2024 INSC 848

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 715 OF 2024

IN THE MATTER OF: -

KIRLOSKAR FERROUS INDUSTRIES LIMITED & ANR **…PETITIONER(S)**

VERSUS

UNION OF INDIA & ORS. **…RESPONDENT(S)**

J U D G M E N T

J.B. PARDIWALA, J.:

1. The petitioners have invoked the jurisdiction of this Court under Article 32 of the Constitution *inter-alia* seeking to challenge the validity of the Explanation to Rule 38 of the Mineral (Other than Atomic and Hydrocarbons Energy Minerals) Concession Rules, 2016 (for short, the "**MCR, 2016**") and the Explanation to Rule 45(8)(a) of the Mineral Conservation and Development Rules, 2017 (for short, the "**MCDR, 2017**") that stipulates the computation of royalty to be levied for the extraction or consumption of mined ores.

A. BRIEF FACTUAL MATRIX

2. The petitioner no.1 herein is a mining leasehold company *inter-alia* engaged in the extraction of pig iron and the manufacturing and sale of its byproducts by way of a mining lease for iron ores in the State of Karnatak in terms of the provisions and procedure envisaged under the Mineral (Development and Regulation) Amendment Act, 2015 (for short the "**2015 Amendment Act**"). The petitioner no.2 herein is one of the shareholders in the petitioner no.1 company. The respondent no. 1 herein is the Union of India through the Secretary, Ministry of Mines, whereas the respondent no. 2 herein is the Indian Bureau of Mines.

3. As per Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, the ("**MMDR, Act**"), the revenue required to be paid for any mineral removed or consumed from the leasehold area would be in the form of royalty and mandates the mining leaseholder to pay such royalty as may be specified in the Second Schedule in respect of any minerals removed or consumed in the leased area allotted to him. Section 9 sub-section (3) of the MMDR Act further empowers the Central Government to enhance or reduce the rate of royalty payable by the leaseholders by way of a notification once every 3-years. The aforesaid provision reads as under: -

> ***"9. Royalties in respect of mining leases. –***
> *(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything*

contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

(2A) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

4. Section(s) 13 and 18 of the MMDR Act respectively further empowers the Central Government to frame Rules for regulating the grant of mineral concession and for the conservation and systematic development of minerals respectively. Pursuant to the above provisions, the Central Government enacted the Mineral Concession Rules, 1960 (for short, the "**MCR, 1960**") which later came to be replaced by the MCR, 2016 for the computation and

payment of royalty in terms of Section 9 read with Schedule II of the MMDR, Act.

5. The erstwhile MCR, 1960, more particularly Rule 64D that was inserted *vide* Notification bearing no. GSR 883(E) dated 10.12.2009, stipulated that the royalty to be paid for all non-atomic and non-fuel minerals would be computed on the basis of the State-wise sale price of different minerals as published by the Indian Bureau of Mines / the respondent no. 2. The said provision reads as under: -

> ***" 64 D. Manner of payment of royalty on minerals on ad valorem basis:***
>
> *(1) Every mine owner, his agent, manager, employee, contractor or sub-lessee shall compute the amount of royalty on minerals where such royalty is charged on ad valorem basis as follows:*
>
> *(i) for all non-atomic and non fuel minerals sold in the domestic market or consumed in captive plants or exported by the mine owners (other than bauxite and laterite despatched for use in alumina and metallurgical industries, copper, lead, zinc, tin, nickel, gold, silver and minerals specified under Atomic Energy Act), the State-wise sale prices for different minerals as published by Indian Bureau of Mines shall be the sale price for computation of royalty in respect of any mineral produced any time during a month in any mine in that State, and the royalty shall be computed as per the formula given below:*
>
> *Royalty = Sale price of mineral (grade wise and State-wise) published by IBM X Rate of royalty (in percentage) X Total quantity of mineral grade produced/ dispatched:*
>
> *Provided that if for a particular mineral, the information for a State for a particular month is not published by the Indian Bureau of Mines, the latest information available for that*

mineral in the State shall be referred, failing which the latest information for All India for the mineral shall be referred.

(ii) for the grades of minerals produced for captive consumption (other than bauxite and laterite despatched for use in alumina and metallurgical industries, copper, lead, zinc, tin, nickel, gold and silver) and those not despatched for sale in domestic market or export, the sale price published by the Indian Bureau of Mines shall be used as the benchmark price for computation of royalty.

(iii) for primary gold, silver, copper, nickel, tin, lead and zinc, the total contained metal in the ore or concentrate produced during the period for which the royalty is computed and reported in the statutory monthly returns under Mineral Conservation and Development Rules, 1988 or recorded in the books of the mine owners shall be considered for the purposes of computing the royalty in the first place and then the royalty shall be computed as the percentage of the average metal prices published by the Indian Bureau of Mines for primary gold, silver, copper, nickel, tin, lead and zinc during the period of computation of royalty as follows:

Royalty = sale price X rate of royalty in percentage

where sale price = Average price of metal as published by Indian Bureau of Mines during the month X Total contained metal in ore or concentrate produced X Rupee or Dollar exchange rate selling as on the last date of the month of computation of royalty:

Provided that in case of by-product gold and silver the royalty shall be based on the total quantity of metal produced and such royalty shall be calculated as follows:

Royalty = Sale price X rate of royalty in percentage

Explanation - For the purpose of this sub-clause sale price means, average price of metal as published by Indian Bureau of Mines during the month X Total byproduct metal actually

produced X Rupee or Dollar Exchange rate selling as on the last date of the month of computation of royalty.

(iv) For bauxite or laterite ore despatched for use in alumina and aluminium metal extraction or despatched to alumina or aluminium metal extraction industry within India, the total contained alumina in the bauxite or laterite ore on dry basis produced during the period for which the royalty is computed and reported in the statutory monthly returns under Mineral Conservation and Development Rules, 1988 or recorded in the books of the mine owners shall be considered for the purpose of computing the royalty in the first place and then the royalty shall be computed as the percentage of the average monthly price for the contained aluminium metal in the said alumina content of the ore published by the Indian Bureau of Mines, on the following basis namely:-

Royalty =

52.9 / 100	*X*	*Percentage of Al2O3 in the bauxite on dry basis (as reported in the Statutory Monthly return under MCDR)*	*X*	*Average monthly price of aluminium as published by the IBM*	*X*	*Rupee/ dollar exchange rate (selling) as on the last date of the period of the computation of royalty*	*X*	*Rate of royalty (in percentage)*

Provided that for computing the royalty for bauxite or laterite despatched for end use other than alumina and aluminium metal extraction and for exports provisions of this clause shall not apply.

(2) In case of metallic ores based on metal contained in ore and metal prices based on benchmark prices, the royalty shall be charged on dry basis, and the mine owner shall establish suitable facilities for collection of sample and its analysis on dry basis at the mine site."

6. A bare perusal of the aforesaid provision makes it clear that for computing the royalty that may be payable both the i) grade-wise and State wise sale price of mineral as published by IBM and the ii) rate of royalty were being factored along with the quantity of mineral that is produced or dispatched in order to determine the ultimate royalty that may be payable.

7. Thereafter, the Central Government by way of the aforesaid 2015 Amendment Act *inter-alia* inserted Section(s) 9B and 9C into the MMDR Act whereby contributions were required to be paid to the District Mineral Foundation ("**DMF**"), a non-profit body established to work for the interest and benefit of persons and areas affected by mining related operation and to the National Mineral Exploration Trust ("**NMET**") a non-profit autonomous body for the purposes of regional and detailed exploration.

8. As per Section 9B sub-section (5) of the MMDR Act, the contributions towards the DMF were computed as a percentage of the royalty paid by the mining leaseholder that could extend upto a sum equivalent to a maximum of one-third of such royalty. Thereafter, the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 ("**DMF Rules**") came to be enacted, Rule 2(a) of which stipulated that the contributions towards DMF shall be computed as ten percent of the royalty paid in accordance with the Second Schedule. On the other hand, the contributions towards the NMET under

Section 9C of the MMDR Act, were calculated as a sum equivalent to two percent of the royalty paid.

9. On 04.03.2016, the Central Government vide Notification no. GSR 278(E) enacted and notified the MCR, 2016 rules replacing the erstwhile rules of MCR, 1960, in order to revamp the entire mechanism *inter-alia* for the calculation of royalty on minerals and the grant of concessions.

10. Rule 38 of the MCR, 2016 defines the term 'Sale Value' as the gross amount payable as per the sale invoice where the sale transaction is on an arms' length basis and such price is the sole consideration for the sale excluding taxes. The Explanation appended to the said rule further provides that for computation of 'Sale Value' there shall no deduction in respect of royalty, payments or contributions towards DMF and NMET. The relevant provision reads as under: -

> *"**38. Sale Value. –***
> *Sale value is the gross amount payable by the purchaser as indicated in the sale invoice where the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, excluding taxes, if any.*
>
> *Explanation - For the purpose of computing sale value no deduction from the gross amount will be made in respect of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust."*
>
> (Emphasis supplied)

11. Rule 39 sub-rule (3) of the MCR, 2016 further provides how royalty is to be paid and the manner in which it is to be computed. It stipulates that royalty in respect of any mineral is to be paid on an Ad valorem basis. It further provides that royalty shall be calculated at the specified percentage of the 'average sale price' of such mineral for the month of removal / consumption as published by the Indian Bureau of Mines.

12. Rule 42 of the MCR, 2016 provides the manner in which the 'average sale price' shall be computed. Rule 42 sub-rule (1) stipulates that the average sale price of mineral grade / concentrate shall be computed on the basis of its 'ex-mine price'. Rule 42 sub-rule (3) further provides that the 'average sale price' shall be the weighted average of the 'ex-mine price' as computed in terms of sub-rule (2) of Rule 42. Rule 42 sub-rule (2)(b) provides that the 'ex-mine price' shall be computed as the sale value of the mineral less the actual expenditure incurred where the sale takes place domestically but beyond the mining lease area. The said provision reads as under: -

> ***"42. Computation of average sale price.***
> *(1) The ex-mine price shall be used to compute average sale price of mineral grade/concentrate.*
>
> *(2) The ex-mine price of mineral grade or concentrate shall be:*
> *(a) where export has occurred, the free-on-board (F.O.B) price of the mineral less the actual expenditure incurred beyond the mining lease area towards transportation charges by road, loading and unloading charges, railway freight (if applicable), port handling charges/export duty, charges for sampling and analysis, rent for the plot at the*

stocking yard, handling charges in port, charges for stevedoring and trimming, any other incidental charges incurred outside the mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity exported.

(b) where domestic sale has occurred, sale value of the mineral less the actual expenditure incurred towards transportation loading, unloading, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity sold.

(c) where sale has occurred, between related parties and/or where the sale is not on arms' length basis, then such sale shall not be recognized as a sale for the purpose of this rule and in such case, sub-clause (d) shall be applicable.

(d) where sale has not occurred, the average sale price published monthly by the Indian Bureau of Mines for that mineral grade / concentrate for a particular State:

Provided that if for a particular mineral grade / concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade / concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be used, failing which the latest information for All India for the mineral grade / concentrate, shall be used.

(3) The average sale price of any mineral grade/concentrate in respect of a month shall be the weighted average of the ex-mine prices of the non-captive mines, accordance with computed the in above provisions, the weight being the quantity dispatched from the mining lease area of mineral grade I concentrate relevant to each ex-mine price."

13. In other words, Rule 39(3) of the MCR, 2016 provides that royalty would be calculated as the percentage of the average of the 'Sale Value'. The Sale Value of any graded mineral / concentrate for the purposes of these rules in terms of Rule 38 is the gross amount payable as per the sale invoice including the royalty, DMF and NEMT paid. This Sale Value minus the actual expenditure incurred (without deducting the royalty, DMF and NEMT in terms of the Explanation to Rule 38) would be the ex-mine price of such mineral grade / concentrate. The weighted average of this 'ex-mine price' shall be the 'Average Sale Price' for the purposes of calculating royalty.

14. Similarly, under the Mineral Conservation and Development Rules, 2017 (for short, the "MCDR, 2017") that was enacted by the Central Government for the conservation and systematic development of minerals in exercise of its powers under Rule 18 of the MMDR Act, Rule 45(8)(b) provides that the 'Sale Value' for the purposes of the said rules is the gross amount payable without any deduction in respect of royalty, DMF and NEMT paid. The said rule reads as under: -

> *"**45. Monthly and annual returns –***
> *(8) In case of mining of minerals by the holder of a mining lease, the –*
> *(b) ex-mine price of mineral grade or concentrate shall be,–*
>
> *(I) where export has occurred, the total of, sale value on free-on-board (F.O.B) basis, less the actual expenditure incurred beyond the mining lease area towards –*

(i) transportation charges by road;
(ii) loading and unloading charges;
(iii) railway freight (if applicable);
(iv) port handling charges or export duty;
(v) charges for sampling and analysis;
(vi) rent for the plot at the stocking yard;
(vii) handling charges in port;
(viii) charges for stevedoring and trimming;
(ix) any other incidental charges incurred outside the mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity exported;

(II) where domestic sale of mineral has occurred, the total of sale value of the mineral, less the actual expenditure incurred towards loading, unloading, transportation, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity sold;

(III) where sale has occurred, between related parties and is not on arms' length basis, then such sale shall not be recognised as a sale for the purposes of this rule and in such case, sub-clause shall be applicable;

(IV) where the sale has not occurred, the average sale price published monthly by the Indian Bureau of Mines for that mineral grade or concentrate for a particular State:

Provided that if for a particular mineral grade or concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade or concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be referred, failing which the latest information for all India for the mineral grade or concentrate, shall be referred;

(V) the per unit cost of production in case of captive mines."

15. It is the case of the petitioners that, in view of the Explanation(s) appended to the definition of 'Sale Value' in Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017, royalty which has already been paid in the previous month is again being factored for the purposes of computation of royalty to be paid for the subsequent months. Thus, it is the contention of the petitioners that this "compounding" of royalty by virtue of the aforesaid Explanations is manifestly arbitrary inasmuch as it has led to a cascading effect within the fold of determination of the rate of royalty under Section 9 sub-section (3) of the MMDR Act.

16. However, when it comes to computation of royalty in respect of coal, it was submitted by the petitioners that the Central Government has remedied the aforesaid anomaly by excluding the previously paid royalty and contributions towards DMF and NMET in its calculation, by way of an amendment *vide* Notification No. GSR 445(E) by inserting an Explanation in Entry A, Item 10 in the Second Schedule of the MMDR Act. The relevant provision reads as under: -

> *"Explanation:- For the purposes of this sub entry –*
> *(iii)*
> *(iv) Actual price means the sale invoice value of coal, net of statutory dues including taxes, · contribution to levies, · royalty, National Mineral Exploration Trust and District Mineral Foundation ... "*

17. The petitioners have contended that for the purposes of computation of royalty there exists no intelligible differentia between coal and iron ore and thus, the exclusion of royalty, DMF and NMET contributions for computation of sale value for coal but not for other minerals such as iron is manifestly arbitrary and the aforesaid Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 is in consequence of violation of Article 14 of the Constitution and liable to be struck down.

18. During the course of hearing, our attention was also drawn to the fact that on 25.05.2021, a notice was issued by a committee of the Ministry of Mines inviting comments and suggestions from all stakeholders on this issue of double calculation of royalty for computation of the 'average sale price', and that after receiving the responses, a report dated 31.01.2022 was submitted by the said committee to the Ministry of Mines giving its recommendations on the incidence of compounding royalty.

19. Although the aforesaid report has not been made publicly available, yet the Ministry of Mines pursuant to the aforesaid report has issued a Notice dated 25.05.2022 for public consultation on amending the MMDR Act to bring reforms in the mining sector by *inter-alia* proposing amendment to the relevant rules for removing the cascading impact of royalty on royalty in the

calculation of the ‘average sale price’. The relevant portion of the aforesaid notice reads as under: -

> *“1. Calculation of ASP: Removing the cascading impact of royalty on royalty*
> *(iv) A committee was constituted by the Ministry of Mines under chairmanship by Shri Praveen Kumar, /AS (Retd.) with members from Ministry of Mines, NIT/ Aayog, Ministry of Steel, Indian Bureau of Mines (IBM) and Indian Statistical Institute to examine the incidence of double calculation of royalty. The committee concluded that since the sale value already includes royalty, DMF and NMET, the Jessee pays royalty on royalty, DMF and NMET. Due to this, there is an additional charge on the miners under the current methodology.*
>
> *(vi) Accordingly, it is proposed to (i) introduce new section in the MMDR Act regarding ASP; (ii) the provision shall specifically provide that ex-mine price for determination of ASP shall exclude GST, export duty, royalty. DMF & NMET & such other levies as may be prescribed; (iii) the change will be applicable for all the MLs, whether auctioned/ granted before or after the commencement of the proposed MMDR Amendment Act, for the minerals removed or consumed from the leased area after the commencement of the said Act; and (iv) adoption of new formula only for the future dues for existing MLs arising after the amendment"*

20. The petitioners on the strength of the aforesaid notices issued by the Ministry of Mines have contended that although the respondents themselves have acknowledged the compounding of royalty in the computation of ‘average sale price’ yet no action or amendment has been made to the MMDR Act and the relevant rules thereunder in this regard.

21. In such circumstances referred to above, the petitioners have come up before this Court with the present writ petition.

B. SUBMISSIONS OF THE PETITIONER

22. Dr. A.M. Singhvi, the learned senior counsel for the petitioners presented the statutory background to us in his submissions. He submitted that Section 9(2) of the MMDR Act contemplates payment of royalty at the rates specified in the Second Schedule to the MMDR Act and that Section 9(3) of the MMDR Act affords revision of the rates, but with a proviso restricting it to once every 3 years.

23. Dr. Singhvi apprised us of the fact that Section 13 of the MMDR Act empowers the Government of India to make rules, *inter alia,* with respect to the manner in which royalty shall be payable and consequent to such powers, the MCR, 2016 have been enacted. He submitted that Rule 39(3) of the MCR, 2016 provides that where royalty is to be paid on *ad valorem* basis, it shall be calculated as a specified percentage of the ASP as published by the Indian Bureau of Mines for the month of removal/consumption. Moreover, he underlined that Rule 42 provides for the manner of computation of the ASP, and sub-rule (2)(b) thereof excludes the actual expenditure incurred from the sale value, in its prescriptions of the manner of computation.

24. We were further apprised of the fact that the method to compute ASP is in turn governed by Rule 38 of the MCR, 2016 which defines the term "sale value" and the Explanation thereto which stipulates that the royalty as well as the contributions made to DMF and NMET will not be deducted while computing the "sale value". He pointed out a similar method of computation in Rule 45(8)(a) of the MCDR, 2017 which prescribes the manner of filing of monthly and annual returns.

25. He submitted that the present petition seeks to challenge the Explanation to Rule 38 of the MCR, 2016 and Explanation to Rule 45(8)(a) of the MCDR, 2017 as they mandate the non-exclusion of royalty and the contributions made to DMF and NMET, in the computation of the "sale value".

26. The learned senior counsel contended that the Impugned Explanations lead to a situation where the royalty as well as payments to DMF and NMET made previously, are included in the ASP, which, in turn, is used as the basis to compute royalty for the next month. Such method of computation of ASP effectively results in the payment of royalty as well as DMF and NMET contributions not only on the value of the ore/mineral, but also on the royalty, DMF and NMET contributions paid in the previous month. Thus, there is an imposition of royalty on a royalty. It was contended that the Impugned Explanations create a twin charge on royalty: *first*, a charge on the value of

the mineral before payment of royalty at the prescribed rate; and, *secondly*, a re-charge of royalty on royalty at a prescribed rate. It was submitted that such re-charge of royalty on royalty is *ultra vires* to the scope of Section 9(3) of the MMDR Act.

27. The learned senior counsel contended that the Impugned Explanations are manifestly arbitrary for the following reasons:

(i) The present methodology for computing royalty leads to a compounding or cascading effect as it creates a charge of royalty on previous month's royalty.

(ii) It has been held by a 9-Judge Bench of this Court in ***Mineral Area Development Authority & Anr. v. Steel Authority of India Limited & Anr.*** reported in **2024 SCC OnLine SC 1974** that royalty is a consideration for extracting minerals. Therefore, such consideration cannot be compounded every month.

(iii) Rule 42(2)(b) of the MCR, 2016 excludes actual expenditure incurred towards transportation, loading, unloading, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area. However, the impugned Explanations do not exclude royalty, DMF and NMET contributions from such actual expenditure. It was contended that royalty is also an expense as it has

been excluded from the category of taxes, therefore, it is illogical to not exclude the same from the ex-mine price.

28. The learned senior counsel referred to the following judgments pronounced by this Court to submit that manifest arbitrariness is a well-recognized ground to challenge the validity of a legislation and the same has been acknowledged as a facet of Article 14:

- ***Manish Kumar v. Union of India*** reported in **(2021) 5 SCC 1**;
- ***Dy. Commissioner of Income Tax & Anr. v. Pepsi Foods Limited*** reported in **(2021) 7 SCC 413**.

29. Dr. Singhvi also submitted that there is no statutory prescription for the inclusion of royalty, DMF and NMET contributions while computing ASP. It is only the Impugned Explanations which save these payments from being excluded thereby resulting in a compounding or cascading effect.

30. We were informed by the learned senior counsel that this anomaly has been noticed by the Government of India in a report of a committee set up by the Ministry of Mines and a public notice dated 25.05.2022 has been published to call for suggestions in this regard. He submitted that the Ministry of Mines is charged with administering the MMDR Act. Therefore, the Consultation Paper of 2022, published by it is *contemporeo exposito* and is a valid aid of

construction of the relevant Rules and the Impugned Explanations as per the dictum of this Court in ***K.P. Varghese v. ITO*** reported in **(1981) 4 SCC 173**.

31. Furthermore, such anomaly was remedied by the Ministry of Coal with respect to only coal by effecting an amendment to Schedule II of the MMDR Act, which defined "actual price" for the purpose of imposing royalty at *ad valorem* rates, to mean the sale invoice value of coal, net of statutory dues including taxes, levies, royalty, contribution to National Mineral Exploration Trust and District Mineral Foundation. The learned senior counsel submitted that remedying such anomaly for coal but not for iron ore creates a classification which has no intelligible differentia and is in violation of Article 14.

32. It was also submitted that lessees such as the petitioner herein, who have secured a mine in an auction, also pay a premium in terms of Rules 8 and 13(2) of the Mineral (Auction) Rules, 2015 respectively which is calculated on the basis of the flawed definition of ASP.

33. Dr. Singhvi while countering the submissions of the learned senior counsel for the Union of India, submitted that the compounding or cascading effect occurring every single month cannot come within the fold of determination of the rate of royalty under Section 9(3) of the MMDR Act, as it would be

in contravention to the proviso thereto which prohibits a change of rate of royalty for three years.

C. SUBMISSIONS OF THE RESPONDENT

34. Mr. Shailesh Madiyal, the learned ASG appearing on behalf of the Union of India presented the scheme of the MMDR Act and the MCR, 2016 in relation to the computation of royalty and submitted that Section 9(1) of the MMDR Act requires the holder of a mining lease to pay royalty in respect of the mineral being mined from the lease area at the rate specified in Schedule II of the MMDR Act. He apprised us of the fact that Section 9(3) permits the Government of India to issue notifications to amend Schedule II to increase or reduce the rate at which royalty is payable. He informed that the rate of royalty for iron ore at present is 15% of average sale price on *ad valorem* basis.

35. The learned ASG submitted that the computation of the ASP is to be done on a monthly basis and as per Rule 42(3), the ASP of any mineral grade/concentrate for a particular month shall be the weighted average of the ex-mine prices of the non-captive mine. He submitted that the ASP with respect to a particular month is unrelated to the ASP of the previous month and there can be no cumulative effect on the royalty charged.

36. It was submitted that Rule 42(2)(b) of the MCR, 2016 provided that where domestic sale has occurred, the ex-mine price of a mineral grade or concentrate is the "sale value" of the mineral less the actual expenditure incurred towards transportation, loading and unloading, etc. divided by the total quantity sold.

37. The learned senior counsel then proceeded to submit that the term "sale value" is defined in Rule 38 of the MCR, 2016 and the Explanation thereto provides that no deduction from the gross amount will be made in respect of royalty, payments to the DMF and NMET.

38. Mr. Madiyal submitted that the writ petition, challenging the Impugned Explanations, has been filed under Article 32 of the Constitution of India and therefore, is not maintainable as the petitioner ought to have approached the High Court under Article 226.

39. The learned senior counsel referred to the decision of a 5-Judge Bench of this Court in the case of ***Natural Resources Allocation, In Re: Special Reference No. 1 of 2012*** reported in **(2012) 10 SCC 1** to submit that the methodology pertaining to disposal of natural resources is an economic policy entailing intricate economic choices. Therefore, the manner of computation of royalty is a matter of policy and must be left to the discretion of the executive and legislative authorities, as the case may be.

40. The learned ASG that the petitioner's challenge to the Impugned Explanations does not meet the threshold of 'manifest arbitrariness' that is, whether an action was done or legislation was enacted capriciously, irrationally and/or without adequate determining principle, and cannot be excessive and disproportionate. He vehemently argued that no evidence or data was provided by the petitioner to show that the Impugned Explanations result in an endless monthly cumulative exaction of royalty. He submitted that the ASP for a succeeding month could in fact be lower than that of the previous month and no consistent monthly cumulative effect was possible.

41. Mr. Madiyal also contended that at the time of the auction of mining leases, the bids submitted are taking into consideration the existing legal regime, which includes Rule 38 of the MCR, 2016 as well as the Explanation thereto, and the bidders are aware that royalty and auction premium is calculated on the basis of the sale value which is inclusive of the royalty and contributions to DMF and NMET of the previous month. He submitted that the revenue of a State comprises of the royalty collected from such mining leases. Changing the methodology of calculation of "sale value" by excluding the royalty payable for mining leases which have already been auctioned would therefore, result in loss of revenue to the States as estimated at the beginning of the auctioning process. It was submitted that it is important that the revenue of the state Governments should be protected.

42. He further submitted that there is no legal bar on the imposition of royalty on royalty and cannot be adjudged on the same footing as a case of "tax on tax", in light of this Court's decision in ***Mineral Area Development Authority*** (supra)wherein it was held that royalty is not a tax.

43. On the status of public consultations, Mr. Madiyal submitted that the Committee constituted by the Ministry of Mines has received the views & suggestions from various stakeholders as well as from the State Governments. However, the issue is under consideration and no decision yet has been taken on the matter. The learned ASG apprised us of the fact that the Committee is deliberating on the question of the amendment of the Rules and the impact of such amendment on the determination of royalty and auction premium payable in respect of mining leases auctioned prior to the amendment, if any carried out in the future.

D. <u>ISSUE FOR DETERMINATION</u>

44. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the pivotal question of law that falls for our consideration: -

I. Whether, the Explanation(s) appended to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 respectively are unreasonable and manifestly arbitrary and in consequence of violation of Article 14 of the Constitution?

E. ANALYSIS

45. Before, we proceed with the analysis, it is necessary to understand the case of the petitioners in the present litigation as discernible from their pleadings. The argument of the petitioners in sum is twofold: -

(i) ***First,*** that the very inclusion of the royalty, and contributions towards DMF and NMET paid previously for the purpose of computation of the requisite royalty for subsequent months is manifestly arbitrary. The said mechanism of computation of royalty has a cascading effect on the rate of royalty for every subsequent month.

(ii) ***Secondly,*** the exclusion of the royalty, and contributions towards DMF and NMET paid previously for coal but not for other minerals such as iron ore for computation of royalty is unreasonable and manifestly arbitrary. There exists no intelligible differentia between coal and iron ore or any other similar mineral and thus the act of the legislature in excluding the royalty, and contributions towards DMF and NMET for one but not for the other i.e., for coal but not for iron is in violation of Article 14 of the Constitution and thus, the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 is liable to be struck down.

i. Whether the manner or mechanism of computation of royalty under the MCR, 2016 and MCDR, 2017 is manifestly arbitrary?

46. In ***M.P. Oil Extraction & Anr. v. State of Madhya Pradesh & Ors,*** reported in **(1997) 7 SCC 592**, this Court held that policy decisions are the domain of the executive authority of the State and that the courts should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the stature or the Constitution of India. It further observed that unless the policy framed is absolutely capricious or not informed by reasons, the court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. The relevant observations read as under: -

> *"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the Industrial Policy of 1979 which was subsequently revised from time to time cannot be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State. This Court, in no uncertain terms, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State*

and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the stature or the Constitution of India. The supremacy of each of the three organs of the State i.e. legislature, executive and judiciary in their respective fields of operation needs to be emphasised. The power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set-up to which the polity is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective fields."

(Emphasis supplied)

47. Similarly, in ***Premium Granites & Anr. v. State of Tamil Nadu & Ors.*** reported in **(1994) 2 SCC 691**, this Court observed that it is not the domain of the courts to consider as to whether a particular policy is wise or that a better public policy can be evolved, and that such matters must be left to the discretion of the executive and legislature. The relevant observations read as under: -

"54. It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether the particular public policy is wise or a better, public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the case may be. ..."

(Emphasis supplied)

48. In yet one another decision of this Court in ***Delhi Science Forum and Others v. Union of India and Another*** reported in **(1996) 2 SCC 405** it was observed that the courts should not express opinion as to whether a particular policy

should be adopted or not, and no such direction can be given unless they pertain to the implementation of any policy as a result of which there is a violation or infringement of any constitutional or statutory provision. The relevant observations read as under: -

> *"7. What has been said in respect of legislations is applicable even in respect of policies which have been adopted by Parliament. They cannot be tested in Court of Law. The courts cannot express their opinion as to whether at a particular juncture or under a particular situation prevailing in the country any such national policy should have been adopted or not. There may be views and views, opinions and opinions which may be shared and believed by citizens of the country including the representatives of the people in Parliament. But that has to be sorted out in Parliament which has to approve such policies. Privatisation is a fundamental concept underlying the questions about the power to make economic decisions. What should be the role of the State in the economic development of the nation? How the resources of the country shall be used? How the goals fixed shall be attained? What are to be the safeguards to prevent the abuse of the economic power? What is the mechanism of accountability to ensure that the decision regarding privatisation is in public interest? All these questions have to be answered by a vigilant Parliament. Courts have their limitations because these issues rest with the policy-makers for the nation. No direction can be given or is expected from the courts unless while implementing such policies, there is violation or infringement of any of the constitutional or statutory provision. The new Telecom policy was placed before Parliament and it shall be deemed that Parliament has approved the same. This Court cannot review and examine as to whether the said policy should have been adopted. Of course, whether there is any legal or constitutional bar in adopting such policy can certainly be examined by the Court".*
>
> (Emphasis supplied)

49. In ***Balco Employees' Union v. Union of India*** reported in **(2002) 2 SCC 333** this Court held that it is not for the courts to consider the relative merits of

different economic policies and consider whether a better policy may be evolved. It further held that when it comes to policy decisions on economic matters, the courts ought to be very circumspect in disturbing such conclusions unless there is an illegality in the decision itself. The relevant observations read as under: -

> *"93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the Courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is the Parliament and not the Courts.*
>
> *xxx xxx xxx*
>
> *98. In the case of a policy decision on economic matters, the Courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgement of the experts who may have arrived at a conclusion unless the Court is satisfied that there is illegality in the decision itself."*
>
> (Emphasis supplied)

50. It is possible that at the relevant time in respect of some of the minerals, royalty was being computed without inclusion of the royalty, DMF and NEMT contributions previously paid, however, that does not mean that the Central Government's power is restricted and that the Central Government cannot alter the mode of computation of royalty. Merely, because the methodology or formula for computation of royalty has been altered from what it was under the erstwhile MCR, 1960 will not make the new mechanism or methodology unreasonable or arbitrary and liable to be struck down.

51. From the above conspectus of decisions referred to by us, it is clear that the whether a particular policy is wise or that a better public policy can be evolved is purely the domain of the executive of the state. Matters such as computation of royalty or the levy of such royalty on different minerals is entirely a matter of policy making which is beyond the expertise and domain of the courts. It is no longer res-integra, that a question as regards the validity of a particular policy is concerned with reviewing not the merits of such decision or policy, but the very policy making process itself. The duty of the courts is to confine itself to the question of legality and its concern should be whether a policymaking authority exceeded its powers, whether it committed an error of law or committed a breach of the rules of natural justice or reached a decision which no reasonable authority would have reached or whether it has abused its powers.

52. In a constitutional democracy, each branch of government—executive, legislative, and judiciary — has a defined role and operates within its designated boundaries. This separation of powers ensures that one branch does not encroach upon the functions of the others, preserving a system of checks and balances crucial to democratic governance. Within this framework, courts are primarily responsible for interpreting and upholding the law, while the executive and legislature hold the mandate to formulate and implement policy. This division is essential, as it aligns with the principle that policy-making,

particularly in areas requiring specialized knowledge, foresight, and discretion, should remain within the domain of the elected representatives and those with the requisite expertise.

53. Judicial restraint is rooted in the understanding that courts should respect the decisions made by the legislative and executive branches, provided these decisions are legally sound and constitutionally valid. By adhering to judicial restraint, courts avoid overstepping their constitutional role and thereby prevent potential conflicts with the executive and legislative branches. The principle of separation of powers supports the idea that each branch has a unique role, and mutual respect between these branches is essential for the proper functioning of government. The courts are to ensure that laws and policies do not infringe upon citizens' rights or exceed the authority granted by law. However, this role does not extend to evaluating whether a policy is “wise” or whether a better one could be devised, and rather this process is entrusted to the legislature and executive, which have the expertise to make these determinations.

54. The doctrine of judicial restraint, which is central to this discussion, emphasizes that courts should exercise caution and avoid involvement in policy decisions, as these are complex judgments that require a balancing of diverse and often competing interests. Policies are crafted based on thorough

analysis of social, economic, and political factors, considerations beyond the court's purview. The court is tasked with ensuring that policies do not breach constitutional provisions or statutory limits; however, they should not replace policymakers' judgments with their own unless absolutely necessary.

55. Policy decisions often require the expertise of professionals and specialists in fields such as economics, public health, national security, and environmental science. These domains involve specialized knowledge that judges, as generalists in legal matters, may lack. For instance, in economic policy, the executive may decide on trade tariffs or subsidies based on extensive data and projections that aim to balance domestic industry support with global trade commitments. The courts, lacking the same level of economic expertise and without the authority to make trade-offs among competing policy objectives, is typically not equipped to second-guess these kinds of decisions.

56. While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision-making process rather than the substantive merits of the policy itself. For example, if a government policy infringes on fundamental rights or

discriminates against a particular group, the courts have a duty to strike down such policies. However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.

57. The duty of the court in policy-related cases is primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.

58. Economic and social policies often involve significant redistribution of resources, prioritization of interests, and balancing of public needs, which requires careful consideration by those with specialized knowledge and broad perspectives. In the realm of economic policy, for instance, questions regarding the allocation of subsidies, fiscal deficits, or budget allocations are best managed by the executive, which has access to economic data and is accountable to the public for its financial management. Judicial interference

in such areas risks creating disruptions in the economic balance that policy-makers are trying to achieve.

59. Courts should assume that policy-makers act in good faith unless there is clear evidence to the contrary. As long as the policy does not contravene the Constitution or violate statutory provisions, it is not the role of the courts to question the wisdom or fairness of such policy.

60. While judicial restraint is essential in respecting the boundaries of each branch of government, it does not mean that courts abdicate their responsibility to protect constitutional rights. The courts must still intervene if a policy infringes on fundamental rights, discriminates unfairly, or breaches statutory provisions. The role of the court in such instances is to protect individuals and groups from unlawful actions while maintaining the overall integrity of the policy-making process. This balance ensures that while courts do not interfere in matters of policy wisdom, they remain vigilant guardians of constitutional rights.

61. In the present case, there is no doubt that the mechanism for computation of royalty in terms of Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 devised by the respondents might have onerous implications in monetary terms on the mining leaseholders inasmuch as there is a compounding effect on the rate of royalty for every subsequent month. However, this Court in the

absence of anything to show that such policy is in excess of the powers or domain of the respondents herein or in breach of any statutory provision, cannot strike down the same.

62. It was argued by the petitioners, that here is no statutory prescription for the inclusion of royalty, DMF and NMET contributions while computing ASP. In other words, but for these Explanations, there would be no compounding or cascading effect in the computation of royalty.

63. This Court in ***State of Punjab v. Principal Secretary to the Governor of Punjab & Anr.*** reported in **2023 INSC 1017** it was held that a proviso may be in the form of an exception or in the form of an explanation or in addition to the substantive provision of a statute. The relevant observations read as under: -

> *"22. A proviso, as is well settled, may fulfil the purpose of being an exception. Sometimes, however, a proviso may be in the form of an explanation or in addition to the substantive provision of a statute. [...]"*

64. Similarly in ***State of U.P. v. Achal Singh***, reported in **(2018) 17 SCC 578** this Court reiterated that an Explanation becomes part of the main section and can be read as proviso and be understood as explaining the scope of the main provision. The relevant observations read as under: -

> *"19. Reliance was also placed on the decision rendered by this Court in State of Bombay v. United Motors (India) Ltd. [State of Bombay v. United Motors (India) Ltd., (1953) 1 SCC 514 : AIR*

1953 SC 252] and Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, AIR 1955 SC 661] , in which it has been observed that Explanation can be read as proviso and it explains the scope of the main provision and the Explanation becomes part of the main section. There is no dispute with the aforesaid proposition. The Explanation in the Rules in question has to be applied to both the situations as contemplated in Rule 56(c) and is applicable to both the exigencies not only when the Government decides to retire an employee, but also applicable where voluntary retirement is sought by an employee. It cannot be said that no further restriction by Explanation has been added in a case where an employee has decided to obtain voluntary retirement. The public interest is the prime consideration on which authority has to decide such a prayer as per the rules applicable in the State of Uttar Pradesh."

(Emphasis supplied)

65. What can be discerned from the above is that an Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section. An explanation does not enlarge the scope of the original section that it is supposed to explain. It is axiomatic that an explanation only explains and does not expand or add to the scope of the original section. The purpose of an explanation is, however, not to limit the scope of the main provision. The construction of the explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used. An 'explanation' must be interpreted according to its own tenor. Sometimes an explanation is appended to stress upon a particular thing which ordinarily would not appear clearly from the provisions of the section. The proper function of an explanation is to make plain or elucidate what is enacted in the substantive provision and not to

add or subtract from it. Thus, an explanation does not either restrict or extend the enacting part; it does not enlarge or narrow down the scope of the original section that it is supposed to explain. The Explanation must be interpreted according to its own tenor; that it is meant to explain and not vice versa. Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

66. Merely because the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 provides that there shall be no deduction of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust from the gross amount for the purpose of computing sale value does not in any manner makes the aforesaid Explanation in derogation of the main provision. The aforesaid Explanation(s) are merely clarificatory in nature inasmuch as it explains the ambiguities in the main provisions of Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017, and thus, they cannot be said to exceed the ambit of the main provisions or in contravention of the statutory scheme.

ii. <u>Whether the exclusion of royalty, and contributions towards DMF and NMET paid previously for coal but not for other minerals is unreasonable and manifestly arbitrary</u>?

67. In ***R.K. Garg v. Union of India*** reported in (1981) 4 SCC 675, this Court observed that laws relating to economic activities should be viewed with greater latitude and the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula. The relevant observations read as under: -

> "*8. <u>Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. It has been said by no less a person than Holmes, J. that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved</u>."*
>
> (Emphasis supplied)

68. Similarly in ***State of Tamil Nadu and Anr. v. National South Indian River Interlinking Agriculturist Association*** reported in **(2021) 15 SCC 534** it was held that courts should show a higher degree of deference to matters concerning economic policy. The relevant observations read as under: -

> *"11. ... It is also settled that the Courts would show a higher degree of deference to matters concerning economic policy, compared to other matters of civil and political rights. ..."*

69. While examining the challenge to the validity of laws relating to economic activities, the courts must be slow and circumspect. A higher degree of deference needs to be shown in such matters, and sufficient flexibility should be given to the legislature and the executive in dealing with economic matters. Complex issues of economic and fiscal nature cannot be construed by any strait-jacket formula or unidirectional approach. This Court has time and again recognised that a judicial hands-off approach must be followed *qua* economic legislation and that the legislature is to be allowed wide latitude in experimenting with economic legislation, by virtue of it being an extension of the Government's economic policy.

70. Since the MMDR Act and the rules thereunder pertain to the extraction, disposal and sale of natural resources which is an economic policy that entails intricate economic choices and have a direct effect on the macroeconomics, we are of the considered opinion that when it comes to computation of royalty the legislature must have greater play in the joints.

71. The exclusion of royalty, and contributions towards DMF and NMET paid previously for coal but not for other minerals cannot be termed as arbitrary or unreasonable, merely because the computation for one differs from the other

in certain aspects. Deference needs to be shown to the legislature in deciding how royalty must be computed in respect of different mineral grades / concentrates.

72. However, the present petition particularly the challenge to the validity of the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 is unique in its own way. While there is nothing to show that such policy is in excess of the powers or domain of the respondents herein or in breach of any statutory provision, at the same time, we should not ignore or overlook the fact that the legislature itself has acknowledged the anomaly in compounding of royalty etc. for the purpose of computation of average sale price.

73. Similarly, although the discretion to exclude previously paid royalty and contributions for coal but not for other minerals cannot be approached in a rigid manner yet it would be incorrect to import policies framed and tailored by the executive for one particular subject-area and blanketly apply it to other related subject-areas. It is the executive which is best suited to determine the fine distinctions existing between interlacing or seemingly similar domains and formulate distinct policies to best factor in the dissimilarities.

74. However, this Court in ***Tata Steel Ltd. v. Union of India***, reported in **(2015) 6 SCC 193** while examining Rule 64B of the erstwhile MCR, 1960 has observed that the aforesaid rules were general in nature and applicable to types

of minerals including coal. This Court rejected the categorization of coal on a different pedestal from other minerals under the MMDR Act for the purpose of levy of royalty. The relevant observations read as under: -

> "***70.*** *There is nothing to indicate in Rule 64-B and Rule 64-C of the MCR that coal has been put on a different pedestal from other minerals mentioned in the MMDR Act read with the Second Schedule thereto. It is, therefore, difficult to accept the view canvassed by the Union of India that these Rules "may not be particularly applicable on coal minerals". That apart, the stand of the Union of India is not definite or categorical ("may not be"). In any event, we are not bound to accept the interpretation given by the Union of India to Rule 64-B and Rule 64-C of the MCR as excluding only coal. On the contrary, in NMDC [National Mineral Development Corpn. Ltd. v. State of M.P., (2004) 6 SCC 281] this Court has observed that these Rules are general in nature, applicable to all types of minerals, which includes coal. The expression of opinion by the Union of India is contrary to the observations of this Court.*
>
> ***71.*** *Therefore, on a plain reading of Rule 64-B and Rule 64-C of the MCR, we are of the opinion that with effect from 25-9-2000 when these Rules were inserted in the MCR, royalty is payable on all minerals including coal at the stage mentioned in these Rules, that is, on removal of the mineral from the boundaries of the leased area. For the period prior to that, the law laid down in Central Coalfields Ltd. [Central Coalfields Ltd. v. State of Jharkhand, Civil Appeal No. 8395 of 2001 decided by three learned Judges on 24-9-2003. Ed. : Now reported at (2015) 6 SCC 220.] will operate, as far as coal is concerned, from 10-8-1998 when SAIL [State of Orissa v. SAIL, (1998) 6 SCC 476] was decided, though for different reasons.*"
>
> (Emphasis supplied)

75. Even the respondents herein appear to have acknowledged that the differing mechanism for computation of royalty for coal and other minerals is not based on any fine distinction between the two, but rather an anomaly in the MCR,

2016 and MCDR, 2017, which is why it constituted a committee to look into the same and has proposed amendments for rectifying the same.

76. In view of the fact that the appropriate authorities are actively considering the issue of compounding royalties in the computation of average sale price for all other minerals, and the fact that a notice for public consultation on amending the MMDR Act to *inter-alia* address the aforementioned issue, we may not say anything further as regards whether the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 are manifestly arbitrary or not. Although, the computation of royalty for different minerals is purely a matter of policy yet we should not just shut our eyes to the *prima-facie* anomaly that exists both in the very computation mechanism of average sale price for minerals in terms of the aforesaid provisions and the perplexing stance of exclusion of only coal from such mechanism despite the general nature and application of the aforesaid rules.

77. However, we intend to grant one last opportunity to the respondents herein to seriously consider the mechanism of computation of average sale for the purposes of determining the rate of royalty for all other minerals in terms of the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017. We direct the respondents to conclude the process of public consultation in respect of the compounding of royalties and take a well-meaning decision keeping in mind the representations made by the petitioners herein.

78. We may remind the respondents that, it cannot continue to keep the aforesaid issue in limbo on the pretext of ongoing process of public consultation process. In this regard, we may refer to the decision in ***State of Jharkhand v. Brahmputra Metallics Ltd.,*** reported in **(2023) 10 SCC 634**, wherein the following observations of this Court are significant: -

> *"50. It is one thing for the State to assert that the writ petitioner had no vested right but quite another for the State to assert that it is not duty-bound to disclose its reasons for not giving effect to the exemption notification within the period that was envisaged in the Industrial Policy, 2012. Both the accountability of the State and the solemn obligation which it undertook in terms of the policy document militate against accepting such a notion of State power. The State must discard the colonial notion that it is a sovereign handing out doles at its will. Its policies give rise to legitimate expectations that the State will act according to what it puts forth in the public realm. In all its actions, the State is bound to act fairly, in a transparent manner. This is an elementary requirement of the guarantee against arbitrary State action which Article 14 of the Constitution adopts. A deprivation of the entitlement of private citizens and private business must be proportional to a requirement grounded in public interest. This conception of State power has been recognised by this Court in a consistent line of decisions. As an illustration, we would like to extract this Court's observations in National Buildings Construction Corpn. [National Buildings Construction Corpn. v. S. Raghunathan, (1998) 7 SCC 66 : 1998 SCC (L&S) 1770] : (SCC p. 75, para 18)*
>
> > *"18. ... The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice."*"
>
> (Emphasis supplied)

79. We may also remind the respondents of one another decision of this Court in ***Ramana Dayaram Shetty v. International Airport Authority of India & Ors.*** reported in **AIR 1979 SC 1628** wherein it was held that an executive authority must be rigorously held to the standard by which it professes its actions to be judged. The relevant observations read as under: -

> *"10. [...] It is a well-settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. [...]"*
>
> (Emphasis supplied)

80. Once the respondents have themselves initiated a public consultation process for amending the MMDR Act to *inter-alia* address the aforementioned anomaly in computation of royalty, they must take a prompt decision in this regard. Merely because it has the discretion to take such policy decision does not mean that it can endlessly keep on prolonging the decision-making process whereby the very discretion is rendered ad-lib and the issue in itself a forgone conclusion.

81. Before, we close this matter, we must make a reference to the decision in ***Narottam Kishore Deb Varman v. Union of India,*** reported in **(1964) 7 SCR 55** wherein this Court was called upon to decide a batch of petitions challenging the validity of Section 87B of the Code of Civil Procedure, 1908. In the said decision, although this Court stopped short from holding the provision as unconstitutional yet it called upon the government to examine if

the provision was to be allowed to continue for all times to come. It further observed that the considerations on which the validity of the provision is founded will wear out with the passage of time and may later become open to a serious challenge. The relevant observations read as under: -

> *"11. Before we part with this matter, however, we would like to invite the Central Government to consider seriously whether it is necessary to allow Section 87-B to operate prospectively for all time. The agreements made with the Rulers of Indian States may, no doubt, have to be accepted and the assurances given to them may have to be observed. But considered broadly in the light of the basic principle of the equality before law, it seems somewhat odd that Section 87-B should continue to operate for all time. For past dealings and transactions, protection may justifiably be given to Rulers of former Indian States; but the Central Government may examine the question as to whether for transactions subsequent to 26th of January, 1950, this protection need or should be continued. If under the Constitution all citizens are equal, it may be desirable to confine the operation of Section 87-B to past transactions and not to perpetuate the anomaly of the distinction between the rest of the citizens and Rulers of former Indian States. With the passage of time, the validity of historical considerations on which Section 87-B is founded will wear out and the continuance of the said section in the Code of Civil Procedure may later be open to serious challenge."*
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> (Emphasis supplied)

82. Similarly in ***H.H. Shri Swamiji of Shri Amar Mutt v. Commr., Hindu Religious and Charitable Endowments Deptt.,*** reported in **(1979) 4 SCC 642**, this Court was called upon to determine the constitutionality of application of the Madras Hindu Religious Charitable Endowments Act to South Kanara District. This Court observed that even after the passage of 23 years, no serious attempts were made to remove the inequality that was being caused in the

South Kanara District by the said Act. However, this Court while refraining itself from declaring the law as inapplicable, called upon the legislature look into the issue in the hope that it would act promptly, lest the said Act suffer a serious and successful challenge in the not-so-distant future. The relevant observations read as under: -

> *"31. But that is how the matter stands today. Twenty-three years have gone by since the States Reorganisation Act was passed but unhappily, no serious effort has been made by the State Legislature to introduce any legislation — apart from two abortive attempts in 1963 and 1977 — to remove the inequality between the temples and Mutts situated in the South Kanara Disrict and those situated in other areas of Karnataka. Inequality is so clearly writ large on the face of the impugned statute in its application to the district of South Kanara only, that it is perilously near the periphery of unconstitutionality. We have restrained ourselves from declaring the law as inapplicable to the district of South Kanara from today but we would like to make it clear that if the Karnataka Legislature does not act promptly and remove the inequality arising out of the application of the Madras Act of 1951 to the district of South Kanara only, the Act will have to suffer a serious and successful challenge in the not distant future. We do hope that the Government of Karnataka will act promptly and move an appropriate legislation, say, within a year or so. A comprehensive legislation which will apply to all temples and Mutts in Karnataka, which are equally situated in the context of the levy of fee, may perhaps afford a satisfactory solution to the problem. This, however, is a tentative view-point because we have not investigated whether the Madras Act of 1951, particularly Section 76(1) thereof, is a piece of hostile legislation of the kind that would involve the violation of Article 14. Facts in regard thereto may have to be explored, if and when occasion arises."*
>
> (Emphasis supplied)

83. In view of the decisions referred to above, we may only say that since the respondents herein are already in *seisin* of the anomaly in computation of royalty and the policy is being reconsidered on the grounds raised by the petitioners herein, we do not say anything further as regards the provisions in question other than what we have observed. We clarify that this decision shall not preclude the petitioners from challenging the final policy decision that the respondents may take on completion of the ongoing consultation process.

F. CONCLUSION

84. In view of the aforesaid, we grant the respondents a period of 2-months from the date of pronouncement of this judgment to conclude the public consultation process undertaken for amending the MMDR Act initiated pursuant to the Notice dated 25.05.2022 and take a final decisive call in regard to the cascading impact of royalty on royalty in the calculation of the 'average sale price' by virtue of the Explanation(s) to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017.

85. The challenge to the validity of Explanation(s) appended to Rule 38 of the MCR, 2016 and Rule 45 of the MCDR, 2017 is answered accordingly.

86. The Registry shall notify this matter before an appropriate Bench after a period of two months from the date of pronouncement of this judgment to report compliance of our directions.

..... CJI.
(Dr. Dhananjaya Y. Chandrachud)

..... J.
(J.B. Pardiwala)

..... J.
(Manoj Misra)

New Delhi:
November 7, 2024.