ORISSA HIGH COURT : CUTTACK

AFR

W.P.(C) No.9617 of 2023
CNR No. ODHC010235162023

In the matter of an Application under
Articles 226 and 227 of the Constitution of India, 1950

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Vedanta Limited
through its
General Counsel (Aluminium & Power)
a Public Limited Company
Incorporated and registered
Under the provisions of
The Companies Act, 1956
And
Having its
Registered Office at 1st Floor, 'C' Wing
Unit 103, Corporate Avenue
Atul Projects Chakala, Andheri (East)
Mumbai – 400 093
And
Having its Alumina Refinery Plant
At/P.O.: Lanjigarh,
District: Kalahandi – 766 027, Odisha
Represented through its
General Counsel,
Aluminium and Power,
Shri Nabal K. Sharma. ... Petitioner

-*VERSUS*-

1. Odisha Mining Corporation Ltd.
represented through its

Chief General Manager,
Having its
Registered Office
At: OMC House
Bhubaneswar – 751 001
Odisha.

2. Department of Steel and Mines,
Government of Odisha,
Represented through its
Secretary
Having its Office at Sachivalaya Marg,
Unit-2, Keshari Nagar,
Bhubaneswar – 751 001, Odisha.

3. Union of India,
Represented through
Secretary, Ministry of Mines,
Government of India,
Shastri Bhawan,
New Delhi – 110 001. ... Opposite parties.

Counsel appeared for the parties:

For the Petitioner : Mr. Vikas Singh,
Senior Advocate
along with
Mr. Dhrub Mehta, Senior Advocate
Assisted by
Ms. Deepika,
Mr. Prashanta Kumar Nayak and
Mr. Shibashis Mishra, Advocates.

For the Opposite Party No.1 : Mr. Raj Kumar Mehta,
Senior Advocate assisted by
M/s. Pravat Kumar Muduli and

Himanshi Andley and
Chandan Kumar Rout, Advocates

For the Opposite Party No.2 : Mr. Pitambar Acharya, Advocate General along with Mr. Saswat Das, Additional Government Advocate

For the Opposite Party No.3 : Mr. Prasanna Kumar Parhi, Deputy Solicitor General of India

P R E S E N T:

HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON

AND

HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN

Date of Hearing : 25.08.2026 :: Date of Judgment : 01.10.2026

JUDGMENT

The petitioner, with a hope to resurrect the terms of agreement dated 05.10.2004 for supply of bauxite invoked doctrine of promissory estoppel has filed this writ petition under Articles 226 and 227 of the Constitution of India for grant of following relief(s):

"In view of the above facts and circumstances as well as the legal submissions, the Petitioner prays that this Hon'ble Court may be pleased to:

(a) Admit the present writ application; and

(a)[i] Notwithstanding any prayer already made in the Writ petition, issue an appropriate writ, order or direction to the Odisha Mining Corporation Limited and Government of Odisha to provide minimum 150 Million Tonnes Bauxite at a price spelt out in the agreement of 2004 and 2009 read with the Memorandums of Understanding dated 07.06.2003 and 04.04.2007. The supplies of approx. 20 Million Tonnes of Bauxite already made to the petitioner since 2018 be deducted from the said 150 Millions Tonnes Bauxite; and

(a)[ii] Notwithstanding any prayer already made in the Notwithstanding any prayer already made in the Writ petition, issue an appropriate writ order or direction commanding the State of Odisha to adjust the supplies made so far of Bauxite at the rates specified in the Agreement of 2004 and the surplus amount coming into the hands of the Odisha Mining Corporation Limited on that basis be utilised for further supply of Bauxite.

(b) Take on record the Affidavits dated 30.08.2021 and 07.01.2022 filed by the Ministry of Mines, Government of India in Bharat Aluminium Co. Ltd. Vs. Odisha Mining Corporation Ltd. and Ors., W.P.(C) 9358 of 2021, and pursuant to the clarifications issued by the Central Government on the role and applicability of Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 in the aforementioned two Affidavits, declare that the amended Rule 45(1) does not apply to e-auctions of Bauxite for determining the floor price of the auction; and

(c) *Declare that in public interest, the floor price of the e-auction for mercantile sale of bauxite through auction and Long Term Linkage process carried out by the Opposite Party No.1 is to be determined by calculating the cost of production plus margin of profit of 50% under the previous Policy dated 24.02.2018, which is also contemplated in clause 4 of the Sales agreement dated 20.04.2018 between Odisha Mining Corporation Limited and Vedanta Ltd. and which has yielded three successful auctions; and*

(d) *Direct the opposite parties to determine the weighted average price from e-auctions of Bauxite by determining the floor price of e auction at the cost of production plus margin of profit of 50% as contemplated in clause 4 of the Sales Agreement dated 20.04.2018 read with the Long Term Linkage Policy dated 24.02.2018 as amended on 10.07.2019; and*

(e) *Quash the Letter (Bearing Ref. No.4200/OMC/ S&M/2023) dated 16.03.2023 titled "Disposal of representation dated 08.02.2023 and dated 13.03.2023 in compliance of the Order dated 25.01.2023 passed in W.P.(C) No. 10280 of 2021" issued by the opposite party No.1 and any other documents/communications stating that Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 is applicable and legally justified for calculating the price of Bauxite during commercial sale(s) as arbitrary, unreasonable, violative of Article 14 of the Constitution of India, and ultra vires Section 13 of*

the Mines and Minerals (Development and Regulation) Act, 1957; and

(f) Quash any demand notices which the Odisha Mining Corporation Limited may issue to the Petitioner, consequent to issuance of Letter (Bearing Ref. No. 4200/OMC/S&M/2023) dated 16.03.2023 titled "Disposal of representation dated 08.02.2023 and dated 13.03.2023 in compliance of the Order dated 25.01.2023 passed in W.P.(C) No. 10280 of 2021.", as well as on the basis of the reasoning accorded in the Letter, of using Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 and thereby dismissing the representations of the Petitioner; and

(g) Declare Clause D(e) of the Notification (Bearing Ref. No. 7865) dated 16.08.2022 issued by the Department of Steel & Mines, Government of Odisha, titled "Long Term Linkage (LTL) Policy of Minerals for Odisha Based Industries Through Odisha Mining Corporation Limited (OMC)— 2022" ("the 2022 LTL Policy"), to the extent that it directs that "Floor price for the National e-auction may be fixed as per Rule 45 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 as amended from time to time" as arbitrary, violative of Article 14 of the Constitution of India, and ultra vires Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957; and

(h) Declare that in case of Long Term Linkage sale, the weighted average price of charged to the Long Term Linkage Consumer under commercial sale of Bauxite will always be the last discovered price which is the

price arrived at pursuant to a successfully held auction sale of Bauxite under the 2022 Long Term Linkage Policy. Consequently, direct opposite party No.2 to make necessary modifications in Clause D of the 2022 Long Term Linkage policy, in specific, cl. D(c) which states that the "Weighted average price derived from the National e-auction shall be the long-term linkage price for the relevant grades of Bauxite ore"; and

(i) Direct consequential refunds of all amounts collected by the opposite party 1 on account of illegal application of Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 to the Floor Price calculations of the National e-auctions of bauxite; and

(j) Quash the demand notices raised by the Odisha Mining Corporation Ltd. on the basis of Floor Price fixed using Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 to the extent that they demand excess amounts on account of the applicability of amended Rule 45(1) to e-auction of bauxite; and/or

(k) Pass an appropriate writ, order or direction prohibiting the opposite party Nos.1 and 2 from applying the amended Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 to determine reserve price in the auction process for mercantile sale of bauxite; or

(l) In the alternative and without prejudice to other prayers, declare that the amended Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 is violative of Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957; or

(m) In the alternative and without prejudice to other prayers, read down amended Rule 45 (1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 as amended being de hors Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 and if applied, to declare that Section 13 stands violative of the Constitution of India, 1950; or

(n) In the alternative and without prejudice to other prayers, quash the Notification Nos. G.S.R. 674 (E) and 675 (E) dated 20.09.2019 issued by OP.3 amending Rule 45(1), the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 as ultra vires Section 13 of the Mines and Minerals (Development and Regulation) Act, 1957 and violative of Articles 14, 19 and 300A of the Constitution of India; and/or

(o) Pass such other or further order as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

1.1. Though many prayers are made in the writ petition as reproduced hereinbefore, the petitioner at the time of hearing of the present matter confined arguments to "promissory estoppel" in order to press for enforcement of the terms of Agreement dated 05.10.2004.

Facts:

2. Facts adumbrated by the petitioner giving rise to filing of this writ petition are narrated herein below.

2.1. The present writ petition arises out of a dispute between the petitioner, Vedanta Ltd., and the Odisha Mining Corporation Ltd. ("OMC", for brevity), concerning the supply and pricing of bauxite for the petitioner's alumina refinery and allied aluminium operations in the State of Odisha. The petitioner is a large industrial undertaking engaged in the business of manufacturing aluminium products and operates an alumina refinery at Lanjigarh, as well as an aluminium smelter and captive power plants at Jharsuguda. The petitioner asserts that it has claimed to have made substantial investments in Odisha over the years and that its industrial establishment was made on the basis of assurance of long term bauxite availability and stable pricing structure.

2.2. The petitioner's claim is founded on a series of policy commitment and contractual arrangement entered into with the State of Odisha and the OMC. On 07.06.2003, a Memorandum of Understanding was executed between the Government of Odisha and the petitioner's predecessor, *viz.,* Sterlite Industries India Ltd., for setting up an alumina refinery complex at Lanjigarh. Thereafter, on 05.10.2004, an agreement was entered

into between the OMC and the petitioner, under which the State Government undertook to supply 150 million tonnes of bauxite for the petitioner's refinery, and the pricing mechanism was linked to a formula of cost of production plus 50% royalty for bauxite converted into aluminium within the State. The petitioner claims that, relying on the assurance of the State Government as to both the quantity and the pricing of raw material, it invested approximately Rs.1,00,000 crores in Odisha over two decades and developed major industrial facilities that support large-scale direct and indirect employment.

2.3. In 2014, the Long Term Linkage Policy ("LTL Policy", for convenience) was introduced to provide a mechanism for the supply of minerals, and by Notification, dated 24.02.2018, bauxite was expressly brought within its ambit. Under the Policy of 2018 the State Government provided for a structured regime under which 70% of saleable stock was to be allotted as LTL to the end-user industries, while 30% was to be disposed of through national e-auction. For the e-auction component, the floor price was to be fixed at the cost of production plus 50% profit margin, and this policy created certainty in both the quantity and the pricing. In pursuance of the Policy of 2018, the petitioner-company and the OMC executed a sale agreement on 20.04.2018 for LTL supply

of bauxite and the price payable for the LTL quantity was to be derived from the weighted average price discovered in the national e-auction of bauxite. This regime functioned successfully for some time, and that three e-auctions held between April, 2018 and April, 2019 were successful. Nonetheless, the situation got changed in 2019 and post-thereof. The OMC abruptly discontinued the national e-auction process for bauxite in 2019 and later altered the pricing mechanism for LTL supplies. According to the petitioner, this change was introduced midstream while the contractual arrangement between the parties was still in force. Thus, this caused grave prejudice to the petitioner's industrial operations.

2.4. Complication arose after the Rule 45 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 got amended by virtue of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession (Amendment) Rules, 2019 *vide* G.S.R. 674(E), dated 20.09.2019. The petitioner's grievance is that the OMC began to rely on Rule 45 as amended for determining the floor price of bauxite sold through national e-auction. According to the petitioner, Rule 45 applies to mine-block auctions and not to the mercantile sale of bauxite by the OMC under the LTL arrangement. The petitioner relies on the stand of the

Central Government that mine-block auctions and commercial sale of minerals are distinct activities, and that Rule 45 is intended for use in the context of mine-block auctions.

2.5. On 19.08.2020, the Government of Odisha directed the OMC to implement the mechanism provided under the amendment to Rule 45 for determination of pricing of bauxite in the national e-auction process. This direction materially altered the pre-existing contractual and policy regime and resulted in an enhanced floor price, thereby burdening the petitioner with a substantially higher cost of the raw material. This, according to the petitioner, not only increased its financial burden but also placed it at a disadvantageous position compared with other similarly situated end-user industries. The altered methodology has disrupted the balance of the LTL arrangement and rendered its operations financially unviable.

2.6. The petitioner had earlier approached this Court in W.P.(C) No.22397 of 2020 and thereafter in W.P.(C) No.10280 of 2021, challenging the imposition of the revised pricing formula and sought for interim relief(s). In the proceedings that culminated in the order dated 25.01.2023, the parties agreed that the petitioner would submit a comprehensive representation before the OMC, which would be considered by passing a reasoned and speaking order after granting opportunity of hearing. The

Court also continued the interim arrangement for a limited period.

2.7. In obedience to said order, the petitioner submitted a detailed representation on 08.02.2023, followed by an additional representation on 13.03.2023, wherein and whereby the petitioner set out the historical basis of the bauxite linkage, the investment commitments made by relying upon the assurance given by the Government, the functioning of the Policy of 2018 and it raised grievance that the change in pricing methodology had been introduced without legal justification. The petitioner requested the OMC to revert to the earlier formula of cost of production plus 50% profit for determining the floor price of bauxite and to apply the same formula for pending and future dues inasmuch as the revised pricing method was onerous and unfair.

2.8. Having thus afforded opportunity to the petitioner on 22.03.2023 pursuant to notice issued on 21.03.2023, the OMC passed order dated 16.03.2023 rejecting the petitioner's request and held that it was not possible to accept the demand for fixation of the price of bauxite ore at the cost of production plus 50% profit for the supplies already made from September 2020 to February 2023 and up to 19.04.2023. It is further opined that the LTL sales agreement did not contain any provision for calculation of floor price applicable to the national e-

auction, and that the sale agreement had to be read in conformity with the Rules, and that the Government of India had not clarified that Rule 45 was inapplicable to commercial sale of bauxite. The reason of the OMC is that pricing mechanism adopted for various e-auctions had been based on directions received from the Government of Odisha from time to time and that the price of Rs.1,000 per metric tonne was only an interim arrangement and the petitioner could not be extended any special treatment. Such decision of OMC has been attacked as inconsistent with the earlier policy framework and the contractual arrangement.

2.9. Assailing the Order dated 16.03.2023, the petitioner has come up before this Court by way of filing the present writ petition by contending that unless the interim protection is continued, it would be deprived of access to bauxite from the OMC stockyard and would suffer serious prejudice affecting its ongoing operations and expansion plans.

At the stage of fresh admission:

3. This Court at the stage of entertainment of the writ petition, while issuing notice to the opposite parties, passed the following interim order on 29.03.2023:

> *"This application has been filed by the petitioner for grant of interim protection.*

2. *Mr. D. Mehta, learned Senior Counsel appearing for the petitioner contended that earlier the petitioner had approached this Court by filing W.P.(C) No. 10280 of 2021, which was disposed of vide order dated 25.01.2023*[1] *directing the authority to consider the grievance of the petitioner, but the same was rejected. It is further contended that in the said writ petition, this Court, vide interim order dated 06.04.2022 passed in I.A. No.2662 of 2021 permitted the petitioner to lift the agreed quantity of Bauxite for the remaining period of the financial year 2022-23 subject to payment of Rs.1,000/- per MT which price will be exclusive of royalty, DMF & NMET, GST, weighment and sampling analysis charges, which will be charged extra, upon the*

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[1] A common order dated 25.01.2023 in *W.P.(C) No.10280 of 2021 (Vedanta Limited Vrs. Odisha Mining Corporation Limited)* and *W.P.(C) No.9358 of 2021 (Bharat Aluminium Co. Ltd.)* was passed which is reproduced as follows:

"3. Both the above noted writ petitions have been filed challenging the vires of the provisions contained under Rule 45(1) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, as amended on 20th September, 2019. It is contended that the petitioners are not liable to pay the dues, as demanded by the authority concerned.

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6. The above noted suggestion of Mr. Ashok Parija, learned Sr. Counsel appearing along with Mr. P.K. Muduli, learned counsel for opposite party no.1-OMC, on being confronted to, was agreed upon by Mr. Dhrub Mehta, learned Senior Counsel appearing along with Mr. P.K. Nayak, learned counsel for the petitioners. ***Therefore, as agreed to by learned counsel for the parties,*** *without expressing any opinion on the merits of the case, these writ petitions are disposed of permitting the petitioners to file their respective comprehensive representations agitating all their grievances, besides what have been raised in these present writ petitions before the opposite party no.1-Odisha Mining Corporation within two weeks from today. In the event such representations are filed, opposite party no.1 shall consider the same and pass a reasoned and speaking order by giving opportunity of hearing to the petitioners, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of such representations along with the certified copy of this order.* ***Needless to say, the interim order dated 07.04.2021 shall continue for a period of six weeks, i.e., till disposal of the representations of the petitioners.****"*

petitioner furnishing an undertaking, similar to Annexure-A-1 to I.A. No.5392 of 2021 for the differential amount, with the floor price arrived at by the OMC under Rule 45 of the Minerals (Other than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016 as amended subject to the final outcome of the writ petition. Therefore, it is contended that since the agreement is valid till 19th April 2023, this may continue till that period.

3. *In view of interim order dated 06.04.2022 passed in I.A. No.2662 of 2021 arising out of W.P.(C) No.10280 of 2021, as an interim measure, this Court permits the petitioner to lift the agreed quantity of Bauxite for the remaining period of the financial year 2022-23 subject to payment of Rs.1,000/- per MT which price will be exclusive of royalty, DMF & NMET, GST, weighment and sampling analysis charges, which will be charged extra, upon the petitioner furnishing an undertaking, for the differential amount, with the floor price arrived at by the OMC under Rule 45 of the Minerals (Other than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016, as amended, subject to the final outcome of the writ petition. It is made clear that the agreement, which is valid till 19th April 2023, shall continue till that period subject to extension granted by the Government on the application of the petitioner.*

4. *Issue urgent certified copy as per rules."*

Counter affidavit of the opposite party No.1:

4. A counter affidavit being sworn to by the Advisor (legal), Odisha Mining Corporation Limited, OMC House,

Bhubaneswar has come to be filed on 21st June, 2023 *inter alia* with the following response:

(i) The order dated 16.03.2023 rejecting the petitioner's representation is legal, valid, reasoned and passed strictly in accordance with law after granting due opportunity of hearing pursuant to the directions of this Court.

(ii) It is the specific stand that Rule 45(1) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (for convenience be referred to as "MC Rules"), as substituted by Notification G.S.R. No. 674(E) dated 20.09.2019, provides for the statutory mechanism for determination of the Average Sale Price of metallurgical grade bauxite. The said provision is not confined to mining lease auctions but is equally applicable for determination of the floor price for commercial sale of bauxite through National e-Auction. Neither the MMDR Act, 1957 nor the Rules framed thereunder prohibit application of Rule 45(1) for commercial sale of bauxite and, till date, the Government of India has never issued any clarification excluding such applicability.

(iii) The Long Term Linkage (LTL) Sales Agreement dated 20.04.2018 executed between the parties does not

contain any independent formula or mechanism for fixation of the floor price of bauxite. Consequently, the agreement has to be read analogous with the statutory Rules governing the field, as amended from time to time. Since the statutory Rules prevail over the contractual terms, the floor price adopted by the opposite party No.1 in accordance with Rule 45(1) and the clarification issued by the Government of Odisha *vide* letter dated 19.08.2020 cannot be said to be arbitrary or contrary to the agreement.

(iv) The Government of Odisha, by letter dated 19.08.2020, specifically directed OMC to conduct National e-Auctions by calculating the Average Sale Price in accordance with amended Rule 45(1). Accordingly, all subsequent National e-Auctions were conducted following the statutory formula. No specific sale price being guaranteed under the LTL Agreement, the petitioner's claim to adopt particular methodology for fixation of floor price is misconceived.

(v) The original LTL Policy dated 17.09.2014 stood superseded by the LTL Policy, 2022 with effect from 16.08.2022. Clause D(e) of the new policy expressly provides that the floor price for National e-Auction shall be fixed in accordance with Rule 45 of the MC Rules, 2016, as amended from time to time, or in

terms of any notification issued by the State Government. Therefore, after the LTL Policy, 2022, came into force the earlier policy ceased to operate and the new policy became binding on the parties.

(vi) The LTL Sales Agreement dated 20.04.2018 expired by efflux of time on 19.04.2023 and a fresh LTL Sales Agreement was executed between the parties on 16.05.2023 under the LTL Policy, 2022. Consequently, the rights and obligations of the parties are now governed by the fresh agreement read with the LTL Policy, 2022 and the applicable statutory provisions.

(vii) While disposing of earlier proceeding in *W.P.(C) No.10280 of 2021* by Order dated 25.01.2023 the petitioner was permitted to submit a comprehensive representation. The petitioner, availing such opportunity, was heard and on consideration of all submissions made by the petitioner, its representations dated 08.02.2023 and 13.03.2023, a detailed speaking order dated 16.03.2023 was passed whereby the said representations stood rejected. Every contention raised by the petitioner, including the challenge to the applicability of Rule 45(1), as amended, for determining the fixation of floor price, feasibility of previous LTL Policy, Government communications and legal opinions,

were duly considered before arriving at the impugned decision.

(viii) The Union of India in its earlier counter affidavit filed in W.P.(C) No.10280 of 2021, wherein it was stated that the MMDR Act and the Rules do not either prescribe or prohibit adoption of the Average Sale Price formula under Rule 45(1) for fixation of the floor price of bauxite and that the methodology for determining such floor price is within the domain of the OMC.

(ix) The OMC, being a wholly owned Government of Odisha undertaking, is bound to implement the policies and directions issued by the State Government. In absence of any statutory prohibition against applying Rule 45(1) for commercial sale of bauxite, the OMC is obligated to adopt the statutory formula while conducting National e-Auctions and fixing the floor price.

4.1. On the aforesaid premises, there being no arbitrariness, illegality or violation of neither constitutional provisions nor does the adoption of method to fix sale price in tune with MC Rules as amended affect contractual right of the petitioner, the writ petition, being devoid of merit, deserves to be dismissed.

Rejoinder affidavit of the petitioner:

5. Opposing the response of the opposite parties, the petitioner filed a rejoinder affidavit traversing the averments made in the counter affidavit. The action of the opposite parties whittled down the legitimate expectations arising out of the LTL arrangement and such action is inconsistent with the rights and obligations flowing from the agreement executed between the parties.

5.1. Reiterating that the impugned demand raised by adopting the pricing mechanism lacked statutory and contractual sanction, the petitioner fervently requests the impugned order to be set aside.

Response of the opposite party No.1:

6. In reply to the rejoinder affidavit filed by the petitioner, the opposite parties reiterated and reaffirmed the stand taken in the counter affidavit and denied each of the averments made in the rejoinder, save and except those specifically admitted.

6.1. The actions impugned by the petitioner were taken strictly in accordance with the provisions of the relevant statutes, the applicable rules and regulations, the LTL Policy, and the terms and conditions of the LTL Sales Agreement executed between the parties. Every decision taken by the authorities was supported by the applicable legal framework and was neither arbitrary nor

unreasonable. The petitioner had failed to establish any violation of statutory provisions, contractual obligations, or principles of natural justice.

6.2. The opposite parties maintained that the petitioner had sought to place an erroneous interpretation upon the contractual terms and obligations envisaged under the statutory provisions. The petitioner seeks to overlook the legal framework governing the fixation of price and supply of bauxite.

6.3. The rejoinder fails to dislodge the factual position established in the counter affidavit and does not rebut the documentary materials relied upon by the opposite parties. The petitioner has merely reiterated allegations already dealt with in the counter affidavit without producing any cogent material to substantiate its claims or to demonstrate that the impugned actions suffer from illegality, arbitrariness, or procedural impropriety.

6.4. Reiterating that the counter affidavit fully answers the contentions raised by the petitioner and that the rejoinder does not make out any case for interference under Article 226 of the Constitution of India, the opposite parties prayed that the writ petition, being devoid of merit, be dismissed.

Counter Affidavit of the opposite party No.2:

7. An affidavit being sworn to by the Additional Secretary to Government, Department of Steel and Mines, Government of Odisha, the opposite party No.2 has come to be filed on 17.03.2025 controverting the averments made in the writ petition and supporting the stand taken by the opposite parties. The policy decisions relating to the supply, pricing, and allocation of bauxite were taken after due consideration of the statutory framework and the prevailing requirement under law and that the same cannot be alleged to be neither arbitrary nor contrary to law. The existing policy and the relevant statutory provisions authorise the competent authorities to adopt the impugned pricing mechanism and to regulate the sale and supply of mineral, *i.e.,* bauxite, in the manner prescribed.

7.1. The contractual obligations cannot override or dilute the operation of the governing statutory provisions and policy decisions stemming on the principles of legitimate expectation. The contractual relationship between the parties is to be glossed subject to the statutory framework in force from time to time and any subsequent amendment to the policy would necessarily regulate the rights and obligations arising under the agreement. The petitioner is not entitled to seek enforcement of contractual terms in a manner inconsistent with the applicable statutory provisions.

7.2. Refuting the allegations of arbitrariness and illegality, it is asserted that the impugned actions are not only give rise to transparency, but also it is reasonable and rational. Lawful decision taken being *bona fide* and in the public interest, the writ petition warrants no interference by way of judicial review of decision taken by the authorities.

Hearing:

8. As the pleadings are completed and this Court on 29.03.2023 in consideration of interlocutory application bearing No.4417 of 2023 passed the following order:

> *"In view of interim order dated 06.04.2022 passed in I.A. No.2662 of 2021 arising out of W.P.(C) No. 10280 of 2021, as an interim measure, this Court permits the petitioner to lift the agreed quantity of Bauxite for the remaining period of the financial year 2022-23 subject to payment of Rs.1,000/- per MX which price will be exclusive of royalty, DMF & NMET, GST, weighment and sampling analysis charges, which will be charged extra, upon the petitioner furnishing an undertaking, for the differential amount, with the floor price arrived at by the OMC under Rule 45 of the Minerals (Other than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016, as amended, subject to the final outcome of the writ petition. It is made clear that the agreement, which is valid till 19th April 2023, shall continue till that period subject to extension granted by the Government on the application of the petitioner."*

8.1. The learned counsel representing respective parties agreed for final hearing of the matter.

8.2. Heard Sri Vikas Singh, learned Senior Advocate assisted by Ms. Deepika, Mr. Prashanta Kumar Nayak and Mr. Shibashis Mishra, learned Advocates representing the petitioner; Sri Raj Kumar Mehta, learned Senior Advocate assisted by Sri Pravat Kumar Muduli, learned Advocate and Ms. Himanshi Andley, learned Advocate representing opposite party No.1; Sri Pitambar Acharya, learned Advocate General assisted by Sri Saswat Das, learned Additional Government Advocate representing opposite party No.2 and Sri Prasanna Kumar Parhi, learned Deputy Solicitor General of India representing opposite party No.3.

8.3. Upon conclusion of hearing, the matter stood reserved for preparation and pronouncement of judgment/order.

Submissions made by the petitioner:

9. Elaborating the doctrine of promissory estoppel, learned Senior Advocate submitted that it can be construed as a cause of action, subject of course to very extreme cases, such as, change in the policy, change in the statute or involvement of public interest, which are absent in the instant case. Placing reliance on the agreement dated 05.10.2004 he would submit that the Joint Venture Agreement entered into between the OMC and the

petitioner-company to facilitate setting up aluminium complex in Odisha and such contract between the JVC and the OMC for raising of bauxite included LTL agreement between the Vedanta and the OMC for purchase of bauxite mines from the mines. Raising cost would include the cost associated with the mining of bauxite from the mines.

9.1. Referring to definitions contained in Section 2 of the Mines and Minerals (Development and Regulation) Act, 1957, it is submitted that in the event a Mining Lease is not granted by the Government of Odisha for the Karlapat Mine, any other bauxite mine having at least an equal quantity of bauxite deposit (subject to having at least a composite quantity of 150 million tonnes when taken along with Lanjigarh Mines) should be made available by the OMC with due approval of Government of India/Government of Odisha and all references contained herein in respect of the Karlapat Mines shall apply *mutatis mutandis* to such other substitute mine(s) as and when Vedanta proceeds to set up an integrated Aluminium Smelter in the State of Odisha.

9.2. The "definitive agreements" clause of the Agreement dated 05.10.2004 provided as follows:

"Definitive Agreements shall mean the agreements proposed to be entered into by the parties to give effect to the understandings contained herein, including among others:

i) A Shareholders and Share Subscription Agreement between OMC and VEDANTA for and in relation to the JVC;

ii) A Raising Contract Agreement between JVC and OMC for and in relation to the raising of Bauxite in the mines;

iii) A long term purchase agreement between VEDANTA and OMC for purchase of bauxite mines from the mines."

9.3. Shareholding pattern contained therein provided that:

"Shareholding pattern: OMC will be allowed 26% of the issued and paid up equity share capital of the JVC in consideration of expenses incurred in respect of services rendered by OMC for operating the mines by the JVC as a raising contractor and 74% of the equity share capital will be held by VEDANTA. Throughout the tenure of this Agreement OMC's share holding will be minimum 26% of the issued and paid up share capital free and clear of all liens, restrictions, security interests and other adverse claims. OMC will not be required to contribute any cash at any point of time, or make any financial commitment to the JVC of any nature."

9.4. Learned Senior Advocate submitted that the controversy may be traced to the Joint Venture Agreement executed in the year 2004 between the OMC and the Sterlite/Vedanta. Under the said arrangement, the bauxite raised by the JVC was to be purchased by the Vedanta from the OMC. The consideration payable to the OMC was to comprise the raising cost, royalty payable to the Government of Odisha and other statutory dues payable to the State Government or any other competent statutory authority. The agreement further stipulated that until such time the alumina refinery was operational, Vedanta would pay to the OMC an amount equivalent to the prevailing rate of royalty for every

tonne of bauxite mined. However, from the date on which both the refinery and the aluminium smelter became operational, Vedanta was required to pay to the OMC an amount equivalent to 50% of the prevailing rate of royalty.

9.5. The bauxite supplies commenced only in 2018 and, consequently, the contractual mechanism governing the price of bauxite remained material to the dispute. It is expressly provided in the agreement that the bauxite ore extracted from the mines would be utilised exclusively in the proposed refinery and the OMC would not sell such bauxite to any other person. The exclusivity of supply is, thus, an integral component of the arrangement between the parties.

9.6. Subject to *force majeure*, in the event in absence of achieving any milestone specified in the agreement by the Vedanta due to gross negligence or for the causes directly attributable to it, the OMC could issue a notice to Vedanta. Upon receipt of such notice, the parties were required to discuss in good faith. Upon expiry of the period of sixty days stipulated for such purpose, and unless otherwise agreed between the parties, the OMC could not terminate the agreement by issuing written notice of termination to Vedanta. During the said period, however, the obligations of the parties were to continue to subsist on a best efforts basis. The agreement also

incorporated a condition precedent, whereby its coming into effect was made conditional upon completion of construction of the refinery, which was completed in 2009.

9.7. He submitted that the entire quantity of bauxite raised from the concerned mine was to be utilised exclusively in the proposed aluminium plant to be established at Lanjigarh by the Sterlite (now named as "Vedanta"). The petitioner relies upon this condition to demonstrate that the proposed mining arrangement was intended primarily to secure the supply of bauxite to its aluminium project. Although the concerned mine did not ultimately commence production, under the arrangements contemplated between the parties, the mines to be identified for securing approximately 150 million tonnes of bauxite were intended to supply the entire quantity to the petitioner. Another Memorandum of Understanding ("MoU", for short) was executed on 04.04.2007 between the Government of Odisha and the Vedanta that reveals that the OMC was required to take necessary steps for executing an agreement with the Vedanta, subject to the approval of the Government. The Government of Odisha acknowledged the role of the Vedanta as a responsible corporate entity having substantial involvement in employee welfare and social development. The Vedanta would extend its

development-oriented approach to the alumina refinery, captive power plant and smelter facilities proposed to be established in the State.

9.8. The MoU also contemplated that, in matters of employment, preference would be given to persons from Odisha, including local persons, subject to the requirements of the project and the possession of requisite qualifications. Vedanta was further expected to make efforts to improve the skill levels of such persons, including through specialised training wherever necessary. The MoU was to remain valid for a period of two years from the date of its execution. Any further extension was to be considered in accordance with the applicable terms. However, no extension was to be considered until substantial progress had been made by the Vedanta in implementing the project, particularly in relation to construction and development. He referred to Clause 7 of the MoU, which stipulated that, in the event of non-implementation of the project, or any part thereof, the corresponding support or obligations of the Government of Odisha under the MoU in relation to bauxite mines, coal blocks, incentives and concessions would stand withdrawn.

9.9. The MoU, 2007 constituted clear indication of the proposed expansion of the project to include the aluminium smelter at Jharsuguda, Odisha. The

petitioner submits that the project subsequently developed into a major end-to-end aluminium manufacturing facility, requiring substantial quantities of alumina and also large quantities of bauxite. The arrangements contemplated that the State of Odisha would establish a Special Purpose Vehicle ("SPV", abbreviated) for development of the scheduled area of Lanjigarh, in which the stakeholders would include the State of Odisha, the OMC and the Sterlite[2]. Provision was made for contribution towards the development of the Lanjigarh area from the profits generated from the relevant operations. The annual report of the SPV was to be submitted to the Central Empowered Committee (CEC), constituted by the Supreme Court of India, and any non-utilisation or improper utilisation of the funds was to be brought to the notice of the Court.

9.10. Attention is drawn to the Judgment dated 08.08.2008 passed in *I.A. No.2134 of 2007 in W.P.(C) No. 202 of 1995*, titled *T.N. Godavaraman Thirumulpad Vrs. Union of India & Ors.*, *[(2008) 11 SCR 1091]*, wherein the Hon'ble Supreme Court of India recorded the Petitioner's acceptance of several onerous conditions as a prerequisite for Forest Clearance, including:

i) The accounts of SPV will be prepared by the statutory auditors of the OMC, and they shall be

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2 See, *T.N. Godavaraman Thirumulpad Vrs. Union of India, (2007) 12 SCR 447.*

audited by the Auditor General for State of Odisha every year. M/s Sterlite Industries India Ltd. ("Sterlite", for convenience) will deposit, every year commencing from 01.04.2007, 5% of its annual profits before tax and interest from Lanjigarh Project or Rs 10 crores whichever is higher for Scheduled Area Development with the said SPV and it shall be the duty of the said SPV to account for the expenses each year. The annual report of SPV shall be submitted to CEC every year. If CEC finds non-utilisation or misutilisation of funds the same shall be brought to the notice of the Court. While calculating annual profits before tax and interest Sterlite shall do so on the basis of the market value of the material which is sold by the OMC to the Sterlite or its nominee.

ii) In addition to what is stated above, Sterlite shall pay NPV of Rs.55 crores and Rs.50.53 crores towards Wildlife Management Plan for Conservation and Management of Wildlife around Lanjigarh bauxite mine and Rs. 12.20 crores towards tribal development. In addition, Sterlite shall also bear expenses towards compensatory afforestation.

The Hon'ble Supreme Court, *vide* order dated 08.08.2008, further acknowledged that this additional financial outlay, undertaken by the Petitioner pursuant

to the previous order dated 23.11.2007, might actually entitle it to a reduction in bauxite pricing below the rates originally stipulated in the 05.10.2004 Agreement. The Hon'ble Supreme Court mandated that:

> *"12. If at the end of the accounting year of SIIL, CEC finds that the annual profits before tax and interest is depressed by the pricing mechanism mentioned in joint venture agreement dated 05.10.2004 vide Clause 2.3.3(a) then it would be open to CEC to move this Court with the suggested price mechanism in its report."*

9.11. The arrangements also contemplated payment towards the Net Present Value (NPV) which includes wildlife management and conservation, compensatory afforestation and other measures connected with rehabilitation and environmental protection. A statement was also required to be filed regarding the persons proposed to be absorbed on a permanent basis, including land losers, as well as persons proposed to be employed through contractors. The State Government placed certain suggestions before the Court. It was indicated that, if CIL accepted the rehabilitation package, it would be at liberty to approach the Court by an appropriate application. The rehabilitation package was accepted by CIL without any condition. The CEC observed that the annual profit before tax and interest could be affected by the pricing mechanism contained in

Clause 2.3.3(A) of the Joint Venture Agreement dated 05.10.2004.

9.12. The petitioner asserts that the price payable for bauxite was not intended to be determined unilaterally and any alteration was to be considered on the basis of the financial accounts and the report of the competent auditing authority.

9.13. The OMC had been unable to obtain the requisite mining leases over Lanjigarh, Karlapat or any other identified mine. Though the OMC is stated to have made efforts to secure the leases, but failed. This could be attributed to the OMC, but to be treated as default on the part of Vedanta. Notwithstanding the uncertainties surrounding the availability of bauxite, it had invested more than ₹6,000 crore in establishing the Lanjigarh alumina refinery and had commissioned the refinery in less than thirty months. The refinery started operation with bauxite procured from external sources, resulting in substantial losses, which, according to Vedanta, had accumulated to more than ₹3,000 crore. It had made substantial downstream investments, including in the aluminium smelter and captive power facilities at Jharsuguda, in fulfilment of the commitments arising from the MoU and related arrangements. The assurance regarding availability of bauxite had constituted the foundation for the investment made in the refinery and

downstream facilities. It is, therefore, contended that the substantial investments made in Odisha had been undertaken on the strength of the commitments and assurances extended by the State and the OMC. It is further submitted that the scale of the aluminium smelter and associated facilities established by it demonstrate the magnitude of the investment and the extent to which the project was dependent upon reliable and assured supply of bauxite.

9.14. Learned Senior Advocate urged that it had become one of the largest investors in the State and had generated substantial employment opportunities. Its continued commitment towards the industrial development in Odisha includes providing preference to local persons in employment.

9.15. Section 10A and Section 17A(2)(b) as amended in the Mines and Minerals (Development and Regulation) Act on and from 26.03.2015 brought about change and such change put restrictions having bearing upon the continuation of the Joint Venture arrangement. According to the petitioner, the statutory requirement by way of amendment constituted a substantial impediment to the structure of the original Joint Venture. In view of the amendment to the MMDR Act in 2015, the Government company was required to hold more than 74% of the Joint Venture and the Joint Venture partner

was required to be selected through a competitive bidding process. The petitioner, however, contends that the statutory restriction related to the manner in which mining could thereafter be undertaken did not extinguish the separate commitment regarding supply of bauxite to the refinery. Thereafter, in terms of Clause 2.3.3(F) of the Joint Venture Agreement, the OMC called upon the petitioner to participate in discussions in relation to the show-cause notice proposing termination of the Joint Venture. Although the Joint Venture Company had been formed, no bauxite had been raised by the OMC and the requisite mining lease had not been granted in respect of Lanjigarh, Karlapat or other identified areas. Relying upon the commitments to the State as per the MOU and the Joint Venture in order to secure 150 million tonnes of bauxite, it commissioned the alumina refinery with captive power facilities at Lanjigarh and the aluminium smelter with captive power facilities at Jharsuguda. Approximately 2,060 acres of land were acquired for establishing the refinery facility, with corresponding compensation and rehabilitation obligations. It also claims to have generated substantial employment, incurred significant expenditure and contributed to the development of downstream and ancillary industries and to the State exchequer. Hence, unilateral termination of the Joint Venture arrangement, which constituted the principal instrument for securing

the contemplated supply of 150 million tonnes of bauxite, would jeopardise the project and render the substantial investment made by it commercially redundant. Against this background, the petitioner requested that the commitments contained in the 2004 arrangement relating to supply of 150 million tonnes of bauxite be protected and continued.

9.16. The OMC, in its counter-affidavit, acknowledged that the alumina refinery established by Vedanta was facing an acute shortage of bauxite ore and stated that increasing production of bauxite in the State was in the interest of economic development. The Joint Venture agreement dated 18.02.2009/ was ultimately terminated on 30.09.2015 (Annexure-107).

9.17. The petitioner thereafter made a representation to the Chief Minister. A Gazette Notification No.1478, dated 17.10.2015 (Annexure-109) was also issued subsequent to the termination, whereby, *inter alia*, it was recorded that the terms and conditions were issued for grant of mining lease for bauxite over an area of approximately 721.323 hectares in Lanjigarh in favour of the OMC with additional condition that the entire quantity of bauxite raised from the area was to be utilised exclusively in the proposed alumina plant at Lanjigarh to be established by the Sterlite/Vedanta. The notification further recognised that, after the amendment to the MMDR Act,

it would not be permissible for the Government to transfer the mine of OMC to a Joint Venture Company in which private parties held a controlling stake. A High-Level Committee comprised of six members headed by the Chief Secretary was constituted by virtue of said notification. According to the petitioner, the purpose of the Committee was to examine and devise an appropriate mechanism for ensuring long-term supply of bauxite to the petitioner's alumina refinery in view of the legal impediment created by the amended statutory framework. On 24.11.2015, the petitioner was given an opportunity to place its case before the Committee. The petitioner expressed its expectation that the Committee would appreciate the gravity of the situation and make suitable recommendations for ensuring long-term supply of bauxite to the Lanjigarh refinery.

9.18. Referring to its representation dated 13.11.2015, it is contended that the petitioner made substantial investments in the State on the basis of repeated assurances to make bauxite available on the terms and conditions earlier agreed to between the parties. In absence of firm commitment regarding supply of bauxite in accordance with the Joint Venture arrangement the petitioner is at disadvantageous position. The MMDR Act is not silent about reservation of areas for mining operations by the State Government or by Government

Companies or Corporations owned or controlled by it. The statutory framework contemplated different modes by which mining operations could be undertaken, including by the State itself, through a Government Company or Corporation, or through arrangements requiring the approval of the Central Government. Section 17A(2) of the said Act provides scope for the State Government with the approval of the Central Government to reserve an area not already held under a prospecting or mining licence for undertaking prospecting or mining operations through a Government company or Corporation owned or controlled by it. The restriction of five-years introduced by virtue of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 was not in vogue under the earlier statutory framework and, therefore, it could not retrospectively defeat the rights and commitments arising from the earlier arrangements.

9.19. The MC Rules, 2016, having introduced formula for calculating the average sale price of metallurgical-grade bauxite used in the extraction of alumina and aluminium are intended for determining the value of mineral blocks for the purpose of auction and grant of mineral concessions and it has no bearing to govern the mercantile sale of bauxite already extracted and offered for sale. Notwithstanding the introduction of the

formula, the State Government authorities did not apply the same mechanism while determining the price of bauxite supplied to it. Subsequently, however, the State sought to rely upon the said formula for fixing the floor price for bauxite auctions.

9.20. The rights and commitments arising from arrangement in agreement of the year 2004 had already accrued prior to the Mines and Minerals (Development and Regulation) (Amendment) Act, 2015. It made payments aggregating approximately ₹140 crore, including ₹55 crore towards NPV, ₹50 crore towards the wildlife management plan, ₹12 crore towards tribal development and ₹2 crore towards compensatory afforestation. The petitioner is willing to fulfil its commitments concerning the refinery and smelter. The OMC cannot be permitted to take advantage of its own failure to pursue the requisite proceedings and obtain the necessary approvals for commencement of mining operations. After a prolonged period during which the petitioner was required to procure bauxite from the open market, the State introduced a policy which, according to the petitioner, provided the first viable mechanism for obtaining bauxite through LTL.

9.21. Having the position being apprised, Sri Vikas Singh, learned Senior Advocate would confined his argument by laying stress on the principle of promissory estoppel. He

laid much emphasis on the decisions rendered in the case of *Motilal Padampat Sugar Mills Co. Ltd. Vrs. State of Uttar Pradesh, (1979) 2 SCC 409* and subsequent decisions affirming that principle. Despite absence of any alternative bargaining power and the urgent requirement to commence regular operations, it accepted the policy mechanism with the hope of obtaining a regular supply of bauxite, notwithstanding that the pricing mechanism was somewhat higher than that contemplated under the agreement of 2004. Under the Government of Odisha in Steel and Mines Department Notification No.1323-VSL-18/14/SM, dated 24.02.2018 [Odisha Gazette, Extraordinary No.292, dated 26.02.2018], with the respect to Bauxite Linkage the following is stipulated:

"a. 70% of the saleable stock shall be made available for long-term linkage to the State-based end-users and the remaining 30% shall be sold through national e-auction to be done every six months for price discovery.

b. Weighted average price arrived at from the national e-auction should be the long-term linkage price for the appropriate grades of mineral. State-based end-user plants having long-term linkage can also take part in the auction.

c. Floor price for the national e-auction may be fixed at the cost of production plus margin of profit of 50%."

9.22. It is, therefore, contended that the cost of production plus 50% margin of profit resulted in a price substantially higher than the price mechanism contemplated under the agreement of 2004, whereof it was required to pay the raising cost and the applicable royalty, with the royalty component being reduced upon commencement of the smelter.

9.23. Nevertheless, having waited for several years for the assured supply and having made substantial investments based on such assurances, the petitioner accepted the policy mechanism. The floor price was approximately ₹462 per tonne and the discovered price was ₹465 per tonne. The petitioner agreed to procure bauxite at the discovered price. Subsequently, a Long-Term Linkage Sales Agreement was executed between the OMC and the petitioner for supply of bauxite for the period 2018–2023. Under the mechanism adopted, the long-term sale price would fluctuate with each subsequent auction. A national e-auction was conducted on 03.10.2018, in which the floor price and discovered price were stated to be approximately ₹673 per tonne. Thereafter, a further policy was introduced in 2019 by way of the Minerals (Other than Atomic and Hydro-Carbon Energy Minerals) Concession (Amendment) Rules, 2019. The policy continued the broad mechanism whereby 70% of the saleable stock was to be supplied

through long-term linkage and 30% through national e-auction. The floor price was again linked to the cost of production plus a margin of profit. However, this amendment dated 20.09.2019 introduced a conversion factor into a formula based for calculating the average sale price of metallurgical-grade bauxite. According to the petitioner, the conversion factor had not formed part of the formula when the relevant provision was initially introduced in the said MC Rules of 2016. The petitioner, therefore, disputes the manner in which the formula was subsequently applied to mercantile sales of bauxite. The State Government's communication recorded that the formula appeared unrealistic and that its application would adversely affect the economics of the alumina and aluminium industry. The average sale price calculated under the notified formula appeared substantially higher than the actual value of metallurgical-grade bauxite. The communication also referred to the price discovered through transparent electronic auctions conducted by the OMC and observed that the price discovered through such auctions was substantially lower than the average sale price calculated under the statutory formula. The State Government further noted that the conversion factor of 6.4% had been derived by backward calculation from the London Metal Exchange price of aluminium by taking into consideration the assumed values and percentages attributable to different components of the

production process. The methodology adopted might not accurately reflect the actual conversion factor and even a slight variation in the conversion factor could result in a substantial change in the calculated average sale price. The State Government recognised that the average sale price was required primarily for determining the monetary value of mineral resources and assessing the eligibility and financial requirements of prospective bidders participating in auctions for mineral concessions. The statutory formula was designed for valuation of mineral resources for the purpose of auctioning mineral concessions and was not intended to determine the mercantile sale price of bauxite extracted from an existing mine. The distinction between a mineral-block auction and a mercantile sale of extracted bauxite is fundamental. In the former case, the statutory formula is relevant for estimating the value of the mineral concession and determining the financial parameters for participation in the auction. It does not govern the price at which already extracted bauxite is sold.

9.24. While comparable industries such as Hindalco and NALCO are procuring bauxite at substantially lower rates, the petitioner was required to pay approximately ₹1,000 per tonne, resulting in a significant disparity in the cost of raw material. The petitioner continued to

request that the price be determined on the basis of the cost of production plus 50% margin of profit, which, according to it, was the mechanism contemplated by the earlier policy. The OMC subsequently raised a demand of approximately ₹2,000 crore from the petitioner on the basis that the reserve price determined under the auction mechanism constituted the applicable price and that the difference payable by the petitioner was recoverable as arrears. The petitioner states that, when a small quantity of bauxite was eventually sold at a price of approximately ₹3,000 per tonne in one of the later auctions, it realised that the pricing mechanism had materially departed from the earlier contractual and policy arrangements.

9.25. The petitioner acted upon the representations by establishing the refinery, smelter and captive power facilities making substantial investments in the State. The petitioner, therefore, craves that the State cannot renegade from the representations and commitments on the basis of which the investments were made.

9.26. The principal submission of the petitioner, therefore, boils down to application of promissory estoppel *vis-a-vis* the termination or restructuring of the Joint Venture on account of the subsequent statutory amendment concerning the ownership structure of mining operations. It is forcefully submitted that

notwithstanding the statutory changes and the constitution of the Joint Venture, the State and the OMC remained bound to consider and honour the commitments made regarding supply of bauxite, particularly in view of the substantial investments and obligations undertaken by the petitioner. The State cannot take advantage of its own inability or failure to secure the mining leases after inducing the petitioner to make substantial investments on the representation that adequate bauxite would be made available. Subsequent statutory amendments may regulate the manner in which mining rights can be granted or exercised, but the same cannot retrospectively obliterate or efface the consequences flowing from such representations, assurances and commitments made prior thereto. The petitioner having demonstrably altered its position by investing substantial resources, the OMC is bound to comply with the commitment.

Submissions made by the opposite party No.1:

10. *Per contra*, learned Senior Advocate appearing for the opposite party No.1-OMC, opposed the contentions and averments of the writ petitioner and submitted that the claim made by the petitioner is contrary to the contemporaneous official records and statutory interdiction.

10.1. He vociferously submitted that the doctrine of promissory estoppel is not attracted in the instant matter. The petitioner seeks enforcement of alleged assurances contained in agreements and seeks a direction for supply of bauxite at the rates contemplated under the earlier agreements. Nevertheless, the agreements relied upon by the petitioner have either expired, stood terminated, or became incapable of being implemented by operation of law. Consequently, no enforceable promise survives on the basis of which the doctrine of promissory estoppel can be invoked.

10.2. The Memoranda of Understanding executed in 2003 and 2007 contemplated the establishment of an integrated aluminium complex and the grant of mining leases, subject to the requisite statutory and environmental clearances. The obligations of the State were expressly subject to the constitutional and statutory provisions governing the project. The relevant MoU also contemplated that, in the event of non-implementation of the project, the corresponding support obligations of the Government would stand withdrawn.

10.3. The mining leases contemplated under the aforesaid arrangements could not ultimately be granted despite efforts by the Government of Odisha, the Odisha Mining Corporation and the petitioner, including proceedings before the Supreme Court of India. The requisite forest

and environmental clearances were not obtained and the proposals for grant of clearance were ultimately rejected. Consequently, the underlying mining arrangements paled into significance for being implemented.

10.4. The Joint Venture Agreement was specifically intended for the operation of identified bauxite mines and contemplated that the mining operations would be undertaken by the Joint Venture Company. The bauxite raised by the Joint Venture Company was thereafter to be purchased by the petitioner under the long-term purchase arrangement at the price determined in accordance with the agreed mechanism. Thus, the obligation to raise and supply bauxite under the relevant arrangement was intrinsically connected with the existence and operation of the Joint Venture Company and the availability of the identified mining leases.

10.5. The Joint Venture Company never became operational and the contemplated mining leases were never obtained. The arrangement, therefore, became incapable of being performed. The amendment to the Mines and Minerals (Development and Regulation) Act, 1957, particularly the provisions governing existing rights and the constitution and shareholding of the Government Companies, further altered the legal framework and rendered the earlier arrangement incapable of implementation. The earlier contractual mechanism

could not, therefore, be insisted for enforcement, doing so would be to negate the statutory requirement.

10.6. It is argued that the doctrine of promissory estoppel cannot be invoked to compel the Government or a statutory corporation to act contrary to law. No representation or promise can prevent the State from enforcing or defy statutory prohibition. It is settled principle that principle of estoppel cannot override the law.[3] There is no concept of estoppel against statute and, thereby, promissory estoppel cannot be employed to permit or condone a breach of law, nor can it compel a public authority to perform an obligation which has become inconsistent with the governing statutory provisions.

10.7. The earlier agreements ceased to operate by efflux of time and/or by termination. The arrangements suggested under the MoU were for a limited duration and no enforceable right would have survived after their expiry in the absence of valid extension. The Joint Venture Agreement was subsequently terminated after due consideration and after the necessary Governmental approval.

10.8. After termination of the earlier arrangements, the petitioner participated in the subsequently introduced

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[3] See, *Krishna Rai Vrs. Banaras Hindu University, (2022) 7 SCR 1104.*

LTL mechanism and accepted the revised framework for supply of bauxite. The petitioner applied pursuant to the Expression of Interest issued by the Odisha Mining Corporation and participated in the linkage process without objecting to the termination of the earlier agreements. It, thereafter, entered into LTL sale arrangements under the prevailing policy. Such subsequent conduct demonstrates acceptance of the altered contractual and policy framework and amounts to waiver or abandonment of any alleged right founded upon the earlier arrangements. The conduct of the petitioner makes the principle of promissory estoppel in applicable inasmuch as acquiescence does make such doctrine inapplicable. Having accepted the benefit of the subsequent LTL arrangements and participated in the revised mechanism, the petitioner cannot subsequently seek to revive rights under agreements which had already expired or got terminated.

10.9. The petitioner also accepted the revised pricing mechanism. Under the subsequent LTL policy, a specified proportion of bauxite was to be supplied to long-term linkage holders and the remaining quantity was to be disposed of through auction. The petitioner participated in the revised mechanism and accepted the applicable pricing framework. It, therefore, of promissory estoppel, cannot insist upon the pricing mechanism

contained in the earlier agreements after having accepted the subsequent policy regime. The long-term linkage sale agreement executed subsequently provided for a specified annual quantity and duration and incorporated the prevailing policy and pricing mechanism. The subsequent arrangement, thus, superseded or replaced the earlier contractual understanding concerning the supply of bauxite. The petitioner, having entered into and availed the benefit of such subsequent arrangements, cannot claim specific performance or enforcement of the earlier agreements.

10.10. The petitioner had not, at the relevant time, asserted that the earlier agreements continued to confer upon it an assured right to receive a specified quantity of bauxite at the earlier contractual price. It is too late in the day to set up the claim that the earlier agreements were only partially terminated and obligation to supply bauxite at the earlier price continued. The belated claim demonstrates that it is an afterthought and is inconsistent with not only statutory interdict, but also tells about the petitioner's conduct of acquiescence and contrary to the contemporaneous record.

10.11. The petitioner had also received substantial quantities of bauxite under the subsequent LTL arrangements. Such supplies were made under the prevailing policy and not under the pricing mechanism

contained in the earlier agreements. It is incomprehensible on the one hand to accept the benefits of the subsequent statutory policy framework and seek to enforce the terms of agreements, which had ceased to operate on the other.

10.12. The investment made by the petitioner in establishing its refinery, smelter, power plant and other facilities cannot, by itself, create an enforceable right to obtain bauxite at a particular price or quantity contrary to the prevailing mechanism. Such investments were made as part of commercial enterprise and cannot be treated as consideration for compelling the State or the Odisha Mining Corporation to act contrary to law.

10.13. The claim seeking adjustment of bauxite already supplied against the quantity contemplated under the earlier arrangements and further supply at the old contractual rates was not raised at the appropriate stage and was introduced subsequently. Such a claim founded upon promissory estoppel, being belated, cannot be permitted to revive contractual rights, which had already ceased to exist.

10.14. The statutory amendments materially altered the legal position concerning mining rights, the grant of mining leases and the structure of Government participation in mining operations. The earlier

arrangement contemplated a particular shareholding and management structure, whereas the amended statutory framework required a substantially different structure and competitive process. The earlier Joint Venture arrangement, therefore, could not lawfully continue in its original form.

10.15. The statutory and policy developments also demonstrate that the supply of bauxite was thereafter governed by the LTL policy and the auction mechanism. The petitioner was not granted any perpetual or vested right to receive bauxite at the price prescribed under the earlier agreements/arrangements. The applicable price was to be determined in accordance with the prevailing policy and, wherever applicable, through the auction mechanism.

10.16. The national e-auction mechanism and the determination of the floor price are matters governed by the applicable statutory rules and governmental policies. The mechanism for determining the average sale price and floor price has undergone sea change. The Odisha Mining Corporation, while conducting auctions for merchant sale of bauxite, is required to operate within the existing statutory structure and policy framework. It is fallacious on the part of the petitioner to rely upon the doctrine of promissory estoppel to compel the Odisha Mining Corporation or the State Government to supply

bauxite at a price which is inconsistent with the law or the policy presently governing such supply. The doctrine cannot be invoked to defeat statutory provisions or render the provisions of the statute nugatory.

10.17. The petitioner's subsequent conduct, including its participation in the long-term linkage process, acceptance of the revised pricing mechanism and execution of subsequent supply agreements, is inconsistent with the assertion of a continuing right under the earlier agreements. Having accepted the subsequent arrangement, the petitioner cannot approbate and reprobate[4] by relying upon the earlier agreements for the purpose of claiming a more favourable price or quantity.

10.18. It is, therefore, submitted that no subsisting, enforceable or legally protected right survives in favour of the petitioner under the earlier MoUs, Joint Venture Agreement or long-term purchase arrangement. The petitioner's claim for supply of bauxite at the earlier contractual price and for adjustment of past supplies against the earlier contemplated quantity is consequently untenable. The relief sought for by the

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[4] See, *Samir Ranjan Pradhan Vrs. Union of India, W.P.(C) No.853 of 2023,* decided by this Court *vide Order dated 09.01.2025* by referring to *V. Chandrasekaran Vrs. The Administrative Officer, (2012) 10 SCR 603 = 2012 INSC 407; Mumtaz Yarud Dowla Wakf Vrs. Badam Balakrishna Hotel Pvt. Ltd., (2023) 15 SCR 984 = 2023 INSC 949; Suzuki Parasrampuria Suitings Private Limited Vrs. Official Liquidator of Mahendra Petrochemicals Limited, (2018) 10 SCC 707.*

petitioner would, in substance, require the State Government and the Odisha Mining Corporation to act contrary to the statutory regime and the policies governing the disposal and supply of bauxite. Such a direction cannot be issued in exercise of the writ jurisdiction, particularly where the alleged right is founded upon agreements which have expired, been terminated or become incapable of performance by operation of law.

Arguments advanced by the learned Advocate General:

11. At the outset, learned Advocate General appearing for the State-opposite party No.2 approached to argue that the writ petition, so far as it relates to the amended prayer seeking supply of 150 Million Tonnes of Bauxite at the pricing mechanism contemplated under the Joint Venture Agreements dated 05.10.2004 and 18.02.2009 read with the MoUs dated 07.06.2003 and 04.04.2007, is wholly misconceived, hopelessly barred by delay, laches, waiver and acquiescence and, therefore, liable to be dismissed *in limine*.

11.1. The original MoU dated 07.06.2003 stood superseded upon execution of the subsequent MoU dated 04.04.2007. The said MoU dated 04.04.2007 itself was valid only for a period of two years, *i.e.*, till 03.04.2009 and admittedly no extension thereof was ever granted by

the State Government. The MoUs, being non-statutory in nature, cannot be specifically enforced after lapse of more than sixteen years.

11.2. It is submitted that pursuant to the amendment to the MMDR Act, 1957, with effect from 12.01.2015, in view of Section 17-A(2B) due to non-fulfilment of obligations by the petitioner, the Joint Venture Agreements dated 05.10.2004 and 18.02.2009 were lawfully terminated by OMC on 29/30.09.2015[5] after providing due opportunity to the petitioner and after obtaining approval of the Government of Odisha. The said termination has never been challenged by the petitioner at any point of time

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[5] Text of Letter No.12634/OMC/Project/2015, dated 29/30.09.2015 of OMC addressed to Sterlite Industries (India) Ltd., Vedanta Aluminium Ltd., 75, Nehru Road, Vile Parle (East), Mumbai – 400099 reads thus:
"This has reference to the Show Cause Notice dated 20.02.2015 ***for termination of the J.V. Agreement dated 18.02.2009/05.10.2004****, your reply dated 03.03.2015 to the said Notice, subsequent discussions held with representatives of M/s SIIL/VAL namely Shri K.K. Dave, Chief of Operations, Shri S.K. Pattnaik, V.P. (Corporate Affairs) and Shri N.K. Sharma, Head (Legal) in terms of Clause 2.3.3 (f) of the JV Agreement and your letter dated 28.04.2015.*
In your Reply dated 03.03.2015, you have admitted that the Milestones at Sl. No.5, 7 & 9 of Annexure-IV to the J.V. Agreement dated 05.10.2004 have not been achieved.
In the Reply dated 03.03.2015, you have also admitted that OMC made all possible efforts to get the Mining Lease in respect of Lanjigarh Mines but the same could not be achieved due to reasons beyond control of OMC. In the mean time more than 17 years have expired (from the date of signing of MoU) and 10 years (from the date of Joint Venture Agreement dated 05.10.2004). ***In Terms of the provisions of the MMDR Act, as amended by the MMDR Amendment Act, 2015, the Government Company is required to have more than 74% ownership in the joint venture and the JV partner is required to be selected through competitive bidding process.*** *These provisions have come into force on 12.01.2015.*
In the above circumstances, OMC hereby terminates the J.V. Agreement dated 18.02.2009/05.10.2004 between Orissa Mining Corporation Limited and Sterlite Industries (India) Limited/ Vedanta Aluminium Ltd.
The supply of Bauxite to the Refinery would be in accordance with the long-term linkage policy formulated by the Government.
Since the J.V. Agreement stands terminated, steps may be taken for winding up of the J.V. Company formed pursuant to the J.V. Agreement."

and has attained finality. Nearly eleven years after the petitioner cannot seek revival or indirect enforcement of agreements/MoUs, which admittedly stood terminated.

11.3. The petitioner regarding alleged "partial termination" of the Joint Venture Agreements is equally untenable. A bare reading of the preamble and Clauses 1.1, 2.1, 2.2, 2.3 and allied provisions of the Joint Venture Agreement dated 05.10.2004 clearly demonstrates that the agreement was mine-specific and constituted an indivisible and composite arrangement relating to Lanjigarh and Karlapat mines. Since no mining lease was ever granted either for Lanjigarh or Karlapat in favour of the Joint Venture Company and no approval was ever accorded by the State Government for substitution of mines, the entire agreement stood frustrated and terminated *in toto*. The petitioner cannot dissect or selectively enforce isolated clauses of a composite agreement merely to suit its commercial convenience.

11.4. The petitioner, despite filing earlier writ petitions, being W.P.(C) Nos. 9926 of 2020, 22397 of 2020 and 10280 of 2021, never sought for the relief relating to supply of 150 Million Tonnes of Bauxite under the old regime.

11.5. Without prejudice to the aforesaid submissions, it is further argued by the learned Advocate General that

after termination of the Joint Venture Agreements, the petitioner consciously accepted and acted upon the LTL regime framed by the State Government. The termination letter dated 29/30.09.2015 itself assured supply of bauxite under the prevailing Long Term Linkage Policy. Pursuant thereto, the petitioner participated in the process initiated under the amended LTL Policy dated 24.02.2018, submitted offer pursuant to Expression of Interest dated 08.03.2018 and thereafter voluntarily executed LTL Sales Agreements dated 20.04.2018 and 16.05.2023. Presently, supplies are being effected under the subsisting LTL Sales Agreement dated 16.05.2023 valid till 15.05.2028. Thus, the conduct of the petitioner unequivocally establishes acceptance of the post-amendment of the MMDR Act in 2015 and, thereby it abandoned right flowing from the terminated Joint Venture Agreements. Having accepted benefits under the Long Term Linkage Policy since 2018, the petitioner is estopped from reopening or resurrecting claims under the extinguished agreements of 2004 and 2009.

11.6. The doctrine of promissory estoppel as stemmed upon by the Senior Counsel for the petitioner cannot come to its rescue inasmuch as the petitioner cannot compel the State or its instrumentalities to act contrary to statute. Once Section 17-A(2-B) of the MMDR Act, 1957 came

into force with effect from 12.01.2015, any claim seeking continuation or enforcement of the earlier arrangement running counter to the amended statutory framework becomes legally impermissible. Therefore, the plea of promissory estoppel raised by the petitioner is wholly misconceived and contrary to settled law.

11.7. So far as the challenge to constitutional validity of amended Rule 45(1) of the MC Rules, 2016 is concerned, the same is equally devoid of merit. The Government of India, in its Counter Affidavit dated 30.08.2021 as well as Additional Affidavit dated 07.01.2022, has categorically stated that neither the MMDR Act nor the Rules framed thereunder prohibit adoption of Average Sale Price (ASP) methodology for determining floor price in e-auction and it is within the domain of the OMC to evolve a suitable pricing methodology for sale of minerals through transparent auction process.

11.8. Section 13(1) of the MMDR Act, 1957, confers wide rule-making powers upon the Central Government and the expression "and for purposes connected therewith" occurring therein has to receive a broad and purposive interpretation. Therefore, the amendment to Rule 45(1) squarely falls within the legislative competence and statutory framework contemplated under the MMDR Act.

Written notes of submission of the petitioner:

12. The prayers in the amended writ petition are based on doctrine of promissory estoppel. It is the petitioner's categorical case that the State of Odisha induced them to make substantial investments within the State to establish an integrated aluminium manufacturing plant. This inducement, *vide* Agreement dated 05.10.2004, was based on a clear assurance that the State would provide 150 million tonnes of bauxite— the essential raw material— at a price parity with other State-based manufacturers who benefit from captive mine allocations.

12.1. The guaranteed pricing mechanism was specifically defined as the cost of extraction plus a 50% royalty. Under the terms of this promise, bauxite was to be supplied at extraction cost plus 100% royalty upon the completion of the refinery, with the royalty rate reducing to 50% once the smelter became operational. Adhering to the agreed timelines, the petitioner executed the requisite investments, and the aluminium-producing smelter became operational in 2009. Consequently, the petitioner is legally entitled to receive bauxite at the promised rate of extraction cost plus 50% royalty.

12.2. Since no bauxite was admittedly supplied to the petitioner until 2018, the petitioner remained entitled to the entire supply at the promised rate of cost of extraction plus 50% royalty. Throughout the eleven

years following the refinery's inception— and the nine years after the smelter became operational— the petitioner received no bauxite supply, whether under the initial assurance or otherwise. This prolonged failure caused the petitioner to suffer massive losses amounting to thousands of crores, a fact repeatedly communicated to both the State and the OMC.

12.3. **In 2018, the petitioner agreed to receive bauxite under the 2018 LTL Policy at a rate marginally higher than the original promised price.** However, despite accepting supplies at this adjusted rate, the petitioner never waived its rights under the initial assurance. On the contrary, the Petitioner maintained consistent correspondence with the State, steadfastly asserting its claim grounded in the doctrine of promissory estoppel.

12.4. When the State Government sought to entirely renege on its promise by issuing a fanciful and arbitrary price demand, *vide* letters dated 12.05.2023, 04.10.2025 and 06.11.2025, premised on a misinterpretation of Rule 45 of the MC Rules, 2016 (as amended in 2019), the petitioner was compelled to amend the writ petition. This amendment formally grounded the claim in the doctrine of promissory estoppel, seeking the supply of 150 million tonnes (MT) of bauxite at the specifically assured rate.

12.5. Rule 45 is applied strictly at the stage of grant of mineral concessions. The MMDR Act does not envisage the imposition of a price mechanism on the merchant sale of any mineral. Accordingly, the rule-making power under Section 13 cannot be extended to such sales. The unilateral application of Rule 45 to determine the auction price of excavated Bauxite is contrary to the express mandate under Section 13 of MMDR Act.

12.6. Since the original writ petition as filed in the year 2023 clearly established the petitioner's claim on the basis of the State's initial investment inducements, a point left unrefuted in the counter affidavit of the opposite parties. This Court permitted the amendment *vide* Order dated 03.12.2025.

12.7. The Agreement of 2004, which contained the categorical assurance to supply 150 MT of bauxite at the aforementioned rates mandated the formation of a Joint Venture Company (JVC) for exclusive mining and supply to the petitioner. This JVC was structured with the Petitioner holding a 74% majority stake and OMC holding 26%. Despite the Lanjigarh mine being granted to OMC with the express condition that 'the entire quantity of bauxite raised from the area shall be exclusively used in the proposed aluminium plant to be set up at Lanjigarh by M/s Sterlite/Vedanta Alumina Ltd.', a condition duly acknowledged by the Hon'ble

Supreme Court of India, mining operations could not commence due to the non-grant of Stage-II Forest Clearance.

12.8. Following the 2015 Amendment to the MMDR Act, which prohibited mine allocation to a JVC where private shareholding exceeded 26%, the agreement was rescinded solely regarding the formation of the JVC for mining purposes. However, the State's core assurance to supply 150 MT of bauxite at the agreed rate was never resiled from. This is evidenced by the Gazette Notification dated 17.10.2015, which reaffirmed the State's commitment to supply and explicitly reiterated that the bauxite raised 'shall be exclusively used … in the aluminium plant set up at Lanjigarh.' It is precisely because of this subsisting obligation that the State and the OMC conspicuously failed to deny the applicability of the Agreement dated 05.10.2004 in their counter-affidavits to the original writ petition.

Discussion and conclusion:

13. On the conspectus of the facts discerned from the respective pleadings filed in connection with the instant writ petition and the submissions advanced by the respective counsels, the pivotal issue for determination is squeezed to a solitary "principle of promissory estoppels" and its applicability in the given situation. It

is a specific case of the petitioner that the State of Odisha induced the petitioner to make a substantial investment to set up and/or establish the aluminium manufacturing plants and relying on such representation, the agreement was entered into on 05.10.2004 stipulating the supply of 150 Million Tonnes of Bauxite being the raw materials at such price, which stands on parity with other State based manufacturer benefited from the captive mine operations. The said agreement postulates that the petitioner would bear the cost of extraction plus 50% royalty together with other statutory dues. Despite such agreement so entered and the refineries having set up in 2007 and the smelter in 2008-09, no supply of Bauxite was made under such assurance, which resulted in a massive loss. It is a specific stand of the petitioner that after framing of 2018 LTL policy, the petitioner was compelled to export the bauxite at a higher rate than those promised under 2004 agreement but subsequently when the State sought to renege on its promise upon issuing the demands *vide* letters dated 12.05.2023, 04.10.2025 and 06.11.2025 by misinterpreting Rule 45 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 as amended from time to time. The petitioner laid the claim on the principles of promissory estoppel and sought for a direction to supply 150 million Tonnes of bauxite at a specified assured rate.

13.1. The facts succinctly jotted down as above and before we embark the journey on such peripheral aspects, it would be apposite to trace the legal history of the doctrine of promissory estoppel and its successive development to integrate within the Indian Legal System. The Supreme Court of India in late 1960's made serious endeavour to trace the legal origin of the promissory estoppel in *Union of India and another Vs. Indo-Afghan Agencies Ltd.,* reported in *1967 SCC OnLine SC 12 = AIR 1968 SC 718*. The said case pertains to an Export Promotion Scheme published on October 10, 1962, by the Textile Commissioner to provide incentives to the exporters of the woollen goods, which was subsequently extended by a trade notice dated 1st January, 1963, for exports of woollen goods to Afghanisthan. The respondent therein exported the woollen goods of a substantial f.o.b. value. However, the import entitlement certificate was restricted to a lesser value to which the respondent therein raised an objection and ultimately filed a writ petition in the High Court for a direction that the import entitlement certificate must be of the same value of the export and, therefore, the restriction to a lesser value is contrary to such scheme or the promise which is made to such exporters. The Supreme Court traces the historical origin of the doctrine of promissory estoppel from the judgment rendered in *Municipal Corporation of the City of Bombay Vs. Secretary of State for India in*

Council reported in *1904 SCC OnLine Bom 73 = ILR (1905) 29 Bom 580* where Jenkins, C.J. observed as under:

"The doctrine involved in this phase of the case is often treated as one of estoppel, but I doubt whether this is a correct, though it may be a convenient name to apply.

It differs essentially from the doctrine embodied in Section 115 of the Evidence Act, which is not a rule of equity, but is a rule of evidence that was formulated and applied in Courts of law; while the doctrine, with which I am now dealing, takes its origin from the jurisdiction assumed by courts of equity to intervene in the case of, or to prevent fraud."

The Bench, therefore, proceeded to hold that the Government is not relieved of its liability to act upon the representation on an undefined and undisclosed ground of necessity or expediency in the following:

"24. Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen. We agree with the High Court that the impugned order passed by the Textile Commissioner and confirmed by the Central Government imposing cut in the import entitlement by the respondents should be set aside and

quashed and that the Textile Commissioner and the Joint Chief Controller of Imports and Exports be directed to issue to the respondents import certificates for the total amount equal to 100% of the f.o.b. value of the goods exported by them, unless there is some decision which fails within clause 10 of the Scheme in question."

13.2. Though not in express terms, the doctrine of promissory estoppel was considered in a subsequent decision rendered in *Century Spinning and Manufacturing Company Limited and another Vs. The Ulhasnagar Municipal Council and another* reported in *(1970) 1 SCC 582*, wherein it was observed that the doctrine of representation coupled with the promise would apply not only against the private individuals but also against the Government, if on the basis of such representation or promise, the other persons have altered their position to their prejudice. It further proceeds on the premise that even if there is no formal execution of an agreement or contract, it does not absolve the Government to act upon its representation in the following:

"11. Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contracts by a person who acts upon the promise: when the law requires that a contract

enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may if the contract be not in that form be enforced against it in appropriate cases in equity. In Union of India Vs. Indo-Afghan Agencies Ltd., (1968) 2 SCR 366 this Court held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in Robertson Vs. Minister of Pensions, (1949) 1 KB 227 applied in India:

'The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action.'

We are in this case not concerned to deal with the question whether Denning, L.J., was right in extending the rule to a different class of cases as in Falmouth Boat Construction Co. Ltd. Vs. Howell, (1950) 1 All ER 538 where he observed at p. 542:

'Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it.'

It may be sufficient to observe that in appeal from that judgment (Howell Vs. Falmouth Boat Construction Co. Ltd.) Lord Simonds observed after referring to the observations of Denning, L.J.:

'The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however high or low in the hierarchy.

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The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No.' "

13.3. However, in *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others,* reported in *(1979) 2 SCC 409*, the origin has been succinctly narrated. Its applicability and nuance of the doctrine of promissory estoppel has been discussed by recapitulating the trace of doctrine of promissory estoppel in 1880 from a judgment rendered in *Hughes Vs. Metropolitan Railway Co.* reported in *(1877) 2 AC 439* by the House of Lords but remained in suspended animation until resuscitated in *Central London Property Trust Limited Vs. High Trees House Limited reported in 1956 (1) All ER 256* by Lord Denning. It was observed that the aforesaid two decisions may seem to restrict its applicability to the cases where the parties have entered into a contract and

either of the parties induced the other to believe that the strict right under the contract would not be enforced. However, in a subsequent decision, the width and amplitude of such restriction was doubted in *Dunham Fancy Goods Ltd. Vs. Michael Jackson (Fancy Goods) Ltd.*, reported in *1968 (2) All ER 987*. For a considerable period of time, there was a growing tendency on the applicability of the promissory estoppel doctrine and its enforceability as a shield not as a sword but the Supreme Court in the above report held that the Indian Law does not restrict a limited applicability as a shield but it can also be used as a sword in the following:

> *"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 estoppel been adopted in its fullness but it has been recognized 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 estoppel has also been applied against the Government and the defence based on executive necessity has been categorically negatived. It is remarkable that as far back as 1880, long before the doctrine of promissory estoppel was formulated by Denning, J., in England, a Division Bench of two English Judges in the Calcutta High Court applied the doctrine of promissory estoppel and recognised a cause of action founded upon it in the Ganges Manufacturing Co. Vs. Sourujmull, (1880) ILR 5 Cal 669 = 5 CLR*

533. The doctrine of promissory estoppel was also applied against the Government in a case subsequently decided by the Bombay High Court in Municipal Corporation of Bombay Vs. Secretary of State, (1905) ILR 29 Bom 580 = 7 Bom LR 27.

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24. *This Court finally, after referring to the decision in the Ganges Manufacturing Co. Vs. Sourujmull, Municipal Corporation of the City of Bombay Vs. Secretary of State for India and Collector of Bombay Vs. Municipal Corporation of the City of Bombay summed up the position as follows:*

'Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the Judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen.'

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 promisee 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 exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual so far as the obligation of the law is concerned : the former is equally bound as the latter. 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"? Why should the Government not be held to a high "standard of rectangular rectitude while dealing with its citizens"? There was a time when the doctrine of executive necessity was regarded as sufficient justification for the Government to repudiate even its contractual obligations; but, let it be said to the eternal glory of this Court, this doctrine was emphatically negatived in the Indo-Afghan Agencies case and the supremacy of the rule of law was established. 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. If the Government does not want its freedom of executive action to be hampered or restricted, the Government need not make a promise knowing or intending that it would be acted on by the promisee and the promisee would alter his

position relying upon it. But if the Government makes such a promise and the promisee acts in reliance upon it and alters his position, there is no reason why the Government should not be compelled to make good such promise like any other private individual. The law cannot acquire legitimacy and gain social acceptance unless it accords with the moral values of the society and the constant endeavour of the Courts and the legislature, must, therefore, be to close the gap between law and morality and bring about as near an approximation between the two as possible. The doctrine of promissory estoppel is a significant judicial contribution in that direction. But it is necessary to point out that since the docrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have transpired, it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favour of the promisee and enforce the promise against the Government. The doctrine of promissory estoppel would be displaced in such a case because, on the facts, equity would not require that the Government should be held bound by the promise made by it. When the Government is able to show that in view of the facts as have transpired since the making of the promise, public interest would be prejudiced if the Government were required to carry out the promise, the Court would have to balance the public interest in the Government carrying out a promise made to a citizen which has induced the citizen to act upon it and alter his position and the public interest likely to suffer if the promise were required to be carried out

by the Government and determine which way the equity lies. It would not be enough for the Government just to say that public interest requires that the Government should not be compelled to carry out the promise or that the public interest would suffer if the Government were required to honour it. The Government cannot, as Shah, J., pointed out in the Indo-Afghan Agencies case, claim to be exempt from the liability to carry out the promise "on some indefinite and undisclosed ground of necessity or expediency", nor can the Government claim to be the sole Judge of its liability and repudiate it "on an ex parte appraisement of the circumstances". If the Government wants to resist the liability, it will have to disclose to the Court what are the facts and circumstances on account of which the Government claims to be exempt from the liability and it would be for the Court to decide whether those facts and circumstances are such as to render it inequitable to enforce the liability against the Government. Mere claim of change of policy would not be sufficient to exonerate the Government from the liability : the Government would have to show what precisely is the changed policy and also its reason and justification so that the Court can judge for itself which way the public interest lies and what the equity of the case demands. It is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. The Court would not act on the mere ipse dixit of the Government, for it is the Court which has to decide

and not the Government whether the Government should be held exempt from liability. This is the essence of the rule of law. The burden would be upon the Government to show that the public interest in the Government acting otherwise than in accordance with the promise is so overwhelming that it would be inequitable to hold the Government bound by the promise and the Court would insist on a highly rigorous standard of proof in the discharge of this burden. But even where there is no such overriding public interest, it may still be competent to the Government to resile from the promise "on giving reasonable notice, which need not be a formal notice, giving the promisee a reasonable opportunity of resuming his position" provided of course it is possible for the promisee to restore status quo ante. If, however, the promisee cannot resume his position, the promise would become final and irrevocable. Vide Emmanuel Avodeji Ajaye Vs. Briscoe, (1964) 3 All ER 556."

It was held that though the Government owes its duty to act on its promise, yet it does not absolve in acting on the precincts of law in the following:

*"27. *** Even the truncated passage quoted by the Court recognised in the last sentence that though, as a general rule, the doctrine of promissory estoppel would not be applied against the State in its governmental, public or sovereign capacity, the Court would unhesitatingly allow the doctrine to be invoked in cases where it is necessary in order "to prevent fraud or manifest injustice". This passage leaves no doubt that the doctrine of promissory*

estoppel may be applied against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. It is difficult to imagine that the Court citing this passage with approval could have possibly intended to lay down that in no case can the doctrine of promissory estoppel be invoked against the Government. Lastly, a proper reading of the observation of the Court clearly shows that what the Court intended to say was that where the Government owes a duty to the public to act differently, promissory estoppel cannot be invoked to prevent the Government from doing so. This proposition is unexceptionable, because where the Government owes a duty to the public to act in a particular manner, and here obviously duty means a course of conduct enjoined by law, the doctrine of promissory estoppel cannot be invoked for preventing the Government from acting in discharge of its duty under the law. This doctrine of promissory estoppel cannot be applied in teeth of an obligation or liability imposed by law."

13.4. In *Union of India and others Vs. Godfrey Philips India Ltd.,* reported in *(1985) 4 SCC 369*, a three Judge Bench of the Supreme Court reiterated the principles that if such provisions are countered to the statutory provisions, the Government cannot promise something which is forbidden in law. In the above aspect, the Supreme Court has held as under:

"13. Of course we must make it clear, and that is also laid down in Motilal Sugar Mills case, (1979) 2 SCC

409 = (1979) 2 SCR 641 that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or, power of the officer of the Government or of the public authority to make. We may also point out that the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires; if it can be shown by the Government or public authority that having regard to the facts as they have transpired, it would be inequitable to hold the Government or public authority to the promise or representation made by it, the Court would not raise an equity in favour of the person to whom the promise or representation is made and enforce the promise or representation against the Government or public authority. The doctrine of promissory estoppel would be displaced in such a case, because on the facts, equity would not require that the Government or public authority should be held bound by the promise or representation made by it. This aspect has been dealt with fully in Motilal Sugar Mills case, (1979) 2 SCC 409 = (1979) 2 SCR 641 and we find ourselves wholly in agreement with what has been said in that decision on this point."

13.5. However, in case of *Hero Moto Corp Limited Vs. Union of India and others* reported in *(2023) 1 SCC 386*, the

Supreme Court after taking note of the earlier judgments rendered on the concept of promissory estoppel unequivocally held that there cannot be any estoppel against the legislature in exercise of the legislative functions and the only exception which is carved out to prevent a fraud or manifest injustice in the following:

"67. The judgment of this Court in Jit Ram Shiv Kumar Vs. State of Haryana, (1981) 1 SCC 11 again fell for consideration before a three-Judge Bench of this Court in Union of India Vs. Godfrey Philips India Ltd., (1985) 4 SCC 369, which is again authored by Bhagwati, J. In Union of India Vs. Godfrey Philips India Ltd., (1985) 4 SCC 369, the judgment of the learned three-Judge Bench delivered through Bhagwati, J. holds that what has been held by the learned two Judges in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P., (1979) 2 SCC 409 has been correctly held so and endorses the said judgment. The said judgment also criticises the view taken in Jit Ram Shiv Kumar Vs. State of Haryana, (1981) 1 SCC 11. Within a short period, the issue again comes up for consideration before another three-Judge Bench in Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133. A.P. Sen, J. speaking for the three-Judge Bench notes the conflict between the view taken by Bhagwati, J. in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P., (1979) 2 SCC 409 and Kailasam, J. in Jit Ram Shiv Kumar Vs. State of Haryana, (1981) 1 SCC 11. It appears that since the judgment was delivered within a fortnight from the date on which Union of India Vs. Godfrey Philips India Ltd., (1985) 4 SCC

369 was decided, this Court in Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133 did not notice the judgment in Union of India Vs. Godfrey Philips India Ltd., (1985) 4 SCC 369. However, A.P. Sen, J. in Express Newspapers (P) Ltd. Vs. Union of India, (1986) 1 SCC 133 held that it was not necessary for the purposes of the said judgment to resolve the conflict between the decision of Bhagwati, J. in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P., (1979) 2 SCC 409 and Kailasam, J. in Jit Ram Shiv Kumar Vs. State of Haryana, (1981) 1 SCC 11. It held that one of the limitations on the principle of estoppel is that it does not operate at the level of Government policy.

68. *However, a common thread in all these judgments that could be noticed is that all these judgments consistently hold that there can be no estoppel against the legislature in the exercise of its legislative functions. The Constitution Bench in M. Ramanatha Pillai Vs. State of Kerala, (1973) 2 SCC 650 has approved the view in American Jurisprudence that the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. It further held that the only exception with regard to applicability of the doctrine of estoppel is where it is necessary to prevent fraud or manifest injustice. The analysis of all the judgments of this Court on the issue would reveal that it is a consistent view of this Court, reiterated again in Union of India Vs. Godfrey Philips India Ltd., (1985) 4 SCC 369, that there can be no promissory estoppel against the legislature in the exercise of its legislative functions."*

13.6. It would be pertinent to refer a Division Bench judgment of Delhi High Court rendered in connection with the petitioner, *viz., Union of India Vs. Vedanta Limited* reported in *AIR Online 2021 Del 603*. The Delhi High Court in lucid terms held that the moment the promissory estoppel is projected as an instrument of attack against the utilization of the natural resources, the same cannot be propelled before the Court of law. In connection with the above, it is held as under:

> *"71. The learned Solicitor General had also contended that indirectly and subtly the prayers of the petitioners in the writ petition were based upon principles of promissory estoppel and legitimate expectation, and were misconceived as in Government contracts, wherein overwhelming public interest is involved, concerning the utilization of natural resources held in public trust, the said doctrines, viz, promissory estoppels and legitimate expectations cannot be invoked. We are in complete agreement with the contentions raised by the learned Solicitor General, especially when the decision of Union of India for the extension of the period of PSC on the condition of 10% higher Government share in Profit Petroleum is by way of Policy Decision, uniformly applicable to all PSCs in the Country and has its genesis in public interest and Constitutional mandate.*
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> ***
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> *74. For the reasons mentioned above by us, which we are not repeating, the judgment in GNCTD Vs.*

Bhushan Kumar (supra) is also of no avail to the petitioners. In the said case, the Government of NCTD had invited the applications through industrial units situated in non-conforming areas, for allotment of plots for relocation in terms of a scheme formulated by it and a certain area of the plot was offered and applied for by the respondents therein. Subsequently, however, there was a dispute with regard to the measurement of the plots in question. The Government supported its action of downsizing the plot by alleging that there was scarcity of land and also that the decision was in consonance with a policy decision approved by the Cabinet. In these facts, the Hon'ble Supreme Court considered the issue involved as to whether the binding contract could be modified, novated or cancelled, once it stood concluded and the parties were bound and governed by its terms and conditions. It was held that a policy by itself is not law which has the effect of thrusting new terms and conditions upon a contracting party. We repeat and reiterate that the appellants herein are not imposing a condition which has the effect of novation of a contract as the parties had willingly incorporated a term in the PSC that the extension beyond the current term would be on mutually agreed terms. Despite strenuous arguments, learned Senior Counsel for the petitioners has been unable to show any provision in the PSC binding the contracting parties thereto into extension of the duration of the PSC, on the same terms and conditions of the share of Profit Petroleum, as existed on 15th May, 1995."

13.7. In *Manuelsons Hotels Private Limited Vrs. State of Kerala, (2016) 3 SCR 718*, it has been observed as follows:

"21. In fact, we must never forget that the doctrine of promissory estoppel is a doctrine whose foundation is that an unconscionable departure by one party from the subject matter of an assumption which may be of fact or law, present or future, and which has been adopted by the other party as the basis of some course of conduct, act or omission, should not be allowed to pass muster. And the relief to be given in cases involving the doctrine of promissory estoppels contains a degree of flexibility which would ultimately render justice to the aggrieved party. The entire basis of this doctrine has been well put in a judgment of the Australian High Court reported in The Commonwealth of Australia Vrs. Verwayen, 170 C.L.R. 394, by Deane, J. in the following words:

1. While the ordinary operation of estoppel by conduct is between parties to litigation, it is a doctrine of substantive law the factual ingredients of which fall to be pleaded and resolved like other factual issues in a case. The persons who may be bound by or who may take the benefit of such an estoppel extend beyond the immediate parties to it, to their privies, whether by blood, by estate or by contract. That being so, an estoppel by conduct can be the origin of primary rights of property and of contract.

2. The central principle of the doctrine is that the law will not permit an unconscionable— or more accurately, unconscientious— departure by one party from the subject matter of an assumption which has been adopted by the

other party as the basis of some relationship, course of conduct, act or omission which would operate to that other party's detriment if the assumption be not adhered to for the purposes of the litigation.

3. *Since an estoppel will not arise unless the party claiming the benefit of it has adopted the assumption as the basis of action or inaction and thereby placed himself in a position of significant disadvantage if departure from the assumption be permitted, the resolution of an issue of estoppel by conduct will involve an examination of the relevant belief, actions and position of that party.*

4. *The question whether such a departure would be unconscionable relates to the conduct of the allegedly estopped party in all the circumstances. That party must have played such a part in the adoption of, or persistence in, the assumption that he would be guilty of unjust and oppressive conduct if he were now to depart from it. The cases indicate four main, but not exhaustive, categories in which an affirmative answer to that question may be justified, namely, where that party:*

   (a) has induced the assumption by express or implied representation;

   (b) has entered into contractual or other material relations with the other party on the conventional basis of the assumption;

(c) has exercised against the other party rights which would exist only if the assumption were correct;

(d) knew that the other party laboured under the assumption and refrained from correcting him when it was his duty in conscience to do so.

Ultimately, however, the question whether departure from the assumption would be unconscionable must be resolved not by reference to some preconceived formula framed to serve as a universal yardstick but by reference to all the circumstances of the case, including the reasonableness of the conduct of the other party in acting upon the assumption and the nature and extent of the detriment which he would sustain by acting upon the assumption if departure from the assumed state of affairs were permitted. In cases falling within category (a), a critical consideration will commonly be that the allegedly estopped party knew or intended or clearly ought to have known that the other party would be induced by his conduct to adopt, and act on the basis of, the assumption. Particularly in cases falling within category (b), actual belief in the correctness of the fact or state of affairs assumed may not be necessary. Obviously, the facts of a particular case may be such that it falls within more than one of the above categories.

5. The assumption may be of fact or law, present or future. That is to say it may be about the

present or future existence of a fact or state of affairs (including the state of the law or the existence of a legal right, interest or relationship or the content of future conduct).

6. *The doctrine should be seen as a unified one which operates consistently in both law and equity. In that regard, "equitable estoppels" should not be seen as a separate or distinct doctrine which operates only in equity or as restricted to certain defined categories (e.g. acquiescence, encouragement, promissory estoppel or proprietary estoppel).*

7. *Estoppel by conduct does not of itself constitute an independent cause of action. The assumed fact or state of affairs (which one·party is estopped from denying) may be relied upon defensively or it may be used aggressively as the factual foundation of an action arising under ordinary principles with the entitlement to ultimate relief being determined on the basis of the existence of that fact or state of affairs. In some cases, the estoppel may operate to fashion an assumed state of affairs which will found relief (under ordinary principles) which gives effect to the assumption itself (e.g. where the defendant in an action for a declaration of trust is estopped from denying the existence of the trust).*

8. *The recognition of estoppel by conduct as a doctrine operating consistently in law and equity and the prevalence of equity in a Judicature Act system combine to give the whole doctrine a degree of flexibi1ity which it*

might lack if it were an exclusively common law doctrine. In particular, the prima facie entitlement to relief based upon the assumed state of affairs will be qualified in a case where such relief would exceed what could be justified by the requirements of good conscience and would be unjust to the estopped party. In such a case, relief framed on the basis of the assumed state of affairs represents the outer limits within which the relief appropriate to do justice between the parties should be framed.'

22. *The above statement, based on various earlier English authorities correctly encapsulates the law of promissory estoppel with one difference— under our law, as has been seen hereinabove, promissory estoppel can be the basis of an independent cause of action in which detriment does not need to be proved. It is enough that a party has acted upon the representation made. The importance of the Australian case is only to reiterate two fundamental concepts relating to the doctrine of promissory estoppels— one, that the central principle of the doctrine is that the law will not permit an unconscionable departure by one party from the subject matter of an assumption which has been adopted by the other party as the basis of a course of conduct which would affect the other party if the assumption be not adhered to. The assumption may be of fact or law, present or future. And two, that the relief that may be given on the facts of a given case is flexible enough to remedy injustice wherever it is found. And this would include the relief of acting on the basis that a future assumption either as to fact*

or law will be deemed to have taken place so as to afford relief to the wronged party."

13.8. In *Rupesh R. Gaonkar Vrs. State of Goa, (2026) 8 SCR 431* it has been succinctly held as follows:

> *"23. We are conscious of the well-settled position that* ***the doctrine of promissory estoppel cannot be invoked to compel the State to act in violation of a statute or of the constitutional discipline****, and that even the celebrated enunciation of the doctrine in M/s. Motilal Padampat Sugar Mills Co. Ltd. Vrs. State of U.P., (1979) 2 SCR 641 cannot be pressed so far as to override an express statutory or constitutional bar. To that extent, we are unable to accept the submission that promissory estoppel, in its strict contractual sense, can by itself found a claim for regularisation contrary to Articles 14 and 16."*

13.9. The cumulative effect of the authoritative judgments rendered on the doctrine of promissory estoppel leaves no ambiguity that it is a valid doctrine recognized in legal parlance and its applicability cannot be restricted to the private individuals but transgress its boundaries to the Government or a public authority. Though as a sound principle of law, it can be used as a sword and may constitute an integral part of the cause of action, yet it has an exception attached to it. The basic feature of the promissory estoppel is founded upon the conduct of the party, who was induced to alter his position to its prejudice but equally it would not apply to a given

situation aiming at preventing a fraud and/or misrepresentation. The doctrine loses its applicability when the promise is contrary to the statutory provisions or on an overwhelming interest of larger public. It would not be applicable in relation to utilization of the natural resources which is wealth and/or asset of the nation and the Government acts as its custodian.

13.10. Based on such broader principles enunciated in the above decisions, let us examine whether the facts involved in the instant case projecting the conduct of the parties in relation to a transactions *vis-a-vis* the statutory provisions relatable to a pricing of the natural resources, the plea of promissory estoppel has any leg to stand upon.

14. By way of written note of submission, the petitioner clearly admitted the fact that in 2018, it agreed to receive bauxite under the LTL Policy of 2018. However, it sought to revive its rights under the initial assurance being made by way of MoUs and Agreements prior to amendment to the MMDR Act in the year 2015 specifying modality for determination of average sale price under Rule 45 of the MC Rules, as substituted by Notification No. G.S.R. 674(E), dated 20.9.2019, which stands as follows:

"Formula for calculating average sale price for metallurgical grade Bauxite to be used in alumina and aluminium extraction, Limestone, Tungsten.—

(1) The State Government shall arrive at the average sale price of metallurgical Bauxite in the following manner:

Average Sale Price = 52.90% X Percentage of Al_2O_3 in bauxite on dry basis X Average aluminium price in Indian rupees for the month as published by IBM X Conversion factor[6] as notified by the Central Government."

14.1. The inconsistent stand taken by the petitioner that it has been representing the Government of Odisha for resurrection of the Joint Venture Company with the OMC so as to get the supply of bauxite at the old price. For basically two reasons the claim of the petitioner cannot be countenanced, *viz.,* by participating in the later process as laid down the amended provisions, it has acquiesced by its own conduct; this is particularly so when the JVC came to be terminated being decided in presence of representative of Sterlite/Vedanta and the OMC (Annexure-107). Validity of such termination in the year 2015 was never questioned, which attained finality.

14.2. In this respect, regard may be had to *Jaya Chandra Mohapatra Vrs. Land Acquisition Officer, (2004) Supp.6 SCR 235,* wherein it has been stated thus:

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6 Conversion factor = 6.40% *vide* GSR No.675(E), dated 20.09.2019.

*"**Furthermore, in this case the aforementioned order dated 08.10.1996 has attained finality by reason whereof the original decree stood amended.** The Executing Court in view of the decision in Bai Shankriben (Dead) by Natwar Melsingh and Ors. Vrs. Special Land Acquisition Officer and Anr., (1996) 4 SCC 533, itself could not have gone behind the decree. The Executing Court, thus, proceeded to pass the impugned judgment on a wrong premise. The Executing Court keeping in view its limited jurisdiction could not have gone into the question as to whether the Reference Court was correct in passing the order dated 08.10.1996 amending the decree or not. The Executing Court did not have any jurisdiction to go into the said question. A decree passed by a competent court oflaw can be suitably amended. **A decree, so amended on an application filed by the claimant for review thereof, becomes final. If the State was aggrieved by and dissatisfied therewith, it could have taken the matter by filing an appropriate application before the High Court.** But keeping in view of the fact that the said order was allowed to attain finality, the court could not have permitted the State to reagitate the said question before the Executing Court by filing an application under Section 4 7 of the Code of Civil Procedure or otherwise. **In a case of this nature, the principle of estoppel by records shall come into play**."*

14.3. The answering opposite parties have clearly asserted that the original MoU dated 07.06.2003 stood superseded upon execution of the subsequent MoU dated 04.04.2007 and by lapse of period of two years, said MoU dated 04.04.2007 itself got non-existent as no

extension thereof was ever granted by the State Government. By virtue of the amendment to the MMDR Act, 1957, with effect from 12.01.2015, in view of Section 17-A(2-B) of the MMDR Act due to non-fulfilment of obligations by the petitioner, the JVC dated 05.10.2004 and 18.02.2009 were lawfully terminated by OMC on 29/30.09.2015 after providing due opportunity to the petitioner and its representatives. The said termination remained unassailed by the petitioner at any point of time and has, thus, attained finality. After long lapse of time the petitioner cannot seek revival or indirect enforcement of agreements/MoUs.

14.4. The Letter bearing No.12634/OMC/Project/2015, dated 29/30.09.2015 of the OMC without any ambiguous terms with the participation of representatives of M/s. Sterlite Industries (India) Ltd./Vedanta Aluminium Ltd. in express words spelt out that "the J.V. Agreement stands terminated". Though representations were being pursued thereafter nothing tangible occurred to reverse such position. The same remained final in absence of any prayer to show indulgence in such termination of Joint Venture Agreement, this Court desists itself to exercise power under Articles 226 and 227 of the Constitution of India.

14.5. In terms of provisions of Section 17-A of the Mines and Minerals (Development and Regulation) Act, 1957 read

with Rule 45 of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, the modality for computation of Average Sale Price the opposite parties are justified in raising the demand.

15. In the wake of the above, while dismissing the writ petition having found no merit, the interim orders passed in the matter stand vacated. The opposite parties are at liberty to take follow up action in accordance with law. In view of disposal of the writ petition, pending interlocutory application(s), if any, shall stand disposed of.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

Signature Not Verified
Digitally Signed
Signed by: ASWINI KUMAR SETHY
Designation: Personal Assistant (Secretary in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 01-Oct-2026 12:21:13