Pushp Steels and Mining (Pvt.) Ltd., a company incorporated under the Companies Act, 1956 with its Registered Office at 751-Kundewalan Street-Ajmeri Gate, P.S. Kamla Market, New Delhi-6, through its Director, Atul Jain, S/o Shri Sulekh Chand Jain - Petiti

Court: CHHATTISGARH HIGH COURT

Date of Decision: July 22, 2016

Citation: (2016) AIRCC 2660

Hon'ble Judges: P. Sam Koshy, J.

Bench: Single Bench

Advocate: Mr. Ratan Singh and Mr. Jitendra Pali, Advocates, for the Petitioners; Mr. U.N.S. Deo, Government Advocate, for the Respondent Nos. 1 and 2; Mr. N.K. Vyas, Assistant Solicitor General, for the Respondent No. 3

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Sam Koshy, J. - The Petitioners in the present writ petition have sought for two reliefs; firstly, for a writ of mandamus to be issued against the

Respondents for immediately executing the mining lease agreement with the Petitioner-company for the land over which permission for mining has

been granted inclusive of 66 hectares of diverted land over which working permission has been granted by the Respondents in favour of the

Petitioners. Secondly, the Petitioners have also sought for quashing of the show cause notice issued to the Petitioners by the Respondents on

13.6.2013 holding it to be per se illegal being contrary to law and without authority.

2. Brief facts to show the entire factual matrix of the case leading to the filing of the present writ petition are that on 27.12.2004 the Petitioners

have applied before the Mining Department of the Respondent-State of Chhattisgarh for grant of 345.90 hectares of land in the forest

compartment No. 355, 356, 357 & 358 falling under Mitchgaon Lohattar Reserve Forest Range of Bhanupratapur Forest Division in District

Kanker. The said land was sought for grant of mining lease.

3. The Petitioner-company had plans for setting up an Integrated Steel Plant in the State of Chhattisgarh for which they entered into a negotiation

with the State Government and finally on 7.1.2005, a Memorandum of Understanding (MoU) was entered into between the State of Chhattisgarh

and the Petitioner-company wherein the Government of Chhattisgarh agreed to provide all help prevailing incentives and facilitate the clearances

necessary for the project which included allotment of land required for setting of these projects and also its necessary recommendations to the

concerned Ministry/Department under the Government of India for grant of mining lease.

4. Pursuant to the MoU entered into with the State Government, the Petitioners as a first step to move forward as per the MoU had of its own

acquired 11.421 hectares of land in village Rasmada, Tahsil & District Durg, for the purpose of construction and establishing a factory thereon for

manufacturing sponge iron and a power plant.

5. Later on, the Mining Department of the State of Chhattisgarh also as a response to the MoU vide their order dated 16.5.2005 granted a mining

permission in favour of the Petitioners for an area of land measuring 215 hectares out of 345.90 hectares applied subject to obtaining necessary

approval from the Forest and Environment Ministry, Government of India. The Government of India in turn also vide their order dated 12.5.2006

granted necessary approval as is required under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, "the

MMDR Act") subject to compliance of various statutory provisions under the different statutes governing the mining field.

6. According to the Petitioners, they meanwhile obtained all the statutory clearances that were required for execution of a mining lease as is

required under the provisions of the MMDR Act, the Minerals Concession Rules, the Forest Conservation Act and also the Environmental Laws

as is required by the Ministry of Environment and Forest.

7. Based upon which, the Petitioners further moved to the Mining department for granting approval of the mining plan so that the same can be

submitted before the Department of Forest as a mandatory requirement. The State further vide Exhibit P-9, dated 15.9.2006, agreed for execution

of the mining lease deed subject to the fulfilment of certain conditions stipulated therein and furnishing an undertaking in this regard. In compliance

to which, the Petitioners again gave an undertaking on the same day, i.e., on 15.9.2006. Finally on 13.10.2006, the State Government issued an

order granting diversion of 66 hectares of land out of 215 hectares initially allotted to the Petitioners for mining purposes with a further condition of

getting a formal approval from the Government of India. The Government of India, Ministry of Environment and Forest, also on 28.1.2008 granted

a formal approval and clearance in this regard. The Petitioners meanwhile on 18.2.2008 acquired a running sponge iron unit at the industrial village

of Siltara, District Raipur with an intention that whatever minerals would be extracted from the 66 hectares of land over which the mining lease shall

be granted can be used at the said plant acquired in accordance with the agreement entered into between the parties.

8. The grievance of the Petitioners is that though the Petitioners have completed all the formalities required under the MMDR Act yet in spite of an

order having been passed, the State Government is not granting the mining lease to the Petitioners on the basis of which the Petitioners can start

mining activities. According to the Petitioners once the Petitioners have got the required permission under Section 5(1) of the MMDR Act, the

State Government itself does not have any further role to play except executing the mining lease. For ready reference the relevant portion of

Section 5(1) of the MMDR Act is reproduced as under :-

5. Restrictions on the grant of prospecting licences or mining leases. -

(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person-

(a) is an Indian national, or a company as defined in subsection (1) of section 3 of the Companies Act, 1956 (1 of 1956); and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be

granted except with the previous approval of the Central Government.

9. In the instant case, the Central Government accorded approval under Section 5(1) of the MMDR Act on 12.5.2006 over an area of 215

hectares of land over which the State Government had granted mining permission on 16.5.2005. On 8.12.2009, the Central Government again

advised the State Government for executing the mining lease expeditiously on account of the inordinate delay that was taking in the course of

execution of mining lease by the State Government. The said letter of the Central Government was issued in the presence of the representatives of

the Government of Chhattisgarh. However, the State authorities did not pay any heed to the instructions of the Central Government.

10. Instead of complying with the statutory requirement, the State Government reopened the file and instead of executing the mining lease took an

arbitrary stand that the mining lease can only be executed upon the Petitioners establishing a new plant at Barai, Durg. This according to the

Petitioners was bad in law for the reason that on 15.6.2006 the Government had permitted them to either install or to acquire a plant for the

captive use of the mineral extracted by the Petitioners. The Petitioners also filed an objection stating that since forest clearance has been granted

for only 66 hectares of land out of the total area of 215 hectares of land which was initially permitted by the State Government for mining activities,

therefore, the Petitioner had reservations in the setting up of the new plant particularly when they have already acquired a plant at Siltara. Further

the Petitioners made a request to the Respondents that as of now the mining lease may be granted only for 66 hectares of land and that the mining

lease for the balance area may be granted after further capacities are established. It was further contended that 66 hectares of land which is

proposed to be granted for mining activities can only satisfy about 60% of existing captive requirement of iron ore. The State Government again on

26.5.2010 insisted upon the Petitioners for submitting an undertaking with certain additional conditions to be incorporated in the mining lease deed.

The Petitioners under protest and since they were left with no other option as they had already made huge investment, again submitted an

undertaking though in duress. In spite of this also the State Government failed to execute the mining lease. The Petitioners made various requests

and reminders to the State Government which fell on deaf ears and in spite of the Petitioners making huge investments the State Government in a

typical example of redtapism has paid no heed to the requests and reminders nor paid heed to the advise made by the Government of India for

executing the mining lease. It is pertinent to mention that the Respondents have also not in any manner shown any default or deficiency on the part

of the Petitioners or for that matter any non-compliance of any statutory requirement for the purpose of executing the mining lease as is required

under the MMDR Act.

11. However, suddenly on 13.6.2013 the State Government issued the impugned show cause notice to the Petitioner-establishment making certain

wild allegations contrary to the MMDR Act calling upon the Petitioners to appear in person on 20.6.2013 for giving an explanation as to why the

application for grant of mining lease deed be not cancelled for the reason that the Petitioners have not established a new plant. Immediately

thereafter the Petitioners had rushed to this Court by filing the present writ petition. Though the show cause notice was issued on 13.6.2013 and

more than 2Ã¯Â¿Â½ years have passed even then the State authorities have not taken any action on the said show cause notice neither have the

Respondent authorities executed the mining lease to the Petitioners.

12. According to the Petitioners, the said issuance of the show cause notice also is in excess of jurisdiction and powers of the State Government

subsequent to the approval under Section 5(1) of the MMDR Act having been obtained by the Petitioners from the Central Government. The

State Government could not have gone beyond the provisions of the MMDR Act. According to the Petitioners all the actions initiated by the

Respondents subsequent to the Government of India granting permission under Section 5(1) of the MMDR Act is totally uncalled for, without

jurisdiction and without any justification and have been passed only with a mala fide intention of frustrating the claim of the Petitioners. According

to the Petitioners the State Government has in the process executed mining lease in respect of all the other applicants of different areas but it is only

the Petitioners who have been pin-pointedly made to suffer in spite of having made huge investments in the State of Chhattisgarh. The said action

on the part of the Respondents also is highly discriminatory and is hit by Article 14 and is also contrary to the industrial policies as well as

investments policies of the State.

13. Counsel for the Petitioners also submits that even under the amended Act of the Mines and Minerals (Development & Regulation) Act, 2015,

the case of the Petitioners is well secured and protected. According to the Petitioners, the new amendment under the MMDR Act came into force

with effect from 12.1.2015 and so far as the rights of the existing concession holders and applicants are concerned it has been protected. Section

10(A) of the MMDR Amendment Act 2015 deals with the Ã¯Â¿Â½rights of existing consisting holders and applicantsÃ¯Â¿Â½ and the relevant portion so

far as the PetitionersÃ¯Â¿Â½ case is concerned of Section 10(A) is being reproduced herein under:-

10(A). Rights of existing concession holders and applicants.-(1) All applications received prior to the date of commencement of the Mines and

Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the commencement of the Mines and Minerals

(Development and Regulation) Amendment Act, 2015,-

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, a reconnaissance permit

or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a

prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State

Government is satisfied that the permit holder or the licensee, as the case may be,-

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of minerals contents in such

land in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of

reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by

the State Government;

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease,

or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the

Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions

of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act :

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of

this sub-section except with the previous approval of the Central Government.

14. A plain reading of the said clause (c) of sub-section 2 of Section 10(A) clearly envisages that in all those cases where the Central Government

has already granted approval as required under sub-Section (1) of the Section 5 of the MMDR Act for grant of mining lease and also in those

cases where the State Government has issued Letter of Intent, the State Government shall have to under statutory obligation execute the mining

lease subject of course fulfilment of the conditions imposed by the Central Government while communicating its approval under Section 5(1) of the

MMDR Act. According to the Petitioners all those conditions which were stipulated by the State Government as well as by the Central

Government have all been fulfilled yet there is a total inaction on the part of the State Government either deliberately or malafidely. Counsel for the

Petitioners further submits that it appears that the State Government is bent upon choking the project of the Petitioners and its investments by killing

time so that the State Government would be free of its obligations and statutory compulsions if it drags on with the matter beyond two years from

the date of the amended MMDR Act came into force. That as per the Amended Act, the State Government has been granted two years time from

the date of the coming into force of the new Act for the execution of the mining lease and that period is expiring on 11.1.2017. Therefore, the State

Government is trying to frustrate the claim of the Petitioners by dragging the matter so that the two years period gets over.

15. Shri U.N.S. Deo, learned Government Advocate, submitted that the writ petition in its present form itself is not tenable for the reason that the

same has been preferred challenging a show cause notice and that the laws regarding the scope of judicial review in a matter where the challenge is

that of a show cause notice by now is well settled. In the instant case also, the writ petition prima facie is premature as the Petitioners could have

approached the authorities concerned explaining their stand so as to take a positive decision. It was submitted that the Petitioners have rushed to

the Court without giving a proper reply to the show cause notice itself is a sufficient ground for dismissing the petition holding it to be not

maintainable. According to the State Counsel, a bare perusal of the show cause notice, Annexure P-33, dated 13.6.2013, itself would reveal that

the Respondent-State has pointed out certain deficiencies on the part of the Petitioner-establishment before a mining lease could have been

executed and it was for the Petitioners to explain the said deficiencies, if any. It was submitted that by the said show cause notice, the Petitioners

have been called upon to explain the deficiencies. That if the Petitioners are able to explain and give plausible explanation, the possibility of the

show cause notice being dropped cannot be ruled out. That at this juncture it would not be proper for the High Court to exercise its discretionary

and extraordinary writ jurisdiction in a case where the challenge is to a show cause notice. Even otherwise the issuance of the show cause notice

alone cannot be presumed to be an order which is detrimental to the interest of the Petitioners nor does the contents of the show cause notice

reflect that some adverse order has been passed against the Petitioners.

16. So far as the merit of the case is concerned, the State Counsel does not dispute the factual matrix which has been adduced by the Petitioners in

the writ petition. He however submits that right from 1981 as is evident from Annexure R-1, the notification issued by the Mining Department of

the erstwhile State of Madhya Pradesh wherein as a matter of policy the State Government had decided that the mining lease of the land falling

under the Districts of Durg and Bastar would be entertained of only those applicants who intent to install an industry based on the said mineral for

which they intent to obtain a mining lease. He further submitted that it was only keeping in view the said notification of 1981, the State of

Chhattisgarh on 16.5.2005 took a decision in favour of the Petitioner-establishment granting them mining concession approval. According to the

State counsel, the Petitioners had already entered into an MoU on 7.1.2005 with the State Government wherein the Petitionercompany had

undertaken to comply with certain terms, assurances, and commitments. In the said MoU itself the Petitioners had categorically mentioned of the

implementation of the project by establishing an industry as early as possible but not later than two years from the date of signing of the MoU. The

State counsel further submitted that the MoU also envisages that in case the project implementation does not commence within the stipulated

period of two years, the MoU shall seize to exist. The State counsel draws the attention of the Court to the fact that there is a non-compliance of

the said conditions of the MoU.

17. Learned State Counsel referred to another undertaking dated 28.5.2010 given by the Directors of the Petitioner-company wherein as

condition no.3, the Petitioner-establishment had undertaken that the company shall start implementation of the proposed Borai plant capacities at

the earliest and the commencement of production from the said plant shall be achieved between 18 to 24 months from the date of execution of the

mining lease. However, there is no progress in the said undertaking given by the Petitioners. Referring to these deficiencies, the Counsel appearing

for the State referred to the impugned show cause notice Annexure P-33 wherein the State Government has specifically pointed out certain

deficiencies as per the MoU and the undertakings given by the Petitioners to the State Government which have not been properly replied by the

Petitioners and have straightaway rushed to the High Court by filing the present writ petition which therefore is not maintainable. It was submitted

that earlier also the State Government had cancelled the MoU that was entered into between the Petitioners and the State Government on

7.1.2005 vide their order dated 29.9.2007 for the same reason of the non-compliance of the conditions enumerated in the MoU. According to the

State Counsel, in spite of sufficient opportunity and time being granted to the Petitioners they have still not honoured with the terms, assurances and

commitments set forth in the original MoU dated 7.1.2005 as well as the subsequent undertakings given on 28.5.2010. Thus, the petition being

totally devoid of merit deserves to be dismissed.

18. Shri N.K. Vyas, learned Assistant Solicitor General appearing for the Government of India, submitted that though the Government of India had

on a couple of occasions written in favour of the Petitioner-establishment directing the State Government for immediate execution of the mining

lease. He however states that the writ petition in its present form may not be sustainable as it is only a show cause notice which has been

challenged in the instant writ petition where the scope of interference is very limited. He referred to the decisions of the Supreme Court reported in

2006 (12) SCC 28 (Union of India & Another v. Kunisetty Satyanarayana); 2010 (13) SCC 427 (Oryx Fisheries Pvt. Ltd. v. Union of

India & Others) and 2013 (14) SCC 661 (Commissioner of Income Tax, Gujarat v. Vijaybhai N. Chandrani), all dealing with a petition

where the challenge was to a show cause notice.

19. Having considered the rival conditions put forth, the facts which are admitted and which have not also been disputed by the State or for that

matter the Central Government, are that:

(i) An MoU was entered into between the Petitioner-company with the State of Chhattisgarh on 7.1.2005 whereby it was proposed by the

Petitioner-company for establishing an integrated Steel Plant in the State of Chhattisgarh and the State Government had agreed to provide all

prevailing incentives and facilitated the clearances necessary for the projects including allotment of land and for issuance of necessary

recommendations to the Government of India for grant of mining lease.

(ii) As the first step on the part of the Petitioners for getting the project through as per the MoU entered with the State Government, the Petitioners

acquired 11.421 hectares of land at Village Rasmada, Tahsil and District Durg.

(iii) On 16.5.2005 mining permission was issued in favour of the Petitioners for an area measuring 215 hectares subject to the condition obtaining

necessary approval from the concerned Ministry under the Government of India.

(iv) On 12.5.2006 necessary approval was issued in favour of the Petitioners under Section 5(1) of the MMDR Act, 1957 subject to compliance

of all the statutory provisions required under different statutes governing the field.

(v) It is also not in dispute that the Petitioners have in fact in due course of time obtained all the statutory clearances and have also complied with all

the conditions stipulated by the Government of India as well as State Government of Chhattisgarh required for grant of mining lease. On

15.9.2006, the State Government agreed for execution of the mining lease subject to fulfilment of certain conditions stipulated therein which also

were fulfilled by the Petitioners and finally on 13.10.2006 the Government of India diverted and granted working permission over 66 hectares of

land for mining purpose out of 215 hectares of land over which mining permission was earlier granted to the Petitioners subject to further formal

approval by the Government of India which too was granted by the Government of India on 28.1.2008.

(vi) As per the order of the State Government dated 15.9.2006, the Petitioners also have acquired a running Sponge Iron Unit at Industrial Area

Siltara in Raipur so that the minerals which would be extracted from the 66 hectares of land provided for this purpose can be used for production

at the said acquired plant.

20. Having undergone all these processes from 2005 to 2008, the Petitioners has been hoping that the mining lease would be executed by the

State Government without any further delay as all the requirements till now have been met by the Petitioner-company without any shortcoming on

any front. Meanwhile, the Petitioners have also made huge investments firstly by purchasing of 11.421 hectares of land in the year 2005 and

subsequently in acquiring a running Sponge Iron Plant at Siltara, Raipur and in addition the PetitionersÃ¯Â¿Â½ have also paid huge amount of money to

the State Government as has been fixed by the State Government under the various statutory provisions under Environment as well as Mining laws

running into many crores of rupees.

21. Having already made huge investments by a company in a State it would not like to let go the entire investments down the drain only for the

inaction on the part of the State Government in fulfilling its part of the commitment and where except for the execution of the mining lease all other

formalities have been completed. So far as a businessman or a business unit is concerned, time is money for them and for a businessman for any

investment that he plans and makes he expects some amount of return from the same at the earliest with which he can further expand his business.

It is with these intentions that the Petitioners had also at the infancy stage of development of the State entered into an MoU with the State

Government. That on the said promise and assurance being made by the State Government, phase by phase the Petitioners made huge investment

and also paid/spent a large amount of money to the State Government as is required under the Environment as well as Mining laws.

22. It is noteworthy to mention that the fact that the deliberate and intentional inaction on the part of the State Government stands established

because realising the same the Government of India had on a couple of occasions issued advisory note to the State Government for executing the

mining lease expeditiously looking to the inordinate delay in execution of the mining lease on the part of the State Government. It also reflects from

the pleadings of the parties that all the other similar plan and projects had already been acted upon by the State Government except in the case of

the Petitioners.

23. Having delayed the matter for so long the authorities of the State Government have deliberately started acting with a hidden agenda of

frustrating the claim of the Petitioners as also put the Petitioners in such a position so that they may not be able to start their business forcing them

to decide dropping the entire project itself. With this intention the Respondents sat over the file of the Petitioners without further action.

Subsequently, when time was running out from the State Government to give it a picture that they are actively considering the case of the

Petitioners they issued another letter on 26.5.2010 insisting the Petitioners for further submitting another undertaking when there was no such

requirement under the provisions of law. The Petitioners having already fulfilled all the other conditions put forth by the State Government till now,

putting certain additional conditions for grant of mining lease for a businessman who has already pumped in huge amount of investments running into

crores of rupees, this letter of the State Government on 26.5.2010 was nothing but an act of arm twisting on its part and putting the Petitioners

under duress. The fact that the Petitioners have already made a huge amount of investment shows the financial capability of the Petitioners. With no

further option left in front of them the Petitioner-company appears to have under duress accepted the additional conditions also by making a fresh

undertaking on 28.5.2010. These additional conditions which were sought for vide their letter dated 26.5.2010 were never a part of the conditions

right from the initial stages when the MoU was entered into between the State Government nor when subsequent permission was granted by the

State Government based upon which the Government of India had granted its approval.

24. Another aspect which has to be borne in mind is the fact that the Petitioners had initially applied for providing 345 hectares of land for mining

purpose of which the State Government had reduced it and granted lease for 215 hectares of land and of these 215 hectares of land also the State

Government diverted and granted working permission for only 66 hectares of land for the purpose. This by itself clearly indicates that the project

which was proposed by the Petitioners keeping in mind 345 hectares of land would be difficult to sustain and manage and therefore the State

Government realising the fact that the Petitioners have been granted working permission for only 66 hectares of land agreed for even acquiring of a

plant as is evident from the letter dated 15.9.2006. This too was acceded by the Petitioners and had accordingly acquired the plant at Siltara which

was more than sufficient to cater to the need of consuming minerals that would be extracted from the 66 hectares of land over which working

permission was provided for mining purpose to the Petitioners.

25. Once when formal approval under Section 5(1) of the MMDR Act is obtained from the Government of India, the State is denuded of its

power to relook into the matter and reopen it except to ensure that before executing of the mining lease the Petitioners have duly obtained

necessary NOC from the Forest and Environment Departments. In the opinion of this Court, the letter dated 26.5.2010 by the State Government

was totally uncalled for and was neither proper, legal or justified. Secondly the undertaking given by the Petitioners in this regard on 28.5.2010

also has to be considered to have been executed under duress, force and compulsion and since the letter of the State Government itself was

beyond authority it was totally uncalled for and is therefore per se illegal. The Petitioners therefore cannot be forced or compelled to act upon the

undertaking which they have given on 28.5.2010 under these circumstances.

26. The opinion of this Court stands fortified from the decision of the Supreme Court in the case of Sandur Manganese and Iron Ores Ltd. v.

State of Karnataka [2010 (13) SCC 1] wherein in paragraph 34 the Supreme Court holds that since the MMDR Act is a parliamentary

declaration, it is clear that the State Legislature is denuded of its legislative power to make any law with respect to the regulation of mines and

minerals development to the extent provided in the Act. In the same judgment the Supreme Court further went on to say that any legislation by the

State after such declaration and trenching upon the field disclosed in the declaration must necessarily be unconstitutional because that field is

abstracted from the legislative competence of the State Legislature. The State also is denuded of its executive power with regard to matters

covered under the MMDR Act and Rules which by itself is a complete code in respect of grant and renewal of prospecting licences as well as

mining lease in lands belonging to the Government. It is not open for the State Government to justify their acts that are de horse to the MMDR Act

and the Mineral Concession Rules. The exercise has to be done strictly in accordance with the statutory provisions and if there is any deviation the

same cannot be sustained. It is the normal rule of construction that when a statute vests certain powers in an authority to be exercised in a

particular manner then the authority has to exercise it only in the manner provided in the statute itself.

27. Rule 63 (A) of the Mineral Concession Rules also obliges to dispose of applications for grant of reconnaissance permit, prospecting licence or

mining lease within the stipulated period prescribed therein subject to the formalities being complete in all respect. The Proviso to the said Section

also requires the State to give reasons for the delay to dispose of applications for grant of reconnaissance permit, prospecting licence or mining

lease.

28. In the instant case, all those conditions imposed by the State Government vide its letter dated 15.9.2006 have all been adhered to in its letter

and spirit by the Petitioner-establishment. In addition, the Petitioners had also complied with all the other conditions so put forth by the Central

Government while granting approval under Section 5(1) of the MMDR Act. In the opinion of this Court the State could not have further imposed

conditions after conditions at a later stage also forcing the Petitioners to provide further undertakings with an object of frustrating or circumventing

the earlier commitments and assurances made by the State and the earlier undertakings provided in this regard.

29. The act on the part of the State Government in forcing the Petitioners to provide undertakings on 28.5.2010 does in fact frustrates the pre-

conditions earlier put by the State Government and for which the Petitioners already have given an undertaking, would squarely fall within the

principles of ""Promissory Estoppel"". It is trite at this juncture to refer to paragraphs 19 and 24 of the landmark decision authored by Justice P.N.

Bhagwati, as he then was, in the case of Motilal Padampat Sugar Mills v. State of U.P., AIR 1979 SC 621 the relevant portion of which

reproduced herein:-

19. When we turn to the Indian law on the subject it is heartening to find that in India not only has the doctrine of promissory estoppels been

adopted in its fullness but it has been recognised as affording a cause of action to the person to whom the promise is made. The requirement of

consideration has not been allowed to stand in the way of enforcement of such promise. The doctrine of promissory estoppels has also been

applied against the Government and the defence based on executive necessity has been categorically negativeÃ¯Â¿Â½

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24. ...The law may, therefore, now be taken to be settled as a result of this decision, that where the Government makes a promise knowing or

intending that it would be acted on by the promise and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be

held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee, notwithstanding that

there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 299 of the

Constitution. It is elementary that in a republic governed by the rule of law, no one howsoever high or low, is above the law. Everyone is subject to

the law as fully and completely as any other and the Government is no exceptionÃ¯Â¿Â½. It is indeed difficult to see on what principle can a

Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppel. Can the Government say that it is under no

obligation to act in a manner that is fair and just or that it is not bound by considerations of ""honesty and good faith""?... It was laid down by this

Court that the Government cannot claim to be immune from the applicability of the rule of promissory estoppel and repudiate a promise made by it

on the ground that such promise may fetter its future executive action.

30. The act on the part of the State Government in forcing the Petitioners to file fresh MoU with new conditions is also contrary to the doctrine of

Legitimate Expectations"". Having allotted land, granted approval and sanction for construction or acquiring of plant to consume the minerals

extracted from the area over which mining lease would be granted and MoU in this regard also having been entered into and an undertaking also

provided by the Petitioners and in furtherance the Petitioners also having acted upon it, the Government now cannot turn around and taken a stand

forcing the Petitioners to file fresh undertakings with fresh conditions which would rather be in contrast to the earlier undertakings and MoUs much

to the detriment of the Petitioners. It would be relevant at this juncture to refer to a decision rendered by the Supreme Court in the Bhushan

Power and Steel Ltd. v. State of Orissa and Another [2012 (4) SCC 246] wherein under somewhat similar factual backgrounds the Supreme

Court deprecated similar stand taken by the State of Orissa. Keeping the doctrine of Legitimate Expectation in mind the Supreme Court in

paragraphs 38 to 41 has held as under (relevant portions are being reproduced):-

38. Despite having allotted land and granted sanction to Bhushan Ltd. to take steps for construction of the said plaint it was subsequently

contended that the application filed by Bhushan Ltd. was premature and could not, therefore, be acted upon. Specific instances have been

mentioned herein above of the steps taken by the various departments in extending cooperation to Bhushan Ltd. to set up its steel plant at

Lapanga. To now turn around and take a stand that the application made by Bhushan Ltd., who have already invested large sums of money in

setting up the plant.

39. The State Government had, on its own volition, entered into the MoU with Bhushan Ltd. on 15-5-2002, and had even agreed to request the

Central Government to allot mining areas and coal blocks for operating the steel plantÃ¯Â¿Â½ the action taken by the State Government appears to us

to be highly unreasonable and arbitrary and also attracts the doctrine of legitimate expectation.

40. There is no denying the fact that the appellants have altered their position to their detriment in accordance with the MoU dated 15-5-2002.

Whatever may have been the arrangement subsequently arrived at between the State Government and BSSL, the original MoU dated 15-5-2002

continued to be in existence and remained operative. The State Government appears to have acted arbitrarily in requiring Bhushan Ltd. to enter

into a separate MoU, notwithstanding the existence of the MoU dated 15-5-2002, which, as mentioned herein above, had been acted upon by the

parties.

41. In the light of the above, the High Court erred in holding that it could not interfere with the decision of the State Government calling upon the

appellants to sign a fresh MoU with the Government, during subsistence of the earlier MoU. Since the State Government has already made

allotments in favour of others in relaxation of the Mineral Concession Rules, 1960, under Rule 59(2) thereof, no cogent ground had been made out

on behalf of the State to deny the said privilege to the appellants as wellÃ¯Â¿Â½.

31. In 1976 (1) SCC 112 (M/s Ramlal & Sons v. The State of Rajasthan), the Supreme Court held as under:-

12. When in this case grant of the mining lease was envisaged under definite statutory rules made in exercise of power conferred under Section 5

of the Mines and Minerals (Regulation and Development) Act, 1948, the State Government was under legal obligation to act in accordance with

these rules. It could not exercise a power in the matter of grant of mining lease unknown to these Rules. The State Government could not impose

terms and conditions according to its own whims ignoring or disregarding the statutory rules which are binding on itÃ¯Â¿Â½

32. In Motilal Padampat (supra), the Supreme Court in paragraph 8 referring to decision of Jorden v. Money had quoted Mr. Justice Denning

which in the facts of the present case also is quite relevant and which reads as under:-

The law has not been standing still since Jorden v. Money. There has been a series of decisions over the last fifty years which, although they are

said to be cases of estoppels, are not really such. They are cases of promises which were intended to create legal relations and which, in the

knowledge of the person making the promise, were going to be acted on by the party to whom the promise was made, and have in fact been so

acted on. In such cases the courts have said these promises must be honoured.

33. Under the given facts and circumstances of the case, the State Government having on 16.5.2005 (Annexure P-5) principally decided to grant

mining lease to the Petitioner-company subject to their obtaining clearance from the Forest and Environment Ministries, Government of India and

the Petitioner-company obtaining the same in due course of time and the Central Government also according approval under Section 5(1) of the

MMDR Act and the Petitioner-company also getting an approval from the Indian Bureau of Mines as early as on 13.10.2006 there appears to be

no reason whatsoever for the State Government not to have further acted upon their promise for executing the mining lease, nor is there any scope

for the State Government to further look into the stage prior to issuance of the approval under Section 5(1) of the MMDR Act by the Government

of India.

34. On 8.12.2009, the Central Government had also advised the State Government for expeditiously executing the mining lease. Later on, the High

Level Coordination-cum-Empowered Committee of the Central Government also pointed it out that there is an inordinate delay on the part of the

State Government in the execution of the mining lease so far as the Petitioners case is concerned and it was expected that the State Government

would take a prompt decision at least thereafter. It is noteworthy to mention that till this time there was no deficiency whatsoever which was shown

to be the reason for not executing the mining lease by the State Government. Now, when the matter was taken note of by the Central Government

on repeated occasions and directing the State Government for an expeditious execution of the mining lease it appears that only to circumvent the

guidelines and advise of the Central Government, the State Government thought of finding of a way to defer from their statutory obligations of

execution of mining lease by creating hindrances to the Petitioners by putting conditions which were till now not in existence and also thereafter

issuing a show cause notice to give it a picture of the case where the Petitioners have not complied with the formalities stipulated by the State

Government.

35. It is more than a decade that the Petitioners have been expecting that the Government would be executing a mining lease in their favour more

particularly when the Petitioners have already fulfilled all the conditions so stipulated for the execution of the mining lease and also fulfilled the

conditions put while recommending the case of the Petitioner to the Central Government for approval for grant of mining lease. After the approval

of the Central Government, there were no further formalities which were to be required to be complied with by the Petitioners-company except for

the act on the part of the State Government in executing the mining lease. This execution of mining lease subsequent to the approval granted by the

Central Government is exclusively a ministerial act with no further scope of reconsidering the claim of the Petitioners or for that matter putting

certain additional conditions which till now had not been put forth. Further, the Petitioners making huge investments for the purpose of purchase of

land and acquiring plant for the purpose of using the mineral that would be extracted from the lease hold land over which the mining lease has been

awarded cannot be overlooked. Further, the Petitioners have also deposited huge amount of money with the State Government towards

compensation to the Forest Department for afforestation somewhere to the tune of Rs.500 lacs. That the State Government now turning around

from its promise after the Petitioners had put in so much of investment is also violative of Article 14 of the Constitution of India for the reason that it

is emphatically submitted by the Petitioners in their petition that so far as the other establishments who had also applied for grant of similar mining

lease either earlier or subsequently or at the same time when the petitioners have applied have all been granted the same and have also been acted

on without any such requirement being put forth to those establishments as is being demanded by the State from the Petitioner-establishment. Thus,

the act on the part of the State Government in not executing the mining lease with the Petitioner-company is clearly unreasonable and illegal and

discriminatory.

36. Recently the Uttrakhand High Court also in the matter of State Bank of India and Others v. Manoj Thakur, reported in (2015) 3 LLJ

28 (UC) and in paragraph 15 dealing on the topic of issuance of prerogative writs has held as under:-

15. ...There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The ''public

authority'' for them mean every body which is created by statute and whose powers and duties are defined by statute. So Government

departments, local authorities, police authorities, and statutory undertakings and corporations, are all ''public authorities''. But there is no such

limitation for our High Courts to issue the writ ''in the nature of mandamus''. Article 226 confers wide powers on the High Courts to issue writs in

the nature of prerogative writs...

37. In 1999 (9) SCC 546 [The State of Bihar v. Dr. Braj Kumar Mishra & Others], the Supreme Court in paragraph 7 has held as under:-

7. It is true that normally the Court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order

should remand the matter to the concerned authority particularly when such authority consists of experts for deciding the issue afresh in accordance

with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court to issue directions

when all the facts were admitted regarding the eligibility of the respondent No.1 and his possessing of the requisite qualifications. Remand to the

authorities would have been merely a ritual and ceremonial. Keeping in mind the lapses attributable to the Commission which had failed to take

appropriate action despite recommendation made in favour of the respondent No.1, the learned Single Judge as also the Division Bench of the

High Court felt it necessary to declare the respondent No.1-promoter with effect from 1.2.1985...

Similar view has also been taken by the Supreme Court in the case of Badrinath v. Government of Tamil Nadu & Others [2000 (8) SCC

395].

38. In view of the above legal proposition laid down by the Supreme Court if the facts of the present case is taken into consideration what is

explicit from the record is that admittedly there was an MoU entered between the Petitioner Company and the Respondent State. That as per the

MoU initially the Petitioners acquired by a way of purchase a large chunk of lands. Later on 16.5.2005 mining permission was issued to the

Petitioners subject to the approval from the Government of India. Subsequently on 12.5.2006 approval by the Government of India also obtained

with a further condition of getting clearance under the forest & environment laws. Having once obtained the formal approval of the Government of

India under Section 5(1) of the MMDR Act, 1957. The only further step which has to be taken by the State Government was immediately on

Petitioner obtaining the necessary statutory clearance from the forest & environment department was to execute the mining lease. However, though

almost more than 10 years have passed the Respondent have been on one pretext or the other differing the matter detrimental to the interest of the

Petitioner-company. Under the said factual background this Court is inclined for issuance of prerogative writ by granting a positive mandamus to

the Respondent directing them for execution of the mining lease in favour of the Petitioners at the earliest. It is expected that taking into

consideration the fact that the Respondent have already delayed the case of the Petitioner for more than a decade the Respondent shall without any

further delay execute the mining lease within a maximum period of 60 days from today.

39. So far as the issue of exercising of the writ jurisdiction at the show cause stage is concerned without traveling too far behind to track the legal

proposition settled by the Supreme Court, this Court feels it proper to refer to one of the recent land mark decision in this field i.e. the case of

Whirlpool Corporation v. Registrar of Trade Marks and Others [1998 (8) SCC 1] wherein the Supreme Court had dealing under similar

circumstances held that where the action initiated by the statutory authority is wholly without authority and jurisdiction the same can be subjected to

challenge Petition under Article 226 of the Constitution of India. In paragraph 15 of the said judgment the Supreme Court has held as under:-

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a

writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available,

the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a

bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where

there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act

is challenged.

40. Prior to the judgment of Whirpool (Supra) in one of its earlier decision in the case of Union of India and Another v. Brij Fertilizers Pvt.

Ltd. And Others [1993 (3) SCC 564], the Supreme Court in paragraph 8 has held as under :-

8 ....It was urged that the High Court was not justified in quashing the show cause notice and issuing the directions for paying the subsidy without

giving an opportunity to the department to verify if the respondents had in fact complied had in fact complied with Control Order. True, the High

Court should normally not interfere at the stage of show cause notice. But, where, from the facts it is apparent that there was no material available

with the department to doubt the statement on behalf of the respondents and their own officers at every point of time had issued the certificate the

correctness of which could not be disputed or doubted except by raising unfounded suspicion or drawing on imagination it would be failing to

exercise jurisdiction if the Court does not discharge its constitutional obligation of protecting....

41. Subsequent to the Whirlpool case, the Supreme Court in the case of Siemens Limited v. State of Maharashtra And Others [2006 (12)

SCC 33] again held that ordinarily a writ Court may not exercise its discretionary jurisdiction in entertaining a writ petition questioning a notice to

show cause unless the same inter alia appears to have been without jurisdiction. It was also held in the said decision that when a notice is issued

with premeditation writ petition would be maintainable. The Supreme Court was of the view that if the statutory authority has already applied its

mind and has formed an opinion and is already determined to pass an order against a person the same does not remain in the realm of the show

cause notice and the writ petition under such circumstances was maintainable.

42. So far as the three judgments [2006 (12) SCC 28, 2010 (13) SCC 427 & 2013 (14) SCC 661] cited by learned Counsel for Respondent

No.3 in connection with the law pertaining to challenge to a show cause notice is concerned, the facts of these cases would clearly reflect that the

show cause notices in all the three cases were issued either under the provisions of a taxing law or they were initiated by quasi-judicial authority or

disciplinary authority. In all the three cases, the parameters for the Court judging the legality of issuance of a show cause notice are entirely

different. In the present case, the challenge to the show cause notice is on the authority of the State Government in issuing the same. Hence, the

ratio laid down by the Supreme Court in these three cases cannot be made applicable and equated with the facts of the present case. These

judgments therefore with all great respect are distinguishable.

43. That another aspect which has to be appreciated is the fact that though the Petitioners have also filed the present petition questioning the

issuance of the show cause notice dated 13.6.2013 but the fact which cannot be ignored is that in spite of the fact that there was no interim

protection against the said issuance of show cause notice, the State authorities have not acted upon it till date though more than three years have

passed and which cannot be looked into lightly and which shows that it was not issued on account of any default on the part of the Petitioners but

was issued only for the sake of showing that the State Government was not sitting over the file but was on serious consideration on the file of the

Petitioners seeking for execution of mining lease. Further, to strengthening the said notion is the act on the part of the State Government vide order

dated 25.9.2013 asking them for depositing certain further amount of money required under the Forest laws. The amount of money had also been

deposited by the Petitioners on 31.10.2013 and the said amount also is lying with the State Government and adds up to the crores of rupees

already invested by the Petitioners. This also clearly depicts that the State Government had ignored the show cause notice dated 13.6.2013 and

has further processed the file of the Petitioners for the execution of the lease deed. The fact that the Petitioners were already entitled for the

execution of the mining lease under the MMDR Act as it stood prior to 12.1.2015 i.e., the date on which amended MMDR Act came into force

and the new amendment Act also has strengthen the claim of the Petitioners in spite of Petitioner fulfilling all conditions imposed by Central

Government while according approval under Section 5(1) of MMDR Act which already stood in its favour prior to the amendment in the law, yet

there is a inordinate, unexplained and unethical attitude on the part of the State Government for not acting upon its promise and commitment made

to the Petitioners. The provisions of the Act clearly casts an obligation on the State Government to execute the mining lease. The Act does not

provide any discretion to the State Government to delay the execution of the lease deed, once the stipulated conditions are fulfilled.

44. By now the proposition laid down by the Supreme Court is very clear that writ court shall be slow in interfering with the show cause notices,

however, the reluctance in this regard is not absolute. It is more on the grounds of the public policy and hesitation, than as principle. In case if the

show cause notice palpably smacking malafides a writ petition in the said circumstances would be maintainable. The Supreme Court in many of

decisions also held that in case if the proceedings of admitted facts are without jurisdiction then there is no bar in entertaining a writ petition under

Article 226 of the Constitution. Thus on the basis of the foregoing proposition of law this Court is of the opinion that the show cause notice firstly is

without authority, secondly, has been issued with malafides and lastly in the light of the Respondent State subsequently after the issuance of show

cause notice on 25.9.2013 ordered the Petitioner to further deposit amount of Rs. 3.77 lakhs towards diversion of land over which lease is to be

granted and which has also been deposited shows that proceeding of the show cause notice either was dropped or the Respondents had taken a

decision not to act upon it. Thus the show cause notice dated 13.6.2013 also deserves to be and is accordingly quashed.

45. For the foregoing reasons, the writ petition stands allowed. The show cause notice dated 13.6.2013 is set aside/quashed. The Respondents

are directed to execute the mining lease with the Petitioners at the earliest preferably within a period of 60 days from today.