on its own or through joint venture partners. Learned Counsel relied upon the decision reported as Pallava Granite Industries (India) Pvt. Ltd. Vs. Union of India (UOI) and Others,

21. The first aspect which has to be addressed, on the basis of rival pleadings

and arguments, is the question of conflict of the 1972 notification with later legislative devices, such as Rule 58 and Section 17-A, and whether such conflict defeats or "overbears" the notification. The Act was intended to cover the field of regulation of Mines and Mineral Development, over which the Union asserted its control, "to the extent" enacted. M.A. Tulloch described the effect of the declaration in the following manner:

the States would lose legislative competence only to the "extent to which regulation and development under the control of the Union has been declared by Parliament to be expedient in the Public interest." The crucial enquiry has Therefore to be directed to ascertain this "extent" for beyond it the legislative power of the State remains unimpaired. As the legislation by the State is in the case before us the earlier one in point of time, it would be logical first to examine and analyze the State Act and determine its purpose, width and scope and the area of its operation and then consider to what "extent" the Central Act cuts into it or trenches on it.

This legal position in such cases was again reiterated in *Ishwari Khetan's* case (*supra*) in the following manner:

24. It can, Therefore, be said with a measure of confidence that legislative power of the States under Entry 24, List II is eroded only to the extent control is assumed by the Union pursuant to a declaration made by the Parliament in respect of declared industry as spelt out by legislative enactment and the field occupied by such enactment is the measure of erosion. Subject to such erosion, on the remainder the State legislature will have power to legislative in respect of declared industry without in any way trenching upon the occupied field. State legislature which is otherwise competent to deal with industry under Entry 24, List II, can deal with that industry in exercise of other powers enabling it to legislate under different heads set out in Lists II and III and this power cannot be denied to the State.

22. The question of conflict of fields of legislation, in the context of the three Lists in the Seventh Schedule, has been examined and revisited in several contexts. For the purposes of the present case it would be adequate to set out these settled principles, as reflected by the Supreme Court's following observations in *State of W. B v. Kesoram Industries Ltd.* AIR 2005 SC 1646: "The principles have been succinctly summarized and restated by a Bench of three learned Judges of this Court on a review of the available decisions in *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, . They are *Hoechst Pharmaceuticals Ltd. and Others Vs. State of Bihar and Others*, :

(1) the various entries in the three Lists are not "powers" of legislation but "fields" of legislation. The Constitution effects a complete separation of the taxing power of the Union and of the States under Article 246. There is no overlapping anywhere in the taxing power and the Constitution gives independent sources of taxation to the Union and the States.

(2) In spite of the fields of legislation having been demarcated, the question of repugnancy between law made by Parliament and a law made by the State Legislature may arise only in cases when both the legislations occupy the same field with respect to one of the matters enumerated in the Concurrent List and a direct conflict is seen. If there is a repugnancy due to overlapping found between List II on the one hand and List I and List III on the other, the State law will be ultra virus and shall have to give way to the Union law.

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(4) The entries in the List being merely topics or fields of legislation, they must receive a liberal construction inspired by a broad and generous spirit and not in a narrow pedantic sense. The words and expressions employed in drafting the entries must be given the widest possible interpretation. This is because, to quote V. Ramaswami, J., the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of a mere simplex enumeration of broad categories. A power to legislate as to the principal matter specifically mentioned in the entry shall also include within its expanse the legislations touching incidental and ancillary matters.

(5) Where the legislative competence of a Legislature of any State is questioned on the ground that it encroaches upon the legislative competence of Parliament to enact a law, the question one has to ask is whether the legislation relates to any of the entries in Lists I or III. If it does, no further question need be asked and Parliament's legislative competence must be upheld. Where there are three Lists containing a large number of entries, there is bound to be some overlapping among them. In such a situation the doctrine of pith and substance has to be applied to determine as to which entry does a given piece of legislation relate. Once it is so determined, any incidental trenching on the field reserved to the other Legislature is of no consequence. The Court has to look at the substance of the matter. The doctrine of pith and substance is sometimes expressed in terms of ascertaining the true character of legislation. The name given by the Legislature to the legislation is immaterial. Regard must be had to the enactment as a whole, to its main objects and to the scope and effect of its provisions. Incidental and superficial encroachments are to be disregarded.

(6) The doctrine of occupied field applies only when there is a clash between the Union and the State Lists within an area common to both. There the doctrine of pith and substance is to be applied and if the impugned legislation substantially falls within the power expressly conferred upon the Legislature which enacted it, an incidental encroaching in the field assigned to another Legislature is to be ignored. While reading the three Lists, List I has priority over lists III and II, and List III has priority over List II. However, still, the predominance of the Union List would not prevent the State Legislature from dealing with any matter within List II though it may incidentally affect any item in List I.

23. It can be discerned from this discussion that the idea of repugnancy arises in

case of two legislations, covering the same subject matter, whether or not falling within the same field of legislation. The precondition for such "repugnancy" should be legislation by the Union and a perceived conflict with State legislation. Here, one cannot see such conflict; what is sought to be argued by the petitioner is that the Notification of 1972 made by the State, stood superseded due to insertion of Section 17-A. In the opinion of the court, such an issue cannot be termed as one concerning repugnance, since the Notification does not pretend to be a law or a statutory instrument; it is akin to a reservation or a grant, for a specific purpose. The issue is, Therefore, simply, whether the Notification survived after enactment of Section 17-A.

24. The next aspect is the impact of amendments made in 1980 (to the Rules) and the Act (in 1986). Before 1980, Rule 58 did not enable the State Government to reserve any areas in the State, for exploitation by a public sector company or corporation. Yet, such power (of reservation) was upheld by the Supreme Court in *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, . Rule 58 was amended later, in 1980, to confer such express power to the State Government. In *Amritlal Nathubhai*, the Supreme Court overruled the contention that the State lacked power under the Act to reserve any area, for exploitation by the public sector (in view of the declaration of control, and consequent lack of legislative power of the State) in the following terms:

3. It may be mentioned that in pursuance of its exclusive power to make laws with respect to the matters enumerated in entry 54 of List I in the Seventh Schedule, Parliament specifically declared in Section 2 of the Act that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The State Legislature's power under entry 23 of List II was thus taken away, and it is not disputed before us that regulation of mines and mineral development had Therefore to be in accordance with the Act and the Rules. The mines and the minerals in question (bauxite) were however in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the "owner of minerals" within its territory, and the minerals "vest" in it. There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the "inherent right to reserve any particular area for exploitation in the public sector". It is Therefore quite clear that, in the absence of any law or contract etc. to the contrary, bauxite, as a mineral, and the mines thereof, vest in the State of Gujarat and no person has any right to exploit it otherwise than in accordance with the provisions of the Act and the Rules. Section 10 of the Act and Chapters II, III and IV of the Rules, deal with the grant of prospecting licences and mining leases in the land in which the minerals vest in the Government of a State. That was why the appellants made their applications to the State Government. We have gone through Sub-section

(2) and (4) of Section 17 of the Act to which our attention has been invited by Mr. Sen on behalf of the appellants for the argument that they are the only provisions for specifying the boundaries of the reserved areas, and as they relate to prospecting or mining operations to be undertaken by the Central Government, they are enough to show that the Act does not contemplate or provide for reservation by any other authority or for any other purpose. The argument is however untenable because the aforesaid Sub-section of Section 17 do not cover the entire field of the authority of refusing to grant a prospecting license or a mining lease to anyone else, and not deal with the State Government's authority to reserve any area for itself. As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it. But quite apart from that, we find that Rule 59 of the Rules, which have made u/s 13 of the Act, clearly contemplates such reservation by an order of the State Government. That rule deals with the availability of areas for the grant of a prospecting license or a mining lease in such cases, and provides as follows :

59. Availability of certain areas for grant to be notified - In the case of any land which is otherwise available for the grant of a prospecting license or a mining lease but in respect of which the State Government has refused to grant a prospecting license or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land become again available for the grant of a prospecting or mining lease, grant the license or lease after following the procedure laid down in Rule 58.

7. Mr. Sen has conceded that it is a valid rule. It clearly contemplates reservation of land for any purpose, by the State Government, and its consequent non-availability for the grant of a prospecting license or mining lease during the period it remains under reservation by an order of the State Government. A reading of Rules 58, 59 and 60 makes it quite clear that it is not permissible for any person to apply for a license or lease in respect of a reserved area until after it becomes available for such grant and the availability is notified by the State Government in the Official Gazette. Rule 60 provides that an application for the grant of a prospecting license or a mining lease in respect of an area for which no such notification has been issued, inter alia, under Rule 59, for making the area available for grant of a license or a lease, would be premature, and "shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded". It would Therefore follow that as the area which are the subject-matter of the present appeals had been reserved by the State Government for the purpose stated in its notification, and as those lands did not become available for the grant of a prospecting license or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature..

25. The position did not radically change in 1980; indeed the power inferred in Amritlal was explicitly located, in Rule 58, through amendment, which enabled

the State to make such reservations. The overlapping of this power, with the power of the Central Government, (due to enactment of Section 17-A), necessitated the deletion of Rule 58 with effect from 13th April, 1988. Rule 59 also underwent appropriate modification; the expression "reserved by the State Government" was substituted for the words "reserved by the government" with effect from 10th February, 1987.

26. Neither the petitioner, nor the contesting respondents, could point to the decision of the Supreme Court in *Lakshmanasami Gounder Vs. Commissioner of Income Tax , Selvamani and Others*, , which dealt with a similar issue, concerning a pre 1980 reservation in favor of public sector agencies, through a notification of 1977, and whether such reservation survived, post insertion of Section 17-A. The relevant discussion on this issue is reproduced below, from the judgment:

39. The principle obstacle in the way of ORIND as well as the other private parties getting any leases was put up by the S.G., OMC and IDCOL. They claimed that none of the private applications could at all be considered because the entire area in all the districts under consideration is reserved for exploitation in the public sector by the notification dated August 3, 1977 earlier referred to. All the private parties have Therefore joined hands to fight the case of reservation claimed by the S.G., OMC and IDCOL. We have indicated earlier that the S.G. expressed its preparedness to accept the Rao report and to this extent waive the claim of reservation. Interestingly, the OMC and IDCOL have entered caveat here and claimed that as public sector corporations they could claim, independently of the S.G.'s stand, that the leases should be given only to them and that the Rao report recommending leases to IMFA, FACOR and Aikath should not be accepted by us.

40. The relevant provisions of the Act and the rules have been extracted by us earlier. Previously, Rule 58 did not enable the S.G. to reserve any areas in the State for exploitation in the public sector. The existence and validity of such a power of reservation was upheld in *A. Kotaiah Naidu Vs. State of Andhra Pradesh*, and *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, , the latter of which was approved by this Court in *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, . (As pointed out earlier, Rule 58 has been amended in 1980 to confer such a power on the S.G.) It is also not in dispute that a notification of reservation was made on August 3, 1977.. There is, Therefore, no answer to the plea of reservation put forward by the S.G., OMC and IDCOL. The S.G., OMC and IDCOL are, Therefore, right in contending that, ex facie, the areas in question are not available for grant to any person other than the S.G. or a public sector corporation [Rule 59(1), proviso] unless the availability for grant is renotified in accordance with law [Rule 59(1)(e)] or the C.G. decides to relax the provisions of Rule 59(1) [Rule 59(2)]. None of those contingencies have occurred since except as is indicated later in this judgment

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45. Under Rule 59(1), once a notification under Rule 58 is made, the area so reserved shall not be available for grant unless the two requirements of Sub-rule (e) are satisfied : viz. an entry in a register and a gazette notification that the area is available for grant. It is not quite clear whether the notification of March 5, 1974 complied with these requirements but it is perhaps unnecessary to go into this question because the reservation of the areas was again notified in 1977. These notifications are general. They only say that the areas are reserved for exploitation in the public sector. Whether such areas are to be leased out to OMC or IDCOL or some other public sector corporation or a government company or are to be exploited by the government itself is for the government to determine de hors the statute and the rules. There is nothing in either of them which gives a right to OMC or IDCOL to insist that the leases should be given only to them and to no one else in the public sector. If, Therefore, the claim of reservation in 1977 in favor of the public sector is upheld absolutely, and if we do not agree with the findings of Rao that neither OMC nor IDCOL deserve any grant, all that we can do is to leave it to the S.G. to consider whether any portion of the land thus reserved should be given by it to these two corporations. Here, of course, there are no competitive applications from organisations in the public sector controlled either by the S.G. or the C.G., but even if there were, it would be open to the S.G. to decide how far the lands or any portion of them should be exploited by each of such corporations or by the C.G. or S.G. Both the corporations are admittedly instrumentalities of the S.G. and the decision of the S.G. is binding on them. We are of the view that, if the S.G. decides not to grant a lease in respect of the reserved area to an instrumentality of the S.G., that instrumentality has no right to insist that a ML should be granted to it. It is open to the S.G. to exercise at any time, a choice of the State or any one of the instrumentalities specified in the rule. It is true that if, eventually, the S.G. decides to grant a lease to one or other of them in respect of such land, the instrumentality whose application is rejected may be aggrieved by the choice of another for the lease. In particular, where there is competition between an instrumentality of the C.G. and one of the S.G. or between instrumentalities of the C.G. inter se or between the instrumentalities of the S.G. inter se, a question may well arise how far an unsuccessful instrumentality can challenge the choice made by the S.G. But we need not enter into these controversies here. The question we are concerned with here is whether OMC or IDCOL can object to the grant to any of the private parties on the ground that a reservation has been made in favor of the public sector. We think the answer must be in the negative in view of the statutory provisions. For the S.G. could always denotify the reservation and make the area available for grant to private parties. Or, short of actually dereserving a notified area, persuade the CG to relax the restrictions of Rule 59(1) in any particular case. It is, Therefore, open to the S.G. to grant private leases even in respect of areas covered by a notification of the S.G. and this cannot be challenged by any instrumentality in the public sector. 46. Before

leaving this point, we may only refer to the position after 1986. Central Act 37 of 1986 inserted Sub-section (2) which empowers the State Government to reserve areas for exploitation in the public sector. This provision differs from that in Rule 58 in some important respects -

(i) the reservation requires the approval of the C.G.;

(ii) the reservation can only be of areas not actually held under a PL or ML;

(iii) the reservation can only be for exploitation by a government company or a public sector corporation (owned or controlled by the S.G. or C.G.) but not for exploitation by the government as such. Obviously, Section 17-A(2) and Rule 58 could not stand together as Section 17-A empowers the S.G. to reserve only with the approval of the C.G. while Rule 58 contained no such restriction. There was also a slight difference in their wording. Perhaps because of this Rule 58 has been omitted by an amendment of 1988 (G.S.R. 449-E of 1988) made effective from April 13, 1988. Rule 59, however, contemplates a relaxation of the reservation only by the C.G. By an amendment of 1987 effective on February 10, 1987 (G.S.R. 86-E of 87), the words "reserved by the State Government" were substituted for the words "reserved by the government" in Rule 59(1)(e). Later Rule 59(1) has been amended by the insertion of the words "or u/s 17-A of the Act" after the words "under Rule 58" in clause (e) as well as in the second proviso. The result appears to be this :

(i) After April 13, 1988, certainly, the S.G. cannot notify any reservations without the approval of the C.G., as Rule 58 has been deleted. Presumably, the position is the same even before this date and as soon as Act 37 of 1986 came into force.

(ii) However, it is open to the S.G. to de-notify a reservation made by it under Rule 58 or Section 17-A. Presumably, de-reservation of an area reserved by the S.G. after the 1986 amendment can be done only with the approval of the C.G. for it would be anomalous to hold that a reservation by the S.G. needs the C.G.'s approval but not the dereservation. Anyhow, it is clear that relaxation in respect of reserved areas can be permitted only by the C.G.

(iii) It is only the C.G. that can make a reservation with a view to conserve minerals generally but this has to be done with the concurrence of the S.G.

47. We are concerned in this case with reservations made by the S.G. under Rule 58 before 1986 which, there is no reason to doubt, continue in force even after the introduction of Section 17-A. These, as pointed out above, can be de-reserved by the S.G. but a relaxation can be done by the C.G. only. We shall consider later whether this power of the C.G. can be or has been or should be exercised in this case. It is sufficient to observe here that reservations notified in 1977 do not necessarily vitiate the grant of leases to private parties.

(Note: the reference to "SG" meant the State Government and "CG" meant the Central Government; OMC and IDCOL were public sector agencies)

27. A careful reading of the judgment would show that the court held, in paras 40 and 46, that reservations made in 1977 (even before Rule 58) were not available for grant to any person other than the State Government or a public sector corporation, by referring to Rule 59(1), proviso - in the absence of availability for grant through re-notification in accordance with law, that is Rule 59(1)(e), or in the absence of a Central Government relaxation under Rules 59(1) and Rule 59(2). The court categorically held that such reservations, made prior to insertion of Section 17-A "continue in force even after the introduction of Section 17-A." In view of this clear and unambiguous declaration, this Court is of the opinion that it is not open to the petitioner to contend that such prior notification, made in 1972, in this case (just as in 1977 in the above case, and Therefore covered by the ruling in Amritlal Nathulal Shah's case) is invalid.

28. The court is of the opinion, that though findings indicated above, are dispositive of this issue, nevertheless, it would be necessary to deal with the other contentions made by parties. Section 17-A is plainly prospective. There is nothing in its terms, or in terms of the amending Act of 1986, extending it to pre-existing state of affairs. This is because of a well settled principle of interpretation that unless expressly enacted, or discerned through necessary implication, every law is deemed prospective, and does not operate from an anterior point in time. The principle was enunciated thus, in the recent decision of the Supreme Court, in Sangam Spinners Vs. Regional Provident Fund Commissioner-I, :

18. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. (See Keshavan Madhava Menon v. State of Bombay⁴.) But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only *nova Constitutio futuris formam imponere debet, non praeteritis....*

It is a logical corollary of the general rule, that retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary.

29. It would do well to recollect that the legality of grants or reservations, similar to the 1972 Notification, were upheld by a Constitution Bench of the Supreme Court, in Amritlal. Having regard to this background, had Parliamentary intention been to override such arrangements, surely the lawmakers would have been explicit in their intention, and not left it to the vagaries of interpretive exercise by the courts. Moreover, if indeed, Parliament had intended that the pre-existing state of affairs was to be "overborne" i.e nullified as is argued, it could have used legislative devices such as a non-obstante clause to express itself, like in the

case of Sub-section (2) to Section 17. Indeed, a well established canon of construction is that Parliament or the concerned legislature is deemed to be aware of existing laws when it enacts new legislative measures- particularly amendments, as in this case *Syndicate Bank Vs. Mr. Prabha D. Naik and Another etc.*, . The singular absence of any such device or intention, rules out any necessity of holding that the 1972 notification is invalid, or inoperable.

30. As far as the question of Section 6 of the General Clauses Act not saving the 1972 Notification, is concerned, it has to be immediately noticed that the provision applies where there is a repeal of an existing enactment. Here, Section 17-A was enacted for the first time, in 1987. It did not substitute or repeal any pre-existing law, and as held earlier, was plainly intended to apply to future proposals or transactions. The construction suggested by the petitioner not only runs counter to this intention, discernable textually, but imports retrospective effect to a new liability in respect of a procedure, which was lawful, when done. It is difficult to comprehend why the court should contrive a construction whereby the enactment, or insertion of Section 17-A is to be first inferred as a repeal, and then proceed to hold that Section 6 could not have intervened to save the 1972 notification. Such a finding is unsupportable by logic, or any legal principle.

31. The last argument of the petitioner concerned the arrangement of the public sector agency, attacked as a "sham" whereby 89% participation is by a private concern, and 11% equity is of the public sector concern. The argument that such an agreement merely enables the public sector or government agency to provide a fa?ade or "mask" for what is essentially a private operation is powerful. However, in the decision in *Pallava Granites* the Supreme Court held that the state agency, APMDC,-which is also involved in this case- could either to excavate the granite on its own or through joint ventures since the land and minerals belonged to the State Government, the decision to grant mining leases to private parties, could not hamper or fetter the power of the Government to exploit the resources through its own agency. In *Netai Bag and Others Vs. The State of West Bengal and Others*, , the Supreme Court held as follows:

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, it was held that the policy decision can be interfered with by the court only if such decision is shown to be patently arbitrary, discriminatory or mala fide.

The State's decision to enter into a joint venture, partnering APMDC and a private concern, cannot in the absence of illegality or violation of government policy, or established mala fides, be characterized as unreasonable or arbitrary. The court cannot don the hat of a decision maker, or an appellate authority,

adjudging the wisdom of the move, or the soundness of the terms of the bargain in such cases. That would be clearly beyond its area of admissible concern under Article 226 of the Constitution of India. Therefore, the petitioner's arguments on this aspect too have to fail, as insubstantial and unmerited.

32. In view of the above findings, the writ petition fails, and is dismissed. In the circumstances of the case, the parties shall bear their costs.