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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22nd December, 2025
Pronounced on: 6th January, 2026

\+ W.P.(C) 14738/2025, CM APPL. 60479-80/2025 & 77491/2025

VEDANTA LIMITED .....Petitioner

Through: Mr. Mukul Rohatgi, Senior Advocate with Ms. Anuradha Dutt, Mr. Anish Kapur, Ms. Nikhita K. Suri, Ms. Suman Yadav, Mr. Gurudas Khurana, Mr. Raghav Dutt and Mr. Keshav Sehgal, Advocates.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ashish K. Dixit, CGSC with MR. Umar Hashmi, Mr. Shivam Tiwari, Ms. Iqra Sheikh and Ms. Urmila Sharma, Advocates for R-1.
Mr. R. Venkataramani, AGI with Mr. Nakul Sachdeva, Mr. Sagar Arora, Mr. Shreyansh Rathi, Ms. Shrinkhla Tiwari, Mr. Abhinandan Sharma, Mr. Kartikay Aggarwal and Ms. Yamika Khanna, Advocates for R-2.
Mr. Ajoy Roy, Ms. Avlokita Rajni, Mr. Lakshya Khanna and Ms. Shradha Sriram, Advocates for R-3.
Mr. Chetan Sharma, ASG with Mr. Abhishek Gupta, Mr. Shaswat Kumar Pandey, Mr. Dhananjay Singh, Mr. Amit Sharma and Mr. Kumar

Kartikeya, Advocates for R-4/ONGC.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Articles 226 and 227 of the Constitution of India, 1950, has been filed seeking the following prayers: -

> "a) Issue a writ of Certiorari, in the nature of Certiorari or any other writ order or direction quashing the Rejection Letter dated 19.09.2025 of Respondent No.1 rejecting the Application dated 28.06.2021 and all consequent actions/directions of the Respondent No. 1 & 2 including the Direction dated 19.09.2025 (not in the possession of the petitioner) to Respondent No. 4 to take over the assets and Petroleum Operations of the Block;
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> b) Issue a Writ of mandamus or in the nature of Mandamus and/or any other appropriate writ, order or direction to Respondent Nos. 1 and 2 to issue written confirmation of extension of the Production Sharing Contract dated 30.06.1998 in relation to the Contract Area identified as CB/OS-2 for a further term of ten (10) years from 30.06.2023 to 29.06.2033 as also the approval for extension of the of Petroleum Mining Lease till 29.06.2033; and
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> c) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

BACKGROUND

2. Brief facts necessary for the disposal of the present petition, as stated by the petitioner, are as under: -

i) On 30.06.1998, a Product Sharing Contract (for short, '**PSC**') was entered between the Government of India (Respondent No.1), Oil and Natural Gas Corporation Ltd. (Respondent No.4; for short, 'ONGC'), Invenire Petrodyne Ltd., which was earlier known as 'Tata Petrodyne Limited.', *i.e.,* Respondent No.3 herein, and Cairn Energy India Pty. Ltd. which is a Division of the Petitioner herein with respect to contract area of approximately 3534 sq. Kms. located offshore in Suvali, Gujarat, with an objective to exploit the petroleum resources in accordance with good international petroleum industry practices.

ii) The term of the PSC, as per Article 2.1 which provided for duration, was for a period of 25 years. All the parties in the PSC were contractors and the Petitioner herein, as per Article 3, was the designated operator under PSC with initial 45% Participating Interest (PI) in the block and was performing operating functions required on behalf of the contracting parties. The PI of the respondent No.3, Invenire Petrodyne Ltd. (earlier known as 'Tata Petrodyne'), and respondent No.4/ONGC, was 45% and 10% respectively. The PI of the parties concerned has changed over the tenure of PSC and now the petitioner (operator) has 40% PI, Invenire Petrodyne Limited has 10% and respondent No.4/ONGC has 50% PI in the PSC.

iii) In 2017, respondent No.1 approved and enacted a policy for the grant of extension of the PSCs signed by Govt. of India awarding Pre-New Exploration Licensing Policy (Pre-NELP) Exploration Blocks to have a transparent and defined framework for granting extension *vide* Notification dated 07.04.2017 published in Extraordinary Part I, Section 1 of the Gazette of India.

iv) As per the policy for the grant of Extension to the PSCs regarding exploration blocks the submission, consideration, and approval of request for extension of Contract was provided under Clause (1). The Clause (1) of the extension policy reads as under: -

> "**1. Submission, Consideration and Approval of request for extension of Contract:** The Contractor should submit the application duly approved by the Operating Committee for extension of Contract to Ministry of Petroleum & Natural Gas (MoPNG) at least 2 years in advance of the expiry date of Contract, but not more than 6 years in advance, with a copy to Directorate General of Hydrocarbons (DGH). DGH will make a recommendation to MoPNG within 6 months of submission of application by the contractor. The Government will take a decision on the request for extension within 3 months of receipt of the proposal from DGH."

v) While the PSC was subsisting and in terms of the aforesaid extension policy, the Petitioner applied for extension of PSC in its favour *vide* application on 28.06.2021. The term of PSC expired on 29.06.2023. Respondent No.1 *vide* letter dated 05.07.2023 granted an interim extension of 3 months to the petitioner for continuing with the petroleum operations in

respect of CB-OS/2 block *w.e.f.* 30.06.2023 by addressing the following letter to the contracting parties: -

> **"Subject:** Continuing Petroleum Operations in respect of CB-OS/2 Block w.e.f. 30.06.2023.
>
> Sir,
>
> I am directed to refer to letter dated 28.06.2021 and 19.06.2023 of the Contractors of the Production Sharing Contract (PSC) dated 30.06.1998 of CB-OS/2 Block requesting for extension of the term of PSC under the PSC Extension Policy for Pre- NELP blocks dated 07.04.2017 for a period of 10 years beyond the existing PSC period.
>
> 2. Pending the decision on your application for extension of PSC of the subject Block and other operational issues, the Contractor is hereby permitted in the public interest, to continue petroleum operations in CB-OS/2 Block till the execution of the Addendum to PSC or for three (3) months from 30.06.2023, whichever is earlier, subject to the following conditions:
>
> a) This shall be purely interim measure of facilitation to continue petroleum operations pending the decision on Contract extension and signing of Addendum to PSC, and shall not be construed as government giving effect to the extension of the PSC.
>
> b) During this period the provisions of the PSC, as modified by the Policy for the Grant of Extension to the Production Sharing Contracts signed by Government of India awarding Pre-New Exploration Licensing Policy (PreNELP) Exploration Blocks (Extension Policy dated 07.04.2017) shall govern all petroleum operations and the financial rights and obligations of the parties namely, the Government of India and the Contractor.
>
> c) The Government shall bear no liability, whatsoever on this account, in the event of Contract is not extended beyond 29.06.2023.
>
> d) The Effective Date of the Addendum of PSC, if executed, towards extension of the PSC, shall be on and from 30.06.2023 as per the Extension Policy dated 07.04.2017 of Government of

India.

3. This has approval of the competent authority."

vi) The aforesaid interim extension was extended in favour of the petitioner on 17.10.2023, 30.01.2024, 29.04.2024, and lastly, on 27.06.2024. Thereafter, respondent No.2/DHG directed the petitioner to halt all drilling related activities/services in the subject oil block as there was no valid PSC or interim approval post 29.09.2024 and on 19.12.2024, respondent No.2 directed the petitioner to halt/drop all plans relating to drilling activities immediately in absence of valid PSC extension and Petroleum Mining License (PML) in the block and that, in view of the same, the petitioner is not authorized to perform petroleum operations in the block.

vii) *Vide* letter dated 30.01.2025, the petitioner informed respondent No.2/DGH that it has deferred the operational activities in pursuance of the aforesaid directions received from the latter. Subsequently, *vide* letter/rejection order dated 19.09.2025 issued by respondent No.1, the application for extension of PSC of Block CB-OS/2 filed on behalf of the petitioner on 28.06.2021 under the extension policy dated 07.04.2017 was rejected and following directions were issued to the petitioner/operating contractor: -

> "2. In view of the above, the Government has decided that the application for extension of the PSC filed by the Contractor shall not be accepted. Accordingly, the contractor is hereby directed to:
>
> a. cease and desist from carrying out any further petroleum operations;
> b. immediately handover over custody and possession of the

block (including all government assets) to ONGC;
c. ensure that all petroleum operations can be continued by ONGC without obstruction or hindrance and render all necessary assistance to ONGC to complete the takeover of assets and operations on as is where is basis; and
d. vacate the premises immediately upon receipt of this communication.

3. Further, it is hereby directed to take the following actions immediately upon receipt of this letter:

a. clear assets relating to the block of all unauthorized charges created.
b . pay all pending contractual and statutory payments due to the Government together with the applicable interest.
c. make outstanding payments to the Site Restoration Fund."

viii) Pursuant to the aforesaid rejection order, ONGC/R-4 issued a letter dated 20.09.2025 to the petitioner informing them that pursuant to the aforesaid directions, an ONGC team has commenced the process of taking over operations of the block and to ensure a smooth, amicable, and uninterrupted transition, their cooperation is required and they are requested to depute their authorized representatives at site to facilitate in completion of the handover and takeover formalities including preparation of documentation as may be necessary in pursuance of the aforesaid directions.

ix) Thus, the present petition has been filed seeking quashing of impugned rejection letter/order dated 19.09.2025 issued by respondent No.1 including the directions to respondent No.4/ONGC to take over the assets and petroleum operations in the block in terms of said order. Further, direction has been sought by way of the present petition to respondent Nos.1 and 2 to issue written confirmation of extension of PSC dated 30.06.1998 in relation to the

Contract Area, CB/OS-2, for a further term of 10 years from 30.06.2023 to 29.06.2033 as also the approval for extension of PML till 29.06.2033.

x) The arbitration clause as envisaged in Article 33 of the PSC was not invoked by the petitioner as the tenure of 25 years of the PSC had expired on 29.06.2023 and even the interim extensions granted to the petitioner has been discontinued from 29.09.2024 and the said PSC is no longer subsisting. Hence, the present petition has been filed assailing the impugned rejection order.

SUBMISSIONS ON BEHALF OF THE PETITIONER/OPERATING CONTRACTOR

3. Following submissions have been made by learned Senior Counsel appearing on behalf of the petitioner in support of the present petition: -

i) Learned Senior Counsel appearing on behalf of the petitioner/operating contractor has submitted that the latter and respondents had been in contractual relationship for sharing of the petroleum excavated from the subject contract area (CB/OS-2 block) by virtue of the aforesaid PSC for last more than 27 years inclusive of the 2 years of interim extensions which were granted by respondent No.1 after the expiry of the PSC on 29.06.2023. It is submitted that even after the expiry of PSC, the petitioner was granted 5 interim extensions on 05.07.2023, 17.10.2023, 30.01.2024, 29.04.2024, 27.06.2024, and no objection or claim, whatsoever, with respect to the outstanding dues or non-payment of royalty was ever raised by respondent

No.1. It is the case of the petitioner that the impugned rejection order has been passed by respondent No.1 in complete disregard of various Clauses of its own extension policy which was enacted for grant of extension to the PSC signed by Government of India for awarding pre-NELP exploration blocks. It is submitted that as per Clause (1) of the said policy, the application for extension was to be made to Ministry of Petroleum & Natural Gas (MoPNG) at least 2 years in advance of the expiry date of contract with a copy to respondent No.2/DGH and the latter was to make recommendation to MoPNG within 6 months of submission of application by the contractor and the Government will to make decision on the request for extension within 3 months of receipt of the proposal from DGH. Learned Senior Counsel has submitted that this timeline for consideration of extension application has not been adhered to at all by respondent No.1 in the present case as the application for extension was submitted by the petitioner on 28.06.2021*, i.e.,* 2 years in advance of the expiry date of PSC, and thereafter, within 9 months, decision was to be taken on the said application. However, in the present case, respondent No.1, while acting arbitrarily, had rejected the extension application of the petitioner *vide* the impugned rejection order dated 19.09.2025.

ii) Learned Senior Counsel for the petitioner has further submitted that, while the PSC was subsisting and even during the interim extensions after 29.06.2023, respondent No.1 never took any objection nor complained about the performance or non-performance its contractual obligations. There was never any issue of lack of performance of the petitioner as contractual operator. He has further submitted that respondent No.1 has passed the

impugned rejection order on the basis of wholly irrelevant and extraneous considerations. It is pointed out that the conditions for consideration and prerequisites for evaluation of application for grant of extension of PSC and criteria for evaluation of request as provided under Clauses 3 & 4, respectively, of the extension policy has not been taken into consideration by respondent No.1, at all, while passing the impugned rejection order.

iii) Learned Senior Counsel has raised three contentions in support of the case of the petitioner. Firstly, that the said order has been sought to be assailed on the ground of the legitimate expectation as no due consideration has been given to the fact of past performance of the petitioner under PSC from 1998 to 2023 and the five interim extensions given to the petitioner. Secondly, the arbitrariness in the decision taken by respondent No.1 as the same is based on the material which was never brought to the notice of the petitioner, and the manner in which the petitioner has been sought to be ousted from the contract area by directing it to hand over the onshore as well as offshore operations undertaken under the PSC at the subject area to respondent No.4/ONGC on "as is where is basis". Thirdly, it is the case of the petitioner that no opportunity of hearing was provided by respondent Nos.1 and 2 with respect to the alleged dues/outstanding amount and grounds mentioned in the impugned letter. It is therefore, submitted that this overall conduct of respondent Nos.1 and 2 in arbitrarily rejecting the extension application of the petitioner can be reviewed under Article 226 of the Constitution of India. Reliance has been placed on **Sivanandan C.T. & Ors.**

v. High Court of Karnataka & Ors.[1]**,** to contend that in view of the past relationship between the parties for 27 years including 2 years of interim extensions, as well as the parameters for evaluation of the application of extension under Extension Policy of 2017, the petitioner has legitimate expectation that it's application for extension would have been allowed. Reliance has been placed on following paragraphs of **Sivanandan C.T. (*supra*)**: -

> "45. The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.
>
> 46. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. [Union of India v. Hindustan Development Corpn., (1993) 3 SCC 499; Bannari Amman Sugars Ltd. v. CTO, (2005) 1 SCC 625; Monnet Ispat & Energy Ltd. v. Union of India, (2012) 11 SCC 1; Union of India v. P.K. Choudhary, (2016) 4 SCC 236 : (2016) 1 SCC (L&S) 640; State of Jharkhand v. Brahmputra Metallics Ltd., (2023) 10 SCC 634.] It is

[1] **(2024) 3 SCC 799**

> merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14."

iv) He has further submitted that as per first ground of rejection, the petitioner though in terms of Article 2.1 of the PSC does not has any entitlement to the grant of extension, however, the rejection of application for extension in terms of extension policy has to be on relevant considerations otherwise the same would suffer from the vice of arbitrariness. It is further submitted that all the compliances and eligibility conditions, in terms of the extension policy, have to be evaluated as on the date when the application for extension was made by the petitioner. It has also been pointed out that respondent No.1, *vide* the impugned order, has taken the ground of outstanding statutory or other dues to it in terms of Clause 3.2 (g) of the Policy, however, there were no such dues or short payment of royalty as well as the profit petroleum payable by the petitioner to respondent No.1. In this regard, the case of the petitioner is that amount mentioned in the impugned letter*, i.e.,* payment of profit petroleum due to recovery of excess drilling cost and Geostatistical inversion study amounting to USD 14.54 Million and deduction of SAED (Special Additional Excise Duty) unilaterally from Govt.'s share of profit petroleum amounting to USD 10.13 Million for Q2 of FY 2022-23 to Q2 of FY 2024-25 and dues for settlement of past audit exceptions and approval of accounts by Management Committee to the tune

of USD 1.54 Million upto 2020-21, have been arbitrarily considered as ground of rejection by respondent No.1 as the same were never raised while the PSC was subsisting nor during the period while the interim extensions were granted to the petitioner till 29.09.2024. It is also the case of the petitioner that PSC in Article 33 provides for Arbitration and Article 30 of PSC provides for Termination of Contract. Attention of this Court has been drawn towards Article 30.2 of PSC which provided for "Circumstances in which Government May Terminate" wherein, it has been mentioned that the PSC can be terminated by the Government upon giving 90 days written notice of its intention to do so. Further attention has been drawn towards the following clauses of Article 30.2 of PSC: -

> "30.2 Circumstances in which Government May Terminate
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> **** **** ****
>
> (d) has -assigned any interest in the Contract without the prior consent of the Government as provided in Article 28; or
>
> **(e) fails to make any monetary payment required by law with respect to Petroleum Operations (but not otherwise) or under this Contract by the due date or within such further period after the due date as may be specified in this Contract, the Operating Agreement or Law; or**
>
> **(f) fails to comply with or . contravenes the provisions of this Contract in a material particular; or**
>
> **** **** ****"

Learned Senior Counsel has further submitted that if there was any default on behalf of the petitioner in clearing the dues as has been mentioned

in para (ii) of the impugned letter then, the respondent No.1 could have taken recourse to the following covenant of the PSC: -

> "30.4 Remedy of Default
> If the circumstance or circumstances that give rise to the right of termination under _Article 30.2 (e) or (f) or Article 30. 3 are remedied (whether by the Defaulting Company or by another Party or Parties on its behalf) within the ninety (90) day period or such extended period as may be granted by the Government, following the notice of the Government's intention to terminate the Contract as aforesaid, such termination shall not become effective."

In view of the aforesaid clause of PSC, it is the submission of learned Senior Counsel for the petitioner that the respondent No.1 had not raised any claim with respect to any of the dues as mentioned in the impugned letter, as noted hereinbefore and thus, the same cannot be a ground of rejection of the application of extension of PSC filed by the petitioner and the impugned letter has been passed arbitrarily on the basis of wholly extraneous and irrelevant considerations. It is further submitted that after the application seeking extension was filed by the petitioner in 2021, there was no discussion with respect to the dues mentioned in the impugned rejection letter and the same were brought to its notice in 2025 itself.

v) Further, learned Senior Counsel has submitted that if respondent No.1 was not inclined to provide extension of the PSC to the petitioner, then, why 5 interim extensions were granted to the petitioner. It is further submitted that direction of respondent No.1 to the petitioner to hand over custody and possession of the block to ONGC and cease and desist from carrying out any further petroleum operations is not possible as the petroleum operations are

continuing and the same cannot be turned off immediately. It is not possible to shut down the operations immediately and close the offshore as well as onshore activities. Learned Senior Counsel has handed up a compilation of documents wherein; photographs of the subject oilfield have been annexed. It is contended that the subject site is in the middle of the ocean and the iron pillars have been rigged into the ocean bed and the same cannot be removed instantly as has been directed by respondent No.1 *vide* the impugned rejection letter/order. It is thus, the case of the petitioner that the subject site does come within the purview of Public Premises Act, 1971, as well and the respondent No.1 ought to have file a suit for eviction of the petitioner under the provisions of Transfer of Property Act, 1882, in accordance with law. Reliance has been placed on following observations of Hon'ble Supreme Court in **Express Newspapers (P) Ltd. v. Union of India**[2] : -

> "**85.** For the sake of completeness, I wish to clear the ground of a possible misconception. Learned counsel appearing for Respondent 1 the Union of India while contending that the impugned notice dated March 10, 1980 was of an exploratory nature, fairly conceded that the lessor i.e. the Union of India must enforce its right of re-entry upon forfeiture of lease under clause 5 of the lease-deed by recourse to due process of law and wanted to assure us that there was no question of marching the army or making use of the demolition squad of the Delhi Development Authority or the Municipal Corporation of Delhi in demolishing the Express Buildings. As we felt that there was some ambiguity in the expression "due process of law", we wanted a categorical answer whether by this he meant by a properly constituted suit. Without meaning any disrespect, the learned counsel adopted an ambivalent attitude saying that the due process may not only consist in the filing of a suit by the lessor or re-entry upon forfeiture of the lease but that in the case of lease of Government lands, the authorities may also take recourse to the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. I have no doubt in my mind that the learned counsel is not right in

[2] **(1986) 1 SCC 133**

suggesting that the lessor i.e. the Union of India, Ministry of Works & Housing can in the facts and circumstances of the case, take recourse to the summary procedure under that Act. The Express Newspapers Pvt. Ltd. having acted upon the grant of permission by the lessor i.e. the Union of India, Ministry of Works & Housing to construct the new Express Building with an increased FAR of 360 together with a double basement was clearly not an unauthorised occupant within the meaning of Section 2(*g*) of the Act which runs as under:

> "2 (*g*) 'unauthorised occupation', in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer), under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever."

86. The Express Buildings constructed by Express Newspapers Pvt. Ltd. with the sanction of the lessor i.e. the Union of India, Ministry of Works and Housing on plots Nos. 9 and 10, Bahadurshah Zafar Marg demised on perpetual lease by registered lease-deed dated March 17, 1958 can, by no process of reasoning, be regarded as public premises belonging to the Central Government under Section 2(*e*). That being so, there is no question of the lessor applying for eviction of the Express Newspapers Pvt. Ltd. under Section 5(1) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 nor has the Estate Officer any authority or jurisdiction to direct their eviction under sub-section (2) thereof by summary process. Due process of law in a case like the present necessarily implies the filing of suit by the lessor i.e. the Union of India, Ministry of Works & Housing for the enforcement of the alleged right of re-entry, if any, upon forfeiture of lease due to breach of the terms of the lease."

vi) Reliance has also been placed by learned Senior Counsel for the petitioner on Section 4 of the Oil Fields (Regulation and Development) Act, 1948, and it is submitted that the present case is of lease and not 'license' and the petitioner is a lessee, and therefore, cannot be removed from the subject oil block site without following the due process of law. It is submitted that the

subject oil field is a leasehold site and on account of the infrastructure build at the subject site onshore or offshore, it is an 'immovable property' falling within the meaning of Transfer of Property Act, 1882, as well as General Clauses Act, 1897, and thus, the petitioner cannot be ousted from the subject oil block in the manner directed by respondent No.1. Attention of this Court has been drawn towards the definitions of "immovable property", "attached to the earth" under Transfer of Property Act, 1882, and definition of "immovable property" under General Clauses Act, 1897.

vii) During the course of arguments on 25.09.2025, learned Senior Counsel for the petitioner, has submitted that the liability to pay the aforesaid amount is not entirely of the petitioner and the same has to be paid by all the contracting parties in correspondence to their participating interest as per PSC and the petitioner is ready and willing to pay its share of the aforesaid amount, under protest as the same has also been done earlier on 12.09.2025, subject to respondent No.1 providing extension of the PSC to the petitioner for a period of 10 years as has been sought in the prayers clause of the present petition. In view thereof, it is submitted that the present petition be allowed and the reliefs sought in the present petition be granted to the petitioner.

viii) Reliance has been placed by learned Senior Counsel in support of the case of the petitioner on the following judgments: -

a) On **S.L. Kapoor v. Jagmohan & Ors.**[3]**,** to contend that the Court may issue writ to press observance of natural justice, if the situation demands of natural justice to be met or otherwise, the very object of the provision would be frustrated. It is further contended that the non-observance of natural justice is itself prejudicial to any person, and proof of prejudice independently of proof of denial of natural justice is unnecessary. Reliance has been placed on the following paragraphs of the aforesaid judgment: -

> "**11.** Another submission of the learned Attorney-General was that Section 238(1) also contemplated emergent situations where swift action might be necessary to avert disaster and that in such situations if the demands of natural justice were to be met, the very object of the provision would be frustrated. It is difficult to visualise the sudden and calamitous situations gloomily foreboded by the learned Attorney-General where there would not be enough breathing time to observe natural justice, at least in a rudimentary way. A municipal committee under the Punjab Municipal Act is a public body consisting of both officials and non-officials and one cannot imagine anything momentous being done in a matter of minutes and seconds. And, natural justice may always be tailored to the situation. Minimal natural justice, the barest notice and the "littlest" opportunity, in the shortest time, may serve. The authority acting under Section 238(1) is the master of its own procedure. There need be no oral hearing. It is not necessary to put every detail of the case to the committee: broad grounds sufficient to indicate the substance of the allegations may be given. We do not think that even minimal natural justice is excluded when alleged grave situations arise under Section 238. If indeed such grave situations arise, the public interest can be sufficiently protected by appropriate prohibitory and mandatory action under the other relevant provisions of the statute in Sections 232 to 235 of the Act. We guard ourselves against being understood as laying down any proposition of universal application. Other statutes providing for speedy action to meet emergent situations may well be construed as excluding the principle audi alteram partem. All that we say is that Section 238(1) of the Punjab Municipal Act does not.

[3] **(1980) 4 SCC 379**

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16. Thus on a consideration of the entire material placed before us we do not have any doubt that the New Delhi Municipal Committee was never put on notice of any action proposed to be taken under Section 238 of the Punjab Municipal Act and no opportunity was given to the Municipal Committee to explain any fact or circumstance on the basis that action was proposed. If there was any correspondence between the New Delhi Municipal Committee and any other authority about the subject-matter of any of the allegations, if information was given and gathered it was for entirely different purposes. In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity" that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. We disagree with the finding of the High Court that the Committee had the opportunity to meet the allegations contained in the order of supersession.

24. ….

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In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree with the

contrary view taken by the Delhi High Court in the judgment under appeal.

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26. In the light of the discussion we have no option but to hold that the Order dated February 27, 1980, of the Lt. Governor superseding the New Delhi Municipal Committee is vitiated by the failure to observe the principle audi alteram partem. The question is what relief should be given to the appellant? The term of the Committee is due to expire on October 3, 1980 which means that just a few days more are left for the term to run out. If now the order is quashed and the Committee is directed to be reinstated with liberty to the Lt. Governor to proceed according to law — this should be our order ordinarily — it may lead to confusion and even chaos in the affairs of the municipality. Shri Sorabjee, learned Counsel for the appellant, had relieved us of our anxiety by stating:

"In view of the fact that the term expires on October 3, 1980, and as the appellant is anxious to have the stigma cast on him by the notification removed, the appellant does not press either for reinstatement in office or for striking down the notification so long as there is a just determination of the invalidity of the notification.""

In view of the aforesaid, it is submitted that the petitioner ought to have been provided an opportunity to explain or clear the outstanding dues as mentioned in the impugned rejection order as the same were put to it only for the first time in 2025.

b) In **Kumari Shrilekha Vidyarthi & Ors. v. State of UP & Ors.**[4]**,** reliance has been placed on following paragraphs: -

"**33.** No doubt, it is true, as indicated by us earlier, that there is a presumption of validity of the State action and the burden is on the person who alleges violation of Article 14 to prove the assertion.

[4] **(1991) 1 SCC 212**

However, where no plausible reason or principle is indicated nor is it discernible and the impugned State action, therefore, appears to be ex facie arbitrary, the initial burden to prove the arbitrariness is discharged shifting onus on the State to justify its action as fair and reasonable. If the State is unable to produce material to justify its action as fair and reasonable, the burden on the person alleging arbitrariness must be held to be discharged. The scope of judicial review is limited as indicated in Dwarkadas Marfatia case [(1989) 3 SCC 293] to oversee the State action for the purpose of satisfying that it is not vitiated by the vice of arbitrariness and no more. The wisdom of the policy or the lack of it or the desirability of a better alternative is not within the permissible scope of judicial review in such cases. It is not for the courts to recast the policy or to substitute it with another which is considered to be more appropriate, once the attack on the ground of arbitrariness is successfully repelled by showing that the act which was done, was fair and reasonable in the facts and circumstances of the case. As indicated by Diplock, L.J., in Council of Civil Service Unions v. Minister for the Civil Service [(1984) 3 All ER 935] the power of judicial review is limited to the grounds of illegality, irrationality and procedural impropriety. In the case of arbitrariness, the defect of irrationality is obvious.

34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case.

35. It is now too well settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the

system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua non to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

c) Reliance has been placed on **Allied Motors Ltd. v. Bharat Petroleum Corporation Ltd.[5],** to contend that the State while dealing with public cannot act arbitrarily and its action must be in conformity with principles of reasonableness and relevance. Reliance has been placed on following portion of the aforesaid judgment: -

"**56.** Reliance has also been placed on Gujarat State Financial Corpn. v. Lotus Hotels (P) Ltd. [(1983) 3 SCC 379] In this case the Court held that the public corporation dealing with the public cannot act arbitrarily and its action must be in conformity with some principles which meets the test of reason and relevance.

[5] **(2012) 2 SCC 1**

57. We have heard the learned counsel for the parties at length and have perused the decisions relied on by the parties.

58. In the instant case, samples were taken on 15-5-2000. On the very next day i.e. on 16-5-2000, without even giving a show-cause notice and/or giving an opportunity of hearing, the respondent Corporation terminated the dealership of the appellant. The appellant had been operating the petrol pump for the respondent for the last 30 years and was given 10 awards declaring its dealership as the best petrol pump in the entire State of NCT of Delhi. During this period, on a number of occasions, samples were tested by the respondent and were found to be as per specifications.

59. In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation on non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice. Samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent Corporation.

60. On consideration of the totality of the facts and circumstances of this case, it becomes imperative in the interest of justice to quash and set aside the termination order of the dealership. We, accordingly, quash the same. Consequently, we direct the respondent Corporation to hand over the possession of the petrol pump and restore the dealership of petrol pump to the appellant within three months from the date of this judgment."

d) Reliance has been placed on **M.P. Power Management Company Limited v. Sky Power South East Solar India Private Limited & Ors.**[6]**,** to contend that an order or decision would be arbitrary if the same is not based on any principle or it shows caprice or it has been passed without any reasonable rational and if there is total non-application of mind with respect to

[6] **(2023) 2 SCC 703**

rights of parties and public interest. Reliance has been placed on following portion of the aforesaid judgment: -

> "**67.**ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] marks a milestone, as it were, in the matter of the superior court interfering in contractual matters where the State is a player even after the contract is entered into. A petition was filed under Article 226 wherein the respondent which was incorporated under the Companies Act repudiated an insurance claim made by the appellant writ petitioner. This Court undertook an elaborate discussion of the earlier case law. We find that this Court dealt with several obstacles which were sought to be posed by the respondent. They included disputed questions of facts being involved, availability of alternate remedy, and the case involving entertaining a money claim. This Court went on to hold as follows : (SCC p. 572, para 27)
>
> > "27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:
> >
> > (a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.
> >
> > (b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.
> >
> > (c) A writ petition involving a consequential relief of monetary claim is also maintainable."
>
> **68.** No doubt, we must also notice para 28 of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] which serves as an admonition against considering the availability of the remedy under Article 226 as an absolute charter to invoke jurisdiction in all cases : (ABL case [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , SCC p. 572, para 28)
>
> > "28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the

> Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1] .) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction."
>
> (emphasis supplied)

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81. We have already concluded that PPA is not a statutory contract. However, that would not be the end of enquiry. Dr A.M. Singhvi, learned Senior Counsel, would point out that the contract, not being a statutory contract, assumes relevance only for the purpose of deciding as to whether the Court should relegate the writ applicant, to alternate remedies. In other words, while the Court would retain its discretion to entertain the petition or decline to do so, in the facts of each case, there is no absolute taboo against the Court granting relief, even if the challenge to the termination of a contract is made in the case of a contract, which is not statutory in nature, when the offending party is the State. In other words, the contention is that the law in this field has witnessed an evolution and, what is more, a revolution of sorts and a transformatory change with a growing realisation of the true ambit of Article 14 of the Constitution of India. The State, he points out, cannot play the Dr Jekyll and Hyde game anymore. Its nature is cast in stone. Its character is inflexible. This is irrespective of the activity it indulges in. It will continue to be haunted by the mandate of Article 14 to act fairly. There has been a stunning expansion of the frontiers of the Court's jurisdiction to strike at State action in matters arising out of contract, based, undoubtedly, on the facts of each case. It remains open to the Court to refuse to reject a case, involving State action, on the basis that the action is, per se, arbitrary.

82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457] , may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847] .

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489]). This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] .

82.5. After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.

82.6. Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] explaining how it distinguished the decision of this Court in State of U.P. v. Bridge & Roof Co. (India) Ltd. [State of U.P. v. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22] , by its observations in SCC para 14 in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]].

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

82.10. The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking

Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] . It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi v. State of U.P. [Shrilekha Vidyarthi v. State of U.P., (1991) 1 SCC 212 : 1991 SCC (L&S) 742]). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

82.13. A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate forum.

82.14. Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.

82.15. Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847]).”

SUBMISSIONS ON BEHALF OF RESPONDENT NO.2/DHG

4. Learned Attorney General for India, while refuting the submissions made by learned Senior Counsel on behalf of the petitioner, has made the following submissions: -

i) At the very outset, learned Attorney General for India, has raised an issue with respect to the maintainability of the present petition under Article 226 of the Constitution on the ground that by way of the present petition, the petitioner is trying to invoke writ jurisdiction for seeking direction for extension of PSC for a further term of 10 years. He submitted that the petitioner does not have any vested legal right or Constitutional right for further extension of contract. It is submitted that writ petition cannot be maintainable in cases which are strictly contractual in nature and wherein, no statutory obligation is casted on the Government for extension of a contract especially in favour of a particular person/entity. He further submitted that the origin of PSC in the oil and gas sector is traceable to Article 297 of the Constitution of India under which Union Government is the custodian of natural resources vested in the people of nation and thus, judicial review of contractual interpretation in such matters is necessarily circumscribed and must be exercised with due regard to public interest and sovereign control over natural resources.

ii) It is submitted that in 2017, Government of India, has enacted a Policy for Grant of Extension to the Production Sharing Contract (PSCs) signed by it for awarding Pre-New Exploration Licensing Policy (Pre-NELP) Exploration

Blocks, by which procedure and criteria on which application for extension of an already existing PSC were to be assessed was provided. It is further submitted that said Policy provided for Fisal Parameters for Extension, Prerequisites for Evaluation, Criteria for Evaluation, on the basis of which any such application for extension is to be considered and in the present case, the application of the petitioner for extension was not found satisfactory in terms of the said policy. Even as per this policy, no right for extension of PSC was vested in the petitioner, who is merely a contractor, and therefore, no question of providing exclusive right of hearing to the petitioner arise. It is the case of respondent No.2/DGH that, in fact, the petitioner was granted various opportunity of being heard and thus, respondent No.2 had complied with the principles of natural justice while passing the impugned rejection order. Attention of this Court has been drawn towards the letters forming part of correspondences between the petitioner and respondent No.2 from 2021 onwards. Learned AGI has further submitted that the petitioner has not approached this Court with clean hands and has suppressed material facts and various communications forming part of correspondences amongst the parties concerned have not been placed on record by the petitioner to enable this Court for proper adjudication of the matter. He has further submitted that the subject oil premises/site belong to respondent No.4/ONGC as the same has been vested with right of lessee and therefore, no obligation as such has been casted, either statutory or otherwise, on the respondent No.2/DGH to take recourse under Public Premises Act, 1971, for eviction of petitioner from subject site.

iii) Learned AGI has further submitted that as per the Extension Policy, Clause 3 provides for Prerequisites for Evaluation, Clause 4 provides for Criteria for Evaluation of Request and Clause 5 provides that in the event of failure to comply with any of the conditions, mentioned in clauses 3 and 4, Government shall have the option to invite fresh bids for further development of the area and to award the field to the most competitive bid and while doing so, Government would also take into account pending arbitration while considering extension requests. He further submitted that the natural resources of this country belong to people of India and the Government is merely a custodian and no one has a vested right to continue with the prolonged excavation of said resources and claim extension of PSC in its favour as a matter of right. Reliance has been placed on following observations of Hon'ble Supreme Court in **Natural Resources Ltd. v. Reliance Industries Ltd.**[7] **: -**

> "**122.** From the above analysis, the following are the broad sustainable conclusions which can be derived from the position of the Union:
>
> (*1*) The natural resources are vested with the Government as a matter of trust in the name of the people of India. Thus, it is the solemn duty of the State to protect the national interest.
>
> (*2*) Even though exploration, extraction and exploitation of natural resources are within the domain of governmental function, the Government has decided to privatise some of its functions. For this reason, the constitutional restrictions on the Government would equally apply to the private players in this process. Natural resources must always be used in the interests of the country, and not private interests.

[7] **(2010) 7 SCC 1**

(*3*) The broader constitutional principles, the statutory scheme as well as the proper interpretation of the PSC mandates the Government to determine the price of the gas before it is supplied by the contractor.

(*4*) The policy of the Government, including the gas utilisation policy and the decision of EGOM would be applicable to the pricing in the present case.

(*5*) The Government cannot be divested of its supervisory powers to regulate the supply and distribution of gas.

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Summary of our conclusions

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E. Role of the Government

128. In a constitutional democracy like ours, the national assets belong to the people. The Government holds such natural resources in trust. Legally, therefore, the Government owns such assets for the purposes of developing them in the interests of the people. In the present case, the Government owns the gas till it reaches its ultimate consumer. A mechanism is provided under the PSC between the Government and the contractor (RIL, in the present case). The PSC shall override any other contractual obligation between the contractor and any other party.

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231. The principal themes in Production Sharing Contracts would appear to be that the sovereignty over the petroleum produced continues to be with the nation, and the contractor bears varying levels of and forms of risk with respect to exploration activities and what is allowed to be recovered as costs (called contract costs) and to what extent in each year (called cost petroleum). According to Daniel Johnston, who was cited by learned Solicitor General Gopal Subramanium:

> "*Contractual arrangements are divided into service contracts and production contracts*. The difference between them *depends on whether or not the contractor receives compensation in cash or in kind (crude)*. This is a rather modest distinction and, *as a result, systems on both branches are commonly referred to as PSCs* or sometimes production sharing agreements (PSAs)."
>
> (emphasis supplied)

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240. Within the context of international law, there has emerged a body of thought under the broad rubric of human rights, that the people as the true owners of natural wealth and resources, ought to exercise a "permanent sovereignty" i.e. the power to make laws, over such resources to ensure national development and well-being of the people. The responsible use of such natural resources for the well-being of the people of a nation has been seen as an important aspect of maintenance of international peace and a part of their right to "self-determination" [*See* UN General Assembly Resolutions 523 (vi) of January 1952, 626 (vii) of December 1952, 1314 (xiii) of December 1958, 1515 (xv) of December 1960—all specifically referred in Resolution 1803 on Permanent Sovereignty.] . Further, these rights of the people as nations have been secured by many struggles for self-determination over millennia. Those rights encompass the freedom of self-determination through a democratic order within the boundaries of the nation-State and the imperative of such self-determination in inter-se and yet interdependent zones of coexistence between nation-States.

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250. We hold that with respect to the natural resources extracted and exploited from the geographic zones specified in Article 297 the Union may not:

(*1*) transfer title of those resources after their extraction unless the Union receives just and proper compensation for the same;

(*2*) allow a situation to develop wherein the various users in different sectors could potentially be deprived of access to such resources;

(*3*) allow the extraction of such resources without a clear policy statement of conservation, which takes into account total domestic availability, the requisite balancing of current needs with those of future generations, and also India's security requirements;

(*4*) allow the extraction and distribution without periodic evaluation of the current distribution and making an assessment of how greater equity can be achieved, as between sectors and also between regions;

(*5*) allow a contractor or any other agency to extract and distribute the resources without the explicit permission of the Union of India, which permission can be granted only pursuant to a rationally framed utilisation policy; and

(*6*) no end user may be given any guarantee for continued access and of use beyond a period to be specified by the Government.

Any contract including a PSC which does not take into its ambit stated principles may itself become vulnerable and fall foul of Article 14 of the Constitution.

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253. As discussed earlier, it is clear that a wide variety of instruments have come to be called Production Sharing Contracts and there is no specific concordance between that title and what is actually shared pursuant to a PSC. In light of that discussion and the general acceptance that revenues are also shared in the context of Production Sharing Contracts, the insistence of RNRL that only production i.e. physical volume of gas can be shared under any Production Sharing Contract may have to be held to be unsustainable.

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255. Article 1.28 of the PSC defines "cost petroleum" to mean "the *portion of total value of the crude oil, condensate and natural gas* produced and saved from the contract area which the contractor is entitled to take in a particular period, for the *recovery of contract costs* as provided in Article 15". Article 1.77 of the PSC defines "profit

petroleum" to mean "the *total value of crude oil, condensate and natural gas* produced and saved from the contract area in a particular period, *as reduced by cost petroleum* and calculated as provided in Article 16". Reading Articles 2.2, 8, 15 and 16 of the PSC together, it would have to be concluded that under this PSC the contractor is only entitled to cost petroleum and share of profit petroleum in terms of realised value from sale of petroleum i.e. natural gas in this case, and not to a share in physical quantities of petroleum.

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317. However wide the powers of the courts may be, they cannot be so wide as to order supply of gas in contravention of government policies, the constitutional obligations that the GoI must bear in mind when formulating such policies and in contravention of broader public interest. The Division Bench erred by holding that certain quantum of natural gas stood allocated to RNRL. The error is on account of both a misinterpretation of the PSC and also public law. Apart from that, both the learned Single Judge and the Division Bench below have erroneously held that the MoU's gas supply section be read into the scheme thereby effectively substituting the phrase "suitable arrangements" in Clause 19 to mean the gas supply provisions of the MoU. We hold that those conclusions were erroneous. We disagree with the propositions of learned counsel for RNRL that the ratio in *S.K. Gupta* [(1979) 3 SCC 54] would support such a result."

In view of the aforesaid, it is contended that no transfer of title had ever taken place in favour of the petitioner and the Government receives only just and fair compensation by letting out the excavation of natural resources while working on the principle of sustainable development and making an endeavour to preserve the natural resources for future generations.

iv) Learned AGI while addressing the argument of petitioner being 'lessee' under PSC has drawn attention of this Court towards the following recitals/covenants mentioned at the very outset of PSC dated 30.06.1998: -

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(1) By virtue of Article 297 of the Constitution of India, Petroleum in its natural state in the Territorial Waters and the Continental Shelf of India is vested in the Union of India;

(2) The Oil Fields (Regulation and Development) Act, 1948 (53 of 1948) and the Petroleum and Natural Gas Rules, 1959, made thereunder make provision inter alia for the regulation of Petroleum Operations and the grant of licences and leases for exploration and development of Petroleum in India;

(3) The Rules provide for the grant of petroleum exploration licences and mining leases in respect of the Territorial Waters and the Continental Shelf by the Government. ONGC has been duly granted a letter of authority to carry out Exploration Operations in association with other companies in that area offshore identified as Block CB/OS-2 and more particularly described in Appendix A;

(4) The Government is satisfied that it is in the public interest to enter into this Contract on terms different from those specified in the Rules and therefore pursuant to Section 12 of the Oil Fields Regulations and Development Act, the Government is entering into this Contract on the terms and conditions as herein specified.

(5) The Government desires that the Petroleum resources which may exist in the Contract Area be exploited with the utmost expedition in the overall interest of India in accordance with good international petroleum industry practices;

(6) The Territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976 (No. 80 of 1976) provides for the grant of a license or letter of authority by the Government to explore and exploit the resources of the Continental Shelf and CNGC has been duly authorised to carry out Petroleum Operations in the said area referred to in paragraph (3) above within the Continental Shelf with liberty, on prior approval of the Central Government, to associate with other companies for this purpose;

(7) The Companies have represented that they have the necessary financial and technical resources and the technical and industrial competence and experience necessary for proper discharge and/or performance of all obligations required to be performed under this Contract in accordance with good international petroleum industry

practices and each Company will provide a guarantee as required in Article 29 for the due performance of its undertakings hereunder;

(8) As a result of discussions between representatives of the Government, ONGC and the Companies, the Government and ONGC have agreed to enter into this Contract with the Companies with respect to the said area referred to in paragraph (3) above on the terms and conditions herein set forth.

v) Further, learned AGI has drawn attention of this Court towards the following definitions enumerated in 'Article 1: Definitions' of the PSC: -

"1.22 "Contract' Area" means, on the Effective Date, the area described in Appendix :A and delineated on the map attached as Appendix B, or any portion of the said area remaining after ,relinquishment or surrender from time to time pursuant to the terms of this Contract.

1.23 "Contract Costs" means costs incurred by the Contractor in accordance • with the provisions of this Contract in connection with Petroleum Operations including Exploration Costs, Development Costs and Production Costs.

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1.31 "Development Costs" means· those costs and expenditures incurred in carrying out· Development Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of this Contract.

1.32 "Development Operations" means operations conducted in accordance with the Development Plan and shall include the purchase, shipment or storage of equipment and materials used in developing Petroleum accumulations, the drilling, completion and testing of Development Wells, the drilling and completion of Wells for gas or water injection, the laying of gathering lines, the installation of offshore platforms and installations, the installation of separators, tankage, pumps, artificial lift and other producing and injection facilities required to produce, process and transport Petroleum into main oil storage or gas processing facilities, either on shore or offshore, including the laying of

pipelines within or outside the Contract Area, storage and Delivery Point or Points, the installation of said storage or gas processing facilities, the installation of export and loading facilities and other facilities required for the development and production of the said Petroleum accumulations and for the delivery of Crude Oil and/or Gas at the Delivery. Point and also including incidental operations not specifically referred to herein as required for the most efficient and. economic development and production of the said Petroleum accumulations in accordance with good international petroleum industry practices.

**** **** ****

1.41 "Exploration Costs" means those costs and expenditures incurred in carrying out Exploration Operations, as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of this Contract.

**** **** ****

1.70 “Production Costs" means those costs and expenditures incurred in carrying out· Production Operations as classified and defined in Section 2 of the Accounting Procedure and allowed to be recovered in terms of this Contract.”

In view of the aforesaid definitions, it is submitted that the contract costs (1.23) is inclusive of development costs, exploration costs, and production costs and once the contract costs is recovered, there is no other right of the petitioner which subsists in the petroleum block or PSC.

vi) Attention of this Court has also been drawn towards the following definitions enumerated in ‘Article 1: Definitions’ of the PSC: -

“l.54 "Licence" means the petroleum exploration licence or letter of authority in respect of an area known as Block CB/OS-2, - issued under the Rules or the Territorial Waters, Continental Shelf, Exclusive

> Economic Zone and Other Maritime Zones Act, 1976 respectively, for the purpose of carrying out Petroleum Operations in the Contract Area.
>
> **** **** ****
>
> 1.65 “Participating Interest" means in respect of each Party constituting the Contractor, the undivided share expressed as a percentage, of such Party in the rights and obligations under the Contract including without limitation, the Party's rights and obligations in relation to a Development Area) and the Operating Agreement.”

It is, therefore, submitted that term ‘lease’ has not been defined in the PSC and the subject site/Petroleum block has been termed as ‘contract area’. The petitioner being a contractor only has ‘participating interest’ in the undivided share expressed as percentage under the Contract and the operating agreement.

vii) Learned AGI has drawn attention of this Court towards Article 2: Duration of the PSC and submitted that as per Article 2.1, the term of PSC was for a period of 25 years which ‘may be’ extended by the Government for a further period not exceeding 5 years and in event of commercial production of non-associated natural gas, the contract may be extended by the Government for a period up to and not exceeding 35 years. It has, thus, been argued that a discretion has been conferred to the Government in respect of extension of an existing PSC; however, there is no vested right to claim extension of PSC in favour of the particular entity. It is further submitted that the Government has decided the application of the petitioner seeking extension of PSC on the touchstones of the parameters laid out in the policy for grant of extension of PSC, as pointed out hereinabove, and this action has

been done by following the principles of natural justice, fairness, justness, and reasonableness. The relevant covenant(s) of 'Article 2: Duration' reads thus: -

"ARTICLE 2
DURATION

> 2.1 The term of this Contract shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated earlier in accordance with its terms, but may be extended by the Government for a further Period not exceeding five (5) years; provided that in the event of Commercial Production of Non Associated Natural Gas, the Contract may be extended by the Government for a period up to but not exceeding thirty five (35) years from the Effective Date."

In view of the aforesaid, it is submitted that this discretionary and permissive of term 'may be' is used keeping in mind the public trust doctrine, which is underlying premise of the contract emanating from Article 297 of the Constitution. It, thus, submitted that even broader interpretation of the extension policy as well as the terms of PSC does not provide an impression of any legitimate expectation on behalf of respondent No.2 to provide an extension of PSC as a matter of right. It has been further argued that the doctrine of Legitimate Expectation would not be applicable to the present category of cases as the Government is merely acting as a custodian of the natural resources and has to make best of them. Learned AGI further submitted that all the 10 blocks of petroleum excavation sites under the extension policy have to be dealt with fairly by respondent No.2.

viii) Attention of this Court has been drawn towards Articles 13, 13.8, 13.9, 14.1, 14.8, 14.7, 14.9, 27, 27.1, 27.4, 28.7 of the PSC and in view of these

covenants of the PSC, it is submitted by learned AGI that the same are based on Article 297 of the Constitution and public trust doctrine, and thus, there is no vested right in excavation contracts.

ix) During the course of proceedings in the present case on 04.12.2025, learned Senior Counsel for the petitioner has submitted that the latter has paid an amount of 7.34 million USD to respondent No.2 as its share of 40% PI as the same was a ground of rejection of the petitioner's application seeking extension. He further submitted that SAED as claimed by respondent No.2 has already been paid, and thus, if the non-payment of dues was a ground to reject the petitioner's application for extension, then, the same have been paid and now, respondent No.2 may consider to review their decision. Learned AGI has confirmed that they have received the money; however, the same will not be consideration for granting extension of PSC to the petitioner.

x) Learned AGI has drawn attention of this Court towards Clause 3.2 of the Extension Policy wherein it has been provided that the application of extension of contract should fulfil the certain conditions for consideration. It is further submitted that as per Clause 3.2(g), all statutory dues and payment to Government should have been cleared and the contractor should not be a defaulter to the Government on any account and as per Clause 4 which provides for criteria for evaluation of request for extension, the performance of the contractor should be satisfactory for the request of extension to be favourably considered. He further submitted that as per Clause 5 of the policy in the event of failure to comply with any of the conditions mentioned in Clauses 3 and 4, Government has the option to invite fresh bids for further

development of the area and to award the field to the most competitive bid. Further, as per Clause 9 of the policy, providing for other conditions, Government has right not to extend PSC without assigning any reason thereof and the conditions stipulated in the policy will override the existing provision of the PSC. The said relevant Clauses of the extension policy read as under: –

> **"3. Prerequisites for Evaluation:**
>
> **** **** ****
>
> 3.2 The application of extension of contract should fulfill the following conditions for consideration:
>
> **** **** ****
>
> g) All the statutory dues and payment due to Government should have been cleared and the contractor should not be a defaulter to the Government on any account.
>
> **4 Criteria for Evaluation of Request**:
>
> 4.1 The past performance of the. contractor should be satisfactory for the request of extension to be favourably considered. The past performance would be judged on the basis of following criteria:
>
> a) Contractor should have drilled at least 70% of the development wells of development plan approved by the Management Committee (MC) due for drilling as on date of application for last 10 years, or, must have achieved 70% of the committed production as on date with reference to the earlier approved FOP or approved Work Programme for the last 10 years.
>
> b) Contractor should have complied with the provisions of creation of Site Restoration Fund (SRF) and Site Restoration Plan (SRP) as per PSC. Wherever PSC does not provide for SRF and SRP, the Contractor should propose SRF and SRP as a part of extended Contract.

5. In the event of failure to comply with any of the above conditions, mentioned in clauses 3 and 4 above, Government shall have the option to invite fresh bids for further development of the area and to award the field to the most competitive bid. Government would also take into account pending arbitration while considering extension requests.

**** **** ****

9. Other conditions:

a) Government shall have the right to stipulate any further conditions specific to any particular Production Sharing Contract.
b) Government shall reserve the right not to extend PSC without assigning any reason thereof.
c) The condition stipulated in this policy will override the existing provision of the PSC.
d) In case any contractor is not agreeable to this policy then the field will be considered for rebidding, on as is where is basis. Government would also have the right to assign the same to National Oil Companies (NOCs) i.e. ONGC or OIL."

In view of the aforesaid provisions of extension policy, learned AGI has submitted that, the scheme of policy enacted by respondent No.1 emanates from Article 297 of the Constitution and is based on 'public trust doctrine' that all natural resources of this country vests in the people of India and the government is merely a custodian of the same. It is further submitted by learned AGI that this extension policy governs 10 Exploration Blocks details of which has been annexed along with the policy and therefore, the option to revisit its decision would be highly prejudicial and will include highly cumbersome procedure.

xi) Learned AGI has placed on record some communications/correspondences by way of an affidavit dated 08.12.2025 sent by respondent Nos.1 and 2, after the application for extension was made

by the petitioner whereby, petitioner who was put to notice with respect to its defaults, short payment of profit petroleum, applicable royalty and to make good of the same. Reliance has been placed on letter dated 21.09.2021, addressed to petitioner and ONGC/respondent No.4 wherein, the audit exceptions reported by the auditor, for which necessary compliance and corrective action was required on the part of operator/contractor, that is, petitioner, were notified and annexed with the said letter. It is further submitted that in the said letter, it was brought to notice of the petitioner that, since it has applied for extension of PSC and one of the conditions for extension of the same is that all statutory dues and payment due to the Government should have been cleared and the contractor should not be defaulter to the Government or any account, and in such condition, replies to the Audit Exceptions shall be provided and contractors account/consequential adjustments to the Government's share of Profit Petroleum shall be made at the earliest. It is pointed out that the petitioner despite being informed of making timely payment of Government's share of Profit Petroleum has not done so. The relevant portion of the said letter dated 21.09.2021 reads as under: -

> "Pursuant to the exercise of rights of Government Audit for the financial year 2018-19 in Article 25.5 of the CB/OS-2 PSC, the audit has been conducted by M/s Grant Thornton Bharat LLP. The Audit exceptions reported by the Auditor for which necessary compliance and corrective action required by the Operator/Contractor are notified herewith and placed at Annexure-I.
>
> The Contractor has submitted application for extension of PSC which Is due to expire on 30.06.2023. One of the conditions for extension of the PSC is that all the statutory dues and payment due

> to Government should have been cleared and the contractor should not be defaulter to the Government or any account.
>
> Accordingly, the replies to the Audit Exceptions shall be provided and agreed adjustments in the Contractors account/consequential adjustments to the Government's share of Profit Petroleum shall be made at the earliest. In any case, the action should not be delayed beyond the timelines prescribed in PSC.
>
> If the exceptions are not replied within the time limit prescribed in PSC, the exceptions shall prevail."

xii) Attention of this Court has been drawn towards the letter dated 22.03.2022, with respect to the short payment of profit petroleum and royalty dues to Government of India in respect of the subject oil field. In this letter, it has been recorded that the contractor/petitioner had submitted its response *vide* letter dated 14.01.2022, whereby, it did not agree to any of the audit exceptions except for Audit Exception No. 6 (Inadmissible cost recovery of local community charges). The relevant portion of the letter dated 22.03.2022 reads as under: –

> "1. This has reference to the above mentioned letter dt. 21.09.2021 on the subject matter wherein, the Contractor was requested to provide the replies to Audit Exceptions, make necessary adjustments in the accounts and remit Government of India (GoI) share of Profit Petroleum along with applicable interest. Contractor's in the response submitted by the Operator vide letter dt. 14.01.2022, did not agree to any of the Audit Exceptions except for Audit Exception No. 6 (Inadmissible Cost recovery of local community charges.)
>
> 2. It has been observed that the replies submitted are not in line with the provisions of PSC, Oil fields (Regulation and Development) Act 1948, PNG Rules 2003 and amendments therein and Contractor has short-paid Profit Petroleum share of GoI and Royalty dues. After review of the responses, as referred above, it is

observed that the Contractors have short-paid Profit Petroleum share of Govt of India on account of the following:

(a) Non-allocation of common expenditure in the Development Areas (Lakshmi, Gauri and Transition Zone) as required under PSC,

(b) Wrong cost recovery of expenses incurred beyond Delivery Point and

(c) Inadmissible Cost recovery of local community charges.

3. The Profit Petroleum share payable to Government has been recomputed after correct allocation of common expenditure between the Development Areas, exclusion of cost incurred beyond Delivery Point along with the exclusion of the inadmissible Cost recovery of local community charges. The Short-paid Profit Petroleum payable to the Government amounts to **US$ 27,149,542 (as on 31.03.2019) (prov.)**

4. The Contractor is required to remit the unpaid Profit Petroleum of US$ 27,149,542 (provisional) as above, along with applicable interest @ LIBOR plus 2% liable under Section 1.7.3 of Appendix C of PSC till the date of actual remittance of such dues forthwith in favour of the Government of India.

5. The Licensee/Lessee of the Block has already been requested to remit the short-paid Royalty (reference is invited to DH letter dated 14.09.2021, wherein the short-paid amount of INR 120,94,79,889 (provisional) upto the Financial year 2020-21 calculated upto 31.03.2021 along with applicable penal Royalty as per PNG rules was already communicated). The Licensee/Lessee is again requested to remit the short-paid Royalty along with penal royalty."

xiii) Reliance has been placed on a letter dated 28.09.2022 whereby respondent No.1 in consultation with respondent No.2/DGH had examined the request of the petitioner with respect to adjustment of the amount payable towards Special Additional Excise Duty "SAED" and after examining the said

request for adjustment from the dues to the government of India, on account of profit petroleum were found unreasonable and untenable. It is submitted that by this letter it was drawn to the attention of the petitioner that PSC is a contract related to exploration and exploitation of a natural resource which is vested with the Union of India under Article 297 of the Constitution of India and that the Government of India, without prejudice, has specifically reserved all its rights and remedies under PSC as well as under law, equity, or otherwise, in respect of all the matters. The relevant portion of the said letter reads as under: –

> "vii. As you are aware, the PSC is a contract related to the exploration and exploitation of a natural resource which is vested with the Union of India under Article 297 of the Constitution of India. Thus, there is an inherent character of national and public interest in the implementation of the PSC. This Ministry understands that SAED has been imposed on domestic crude producers to curb the windfall gains accrued on account of sale on international parity prices. This is applicable across all the oil and gas contracts awarded by the Government of India, subject to the conditions contained in the notification related to SAED and not just to the present PSC. Therefore, your unilateral request for adjustment from the dues to the Government of India on account of Profit Petroleum is unreasonable and untenable.
>
> viii. In the event the Contractor parties proceed to adjust the amount paid under SAED from the dues on account of Profit Petroleum, such action will be in breach of the provisions of the PSC and accordingly, the Government of India reserves its rights to take appropriate steps in accordance with law in this regard.
>
> ix. The present letter is without prejudice to any of Government of India's rights and Government of India specifically reserves all its rights and remedies under the PSC as well as under law, equity or otherwise, in respect of the matters referred to in this reply or even otherwise."

xiv) Attention of this Court has further been drawn towards letter dated 08.05.2023, with respect to audit exceptions for the subject oil block for the year 2019–20. It is the case of the respondent No.2 that by way of this letter it was brought to the notice of the petitioner as it is in default and there is short payment of profit petroleum to the share of government along with interest. It is further submitted that with this letter, prior years' Audit exceptions which were still pending at the petitioner/operator's end were also annexed and it was directed to send compliance report immediately on prior years' Audit exceptions. It is the case of respondent No.2 that there were total 37 audit exceptions which were held by the petitioner against the dues payable by it to the Government of India under PSC and same was well within the knowledge of the petitioner as it was put to notice time and again every year; however, the petitioner chose not to pay the said dues and deliberately kept them pending.

xv) Reliance has also been placed on a letter dated 28.01.2025, addressed to the petitioner by respondent No.2/DGH with respect to short payment of Government of India's share of profit petroleum on account of adjustment of SAED in respect of the subject oil field. The averments made in the said letter read as under: –

> "Your attention is invited to the above captioned subject, whereby DGH/GoI has directed you to pay the Short paid GOI share of PP on account of adjustment of Special Additional Excise Duty (SAED) while remitting the GOI share of PP. However, till date the said amount has not been deposited.

> This conduct of Vedanta is serious breach of the agreed terms and conditions of the PSC causing huge financial losses to Central Exchequer.
>
> Vedanta / CEHL is once again called upon to deposit the short paid GOI share of PP amounting to USD 10.13MM along with applicable interest on account of SAED adjustment made while remitting the GOI share of PP till 30.09.2024 within 7 days of the receipt of this letter. In case the amount is not paid within 7 days, GOL may initiate actions under Article 30 of the PSC.
>
> The forgoing is without prejudice to the GOT's right under the PSC and applicable law."

xvi) Learned AGI, while placing reliance on the aforesaid letters/correspondences exchanged between the petitioner and respondents, has argued that the petitioner was well aware of their outstanding dues and defaults under PSC towards Government of India including SAED, profit petroleum etc., from the day, it preferred application seeking extension of policy in 2021 which continued during the period of interim extensions granted to the petitioner after the expiry of PSC on 29.06.2023 till the passing of impugned rejection letter on 19.09.2025, and still the amounts mentioned in the impugned letter were not deposited by the petitioner, despite repeated reminders and opportunities given for rectifying such defaults. It is the case of respondent No.2 that the aforesaid letters show that the conduct of the petitioner during the extension period was not satisfactory and the said letters have not been placed on record by the petitioner alongwith the present petition.

xvii) It is further submitted that as per Article 27.4 of the PSC, the title of the assets purchased by the contractor/petitioner for use in petroleum operations

was to be in proportion to their Participating Interests; however, ONGC/respondent No.4 had vested right of full title and ownership in the said assets. Further, the assets owned by the contractor/petitioner were to be vested in ONGC when 95% of the cost of the original asset acquired has been written off in accordance with the depreciation rates as the schedule specified in Companies Act. It is therefore, submitted that on recovery of costs of the assets acquired by the contractor/petitioner, such assets were to be vested in full title and ownership of ONGC/respondent No.4 and the petitioner/contractor no right to claim any kind of ownership right on the assets existing at the subject oil field or which have been acquired by it during the subsistence of PSC. As per learned AGI, the rationale behind the same is public trust doctrine as all the natural resources vests in the citizens of this country and the Government is merely acting as a custodian/trustee of such resources and its endeavour is to get best out of them.

xviii) With respect to the reliance placed by learned Senior Counsel for the petitioner on the doctrine of Legitimate Expectation, learned AGI has submitted that there was neither any practice nor any promise by respondent Nos.1 and 2 from which it could be inferred that the petitioner was to be granted extension under PSC as has been allegedly claimed by it. Further, there was no standard procedure to presume that there was Legitimate Expectation. It is the case of the respondent No.2 that petitioner's application seeking extension of PSC was to be assessed on the basis of the parameters and yardsticks provided under the extension policy, as noted hereinbefore, and as per said policy, no right for extension was conferred on the petitioner. It is further submitted that as per Clauses 3.2(g), 5, and 9 of the policy, the

exercise of authority under the policy cannot be questioned and the same is ought to be seen from the context of public trust doctrine and thus, no argument of unreasonableness can be considered by the Court. He further submitted that in absence of any vested right to extension, doctrine of Legitimate Expectation cannot be invoked to compel or presume a renewal or continuance of PSC. It is further the case of respondent No.2 that by way of the present petition, the petitioner attempts to seek a *post facto* hearing based on shortfalls on its part. Further, the interim permissions/provisional extensions pending consideration of petitioner's application seeking extension does not create, confer, or crystallise any vested right or Legitimate Expectation in favour of the petitioner and any administrative indulgence or tolerance on part of the Government cannot be construed as waiver, acquiescence, or estoppel.

xix) Reliance has been placed on a judgment of learned Division Bench of this Court in **Union of India v. Vedanta Ltd. and Ors.**[8], wherein while dealing with an appeal against the judgment passed by learned Single Judge directing Union of India to extend the tenure of the contract in question for a period 10 years beyond it's the then existing tenure on the same terms and conditions when the contract was initially executed. The grievance of the appellant/UOI therein was that the learned Single Judge had directed the extension of the tenure of the contract/PSC on the same terms and conditions as existed in 1995, and without any increase in share of profit petroleum. The contention of UOI was that on extension of the tenure of the contract/PSC, it

[8] **2021 SCC OnLine Del 1336**

is entitled to 10% increase in the share in 'Profit Petroleum' under PSC. The brief facts of the said judgment read as under: -

> "**3.** At the outset, it needs to be pointed out that the question involved in this appeal is an extension of a Production Sharing Contract between the original petitioner (Respondent herein) and the Government of India with regard to exploration, exploitation and sale of petroleum and natural gas. The Production Sharing Contract, by its very nature, is a different nature of contract where a private party shares the national wealth/natural mineral by exploiting, excavating and selling the same and gives to the Government of India its share called "profit petroleum". This contract, therefore, cannot be considered as mere regular commercial contract in view of the fact that all such natural resources are held by the Government of India for and on behalf of People of India and as a trustee. Undisputedly, the Hon'ble Supreme Court has read 'public trust doctrine' in case of natural resources which are 'vested' in the Government of India as a trustee.
>
> **4.** The following conspectus of facts needs to be borne in mind, which are not in dispute-
>
> a) The question pertains to a Production Sharing Contract which is entered into by Union of India in discharge of its sovereign function and entered into and executed in the name of Hon'ble President of India as a trustee of the citizens of the country.
>
> b) The term of Production Sharing Contract having the initial period of 25 years between the Appellant-Union of India and the respondent company has expired in the year 2020 as the initial contractual period commenced from the year 1995.
>
> c) There is a provision for extension of tenure/period of this contract in the Production Sharing Contract.
>
> d) The said extension clause in the Production Sharing Contract viz. Article 2.1 of PSC makes it clear that any subsequent extension (after initial period of 25 years) shall be only "subject to applicable laws".
>
> e) Union of India does not object to the request of the Respondent for 10 years extension.

f) Government of India, has, however, as a trustee of national wealth and natural resources made an all-India policy dated 7th April, 2017 in which it is stipulated that if a private party seeks extension of contract in all Production Sharing Contracts after initial contract period is over, such an extension would be granted on payment of additional 10% profit to the Government of India. As per the all-India policy of the Central Government, in case of an extension after the original contract, extension will be granted only if the Government gets 10% more of profit petroleum.

At this juncture, it needs to be noted that under the Production Sharing Contract, private party is required to pay a particular percentage to the Government of India which is called "profit petroleum".

The Government of India, as a national policy applicable to all extensions of all such blocks in the country after 2017, has decided to extend the PSCs only if there is an increase in profit petroleum by 10%.

g) This policy is applicable to all petroleum blocks in the country and not only to the Respondent herein.

h) The said policy which is framed in exercise of statutory powers as well as Constitutional powers discussed hereunder, is not challenged by the original petitioner-respondent herein.

i) Not only the policy is not under challenge, the quantification of addition in the profit petroleum viz. 10% increase is also not questioned, either as arbitrary or irrational or even excessive.

j) The only argument canvassed by the original petitioner (Respondent herein) and accepted by the learned Single Judge is that the Respondent herein is entitled to an extension as of right, without any condition.

In view of the aforesaid position, the question involved is how a contract involving Government of India, its right to put condition in larger national interest and as a trustee of natural resources in which the natural resources "vest" constitutionally needs to be interpreted by a Constitutional Court."

In the aforesaid facts, after hearing learned counsels for the parties and perusing the record, learned Division Bench had observed and held as under: -

> **"43. <u>The Production Sharing Contracts, is evident, are distinguishable from other types of commercial contracts in the following two ways</u>: —**
> a) The Government continues to be the owner of the petroleum products and holds them as a trustee for and on behalf of the people of India as *'custodia legis'*;
> b) The Contractor carries the exploration risk and if no oil is found, he receives no compensation.
>
> **44.** It is undisputed between the parties that petitioners are private oil companies and Respondent No. 4 herein/ONGC is a national oil company. PSC is a contract entered into by the Government of India in discharge of its sovereign powers and the same is executed in the name of Hon'ble President of India. The preamble of the PSC unambiguously provides that it has been entered into for the purpose of **".. <u>petroleum resources which may exist in India be discovered and exploited with utmost expedition in the overall interest of India</u>…."**.
>
> ******** ******** ********
>
> **67.** In view of the aforesaid dicta of the Hon'ble Supreme Court, it can be safely held by us that "**<u>right to extension of a contract is a valuable right of the Contractor but such a right is not an absolute right</u>"**. The words "**<u>as may be mutually agreed between the parties</u>**" used in Article 2.1 of the PSC very obviously include the right of the State to grant extension of the period of contract with an additional/varied condition/economic stipulation, subject, however, to the other party willing to agree to the said condition and needless to state, if the other party does not wish to agree to the changed term, it has the freedom to refuse extension of the contract.
>
> **68.** The terms of the PSC therefore clearly entail change of terms and conditions of the PSC during the extended period and it is not open to the Courts in a judicial review under Article 226 of the Constitution of India to rewrite the contract between the parties or revisit its terms and conditions. The Courts, as held by the Hon'ble Supreme Court, cannot

substitute their own understanding or wisdom for the understanding of the commercial terms of the parties to the contract which is explicit in the provisions of the contract. The learned Single Judge has by the impugned judgment directed extension of the tenure of the PSC for a further period of 10 years, on same terms as existed earlier, overlooking the power of the State to vary the condition. This is impermissible in the eyes of law.

69. We find merit in the contention of the appellants that the Government may enter into various contracts, some may have public element and some may be purely in the realm of private contracts, but, while entering into a contract with respect to natural resources, the Constitutional imperative and the public interest will outweigh the contractual stipulations. The Policy dated 7 April, 2017 provides that it applies to all existing PSCs and also provides a mechanism for their extension. The direction in the impugned judgment is, therefore, contrary to the policy, which is unchallenged. Likewise, there is also merit in the contention that the petitioners do not have an unfettered right to demand extension of the PSC on unilateral terms which suit their interest, overlooking the interest of the State, which is a Trustee of the natural resources under a Constitutional mandate.

**** **** ****

73. 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.

**** **** ****

77. For all the aforesaid reasons, we hold that **there cannot be extension of the Production Sharing Contract unconditionally, on the same terms and conditions which were prevailing 25 years ago i.e. on 15th May, 1995, the effective date**. By issuing a mandamus to the contrary, the learned Single Judge has erred in law and the impugned judgment deserves to be set aside.

78. As a cumulative effect of the aforesaid facts, reasons, provisions of the PSC and the judicial pronouncements, we hereby set aside the impugned judgment of the learned Single Judge dated 31 May, 2018 in W.P.(C) No. 11599/2015.

79. It needs to be recorded that the parties have addressed the arguments on merits and had categorically submitted that objections/grounds regarding maintainability of the petition were not pressed."

In view of the aforesaid observations, it has been contended by learned AGI that in Government contracts, wherein overwhelming public interest is involved, concerning the utilization of natural resources held in public trust, the doctrine of legitimate expectations cannot be invoked and the extension policy which is uniformly applicable to all PSCs in the country has its genesis in public interest and Constitutional mandate. It is further submitted that the Government has to make an effort to get the best price for the valuable natural resources of the country as the same cannot be thrown away and such stand of the Government cannot be made subject to judicial review under writ jurisdiction.

xx) Reliance has also been placed on judgment passed by learned Coordinate Bench of this Court in **Himalayan Flora and Aromas Ltd. v.**

MCD[9], wherein MCD had declined to extend the contracts/allotments of the petitioners therein for display of advertisements through unipoles for a further period of two years. The petitioners therein had raised an argument of Legitimate Expectation and the same was rejected by observing that there cannot be any Legitimate Expectation in contractual matters. The relevant paragraphs of the said judgment read as under: -

> 6. An E-Tender Notice dated 01st December, 2021 was issued by the erstwhile EDMC, now MCD, for allotment of advertisement rights through designated clusters/individual unipole sites, under its jurisdiction. Clause 7 of the General Terms and Conditions of the Tender, with regard to period of the contract, reads as under:
>
> "
>
7.	**Period of Concession**	The contract period shall be for a period of 03 years and further extendable for another 02 years subject to satisfactory performance of the firm and as decided by the Commissioner, EDMC and 10% enhancement in awarded MLF from 4th year and also10% increase on awarded MLF every year during the extended period, if extended by the Commissioner EDMC. After expiry of the contract period, either on account of completion of the concession period or pre-termination of the contract on any account whatsoever, the contractor shall hand over possession of the unipole(s) with complete structures, fittings and fixtures to the Commissioner, EDMC or any other person authorized by him. At the time of handing over of possession to the EDMC, it shall be ensured that the unipoles(s) is/are in proper condition and that no damage is caused by removing the fixtures and fittings, except the advertisement boards.

[9] **2025: DHC: 4034**

7. Reference may also be made to Clause 15 of the General Terms and Conditions of the Tender regarding extension of contract, which reads as under:

15.	**Extension of contract.**	The contract of each cluster will be awarded to the successful H-1 bidder, initially for 3 years only, extendable for 2 terms of one year each, subject to satisfactory performance of contract. However, the contractor may apply for the extension of contract, 3 months prior to completion of three year contract period. Any application made during the last 3 months of contract, will not be entertained by the department. The application for extension of contract does not entitles any right of extension of contract, the commissioner EDMC or any authorized officer by him shall be at liberty to grant or reject request for extension of contract.

8. Reading of the aforesaid Clauses of the General Terms and Conditions of the Tender, brings forth the following:

8.1 The contract was for a period of three years.

8.2 The period of contract was extendable for another two years, subject to satisfactory performance, and as decided by the Commissioner.

8.3 The contractor had the liberty to apply for extension of contract after completion of initial three years of contract, three months prior to the completion of the three year contract period.

8.4 An application for extension of contract does not entitle the contractor, any right of extension of contract. The Commissioner, MCD or any officer authorized by him, shall be at liberty to grant or reject the request for extension of contract.

9. The aforesaid General Terms and Conditions of the Tender, form the contractual conditions, and govern the contractual relations between the parties. Perusal of the aforesaid terms makes it evident that no vested or legal right was conferred upon the petitioners for extension of their contract, after the expiry of initial period of three years. The only right conferred on

the petitioners was to apply for extension of their contracts, subject to satisfactory performance of the contracts in the initial three years of the contracts. Upon applying for such extension, the discretion lay with the Commissioner, MCD, or his authorized officer, to grant or not to grant extension for further two years.

10. There cannot be any legitimate expectation in contractual matters, beyond the terms of the contract, or in violation of the terms of the contract. The terms of the contract have to be strictly interpreted and adhered to. Automatic extension of contract after expiry of initial three years, upon satisfactory performance, is not envisaged in the contract. Therefore, a benefit which is not contemplated in a contract, can neither be prayed for, nor granted. The rights of the parties are governed by the specific clauses of the contract and within the contours of the contractual provisions.

**** **** ****

14. The petitioners have not been able to establish that the decision taken by the respondent is arbitrary, unreasonable or discriminatory, in any way. The decision taken by the respondent is plausible, and has been undertaken in exercise of the authority and discretion vested in it. The petitioners cannot claim extension of contract as a matter of right, merely on the basis of satisfactory performance of contract for the initial three years of the contract. The terms of the contract are categorical in their stipulation that the application for extension of contract does not entitle any right of extension of contract. It is clearly stipulated that the Commissioner, MCD or any officer authorized by him, shall be at liberty to grant or reject request for extension of contract. The reasons given by the respondent for rejection of the request of the petitioners for grant of extension are tenable, and this Court will not go into the merits of the said decision, in the absence of any arbitrariness or unreasonableness.

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16. The fact that on previous occasions, extensions have been granted by the respondent to the petitioners or other contractors, does not connote that the respondent is bound to grant such extensions for subsequent contracts also, when a uniform decision has been taken by the respondent to not grant such extensions. No instance has been brought forth before this Court that the respondent is not following its decisions uniformly, by granting extensions to other contractors during the current year, while denying the same to the petitioners. When uniform decisions are being taken by the respondent and no discriminatory treatment has been meted out to the petitioners, no ground is made out to interfere with the decision taken by the respondent in exercise of the authority vested in it.

17. It has been held time and again that Courts ought to exercise judicial restraint in respect of the decisions made by various authorities. In the absence of constitutional or legal violations, the Courts should respect the policy choices made by the authorities. If the decision is within the W.P.(C) 5350/2025 & W.P.(C) 5360/2025 Page 17 of 24 executive's legal authority and has been made following proper procedures, the Courts ought not to interfere, even if the said decision appears unwise or imprudent. It is not the role of the Courts to question the wisdom or fairness of such decisions. Thus, in the case of ***Kirloskar Ferrous Industries Limited and Another Versus Union of India and Others, 2024 SCC OnLine SC 3192***, it has been held as follows:

"xxx xxx xxx

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

55. The doctrine of judicial restraint, which is central to this discussion, emphasises that courts should exercise caution and avoid involvement in policy decisions, as these are complex judgments that require a balancing of diverse and often competing interests. Policies are crafted based on thorough analysis of social, economic, and political factors, considerations beyond the court's purview. The court is tasked with ensuring that policies do not breach constitutional provisions or statutory limits; however, they should not replace policy-makers' judgments with their own unless absolutely necessary

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

57. While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision-making process rather than the substantive merits of the policy itself. For example, if a government policy infringes on fundamental rights or discriminates against a particular group, the courts have a duty to strike down such policies. However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.

58. The duty of the court in policy-related cases is primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper

procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.

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

Xxx xxx xxx"

(Emphasis Supplied)

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20. The contention of the petitioners that the subsequent tenders floated by the MCD also contain similar clause regarding extension of contract for two years after initial period of three years, does not benefit the petitioners in any manner. The said clause of the subsequent tenders simply connotes the discretion vested in the MCD for extension of contract, after the initial period of three years, which discretion shall be exercised by the MCD on rational basis. Existence of such a clause for extension does not indicate that such extension has to be granted mandatorily by the MCD.

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25. Considering the aforesaid detailed discussion, no error is found in the decision of the respondent/MCD in declining to extend the contract of the petitioners, for further period."

It is therefore, contended by learned AGI that there cannot be any Legitimate Expectation in contractual matters. It is submitted that a higher standard of judicial non-interference has to be followed in the present case as it involves exploitation of natural resources and 'satisfactory performance'

throughout the term of PSC cannot be sole basis on which contract can be extended further.

xxi) Learned AGI has further submitted that an appeal, **LPA 351/2025**, by the petitioner/appellant therein against the aforesaid judgment of learned Coordinate Bench in **Himalayan Flora and Aromas Ltd. (*supra*)** was also dismissed by learned Division Bench of this Court by observing as under[10]: -

> "17. If we carefully examine Clauses 7 and 15 of the contract, what we find is that the contract period initially was for a period of three years which was extendable for another two years. However, such extension was subject to not only satisfactory performance of the appellant but also subject to decision to be taken by the Commissioner. Clause 7 of the earlier contract is very clear which enables the contractor to seek extension and also enables the MCD to extend the term, however, in our opinion, satisfactory performance of the contractor is not the only or sole basis for conferment of any right of extension in that contract.
>
> **** **** ****
>
> 25. Thus, in our opinion, Clause 7, as noticed above, gives a larger discretion to the Commissioner of the MCD in the present case and, therefore, apart from satisfactory performance of the firm other relevant aspects could also have been taken into account by the Commissioner while taking a decision on the prayer made by the appellant seeking extension in the term of the contract. The judgment in SK Associates (supra) is thus clearly distinguishable.
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> 26. So far as the scope of interference or judicial scrutiny under Article 226 of the Constitution of India is concerned, we are in complete agreement with the findings recorded in that regard by the learned Single Judge which are based on well known pronouncements of the Hon'ble Supreme Court."

[10] **2025: DHC: 4454-DB**

xxii) Learned AGI has, therefore, submitted that there is no fundamental right to carry on a trade with Government of India and the petitioner cannot claim exclusive right to trade with Government of India. It has also been argued that this Court cannot go into the question whether a different view could have been taken by respondent Nos.1 and 2, on the petitioner's extension application as there was no Legitimate Expectation on the part of respondent Nos.1 and 2 as there was neither any practice nor promise nor any statutory obligation on the said respondents to grant extension of PSC in favour of the petitioner. It is also submitted that the extension policy did not provide any promise for absolute right of extension.

xxiii) Reliance has also been placed on the judgement of Hon'ble Supreme Court in **Army Welfare Education Society v. Sunil Kumar Sharma**[11]**,** to contend that the doctrine of Legitimate Expectation cannot govern the operation of contracts between the parties as in such cases doctrine of promissory estoppel is applicable. It is contended by learned AGI that the Legitimate Expectation was a device created in order to maintain check on arbitrariness in States' action; however, it cannot be made applicable to purely administrative decisions. Attention of this Court has been drawn towards the following observations in **Army Welfare Education Society v. Sunil Kumar Sharma (*supra*): -**

> **"43.** There are three decisions of this Court we must look into and discuss.

[11] 2024 SCC OnLine SC 1683

44. The first judgment is *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*[*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] and the other two judgments, we are talking about are *K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg.* [*K. Krishnamacharyulu*v. *Sri Venkateswara Hindu College of Engg.*, (1997) 3 SCC 571 : 1997 SCC (L&S) 841] and *Satimbla Sharma* v. *St Paul's Senior Secondary School* [*Satimbla Sharma* v. *St Paul's Senior Secondary School*, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] .

45. In *Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] , dispute arose between the Trust which was managing and running science college and teachers of the said college. It pertained to payment of certain employment related benefits like basic pay, etc. The matter was referred to the Chancellor of Gujarat University for his decision. The Chancellor passed an award, which was accepted by the University as well as the State Government and a direction was issued to all affiliated colleges to pay their teachers in terms of the said award. However, the aforesaid Trust running the science college did not implement the award. Teachers filed the writ petition seeking mandamus and direction to the Trust to pay them their dues of salary, allowances, provident fund and gratuity in accordance therewith. It is in this context an issue arose as to whether the writ petition under Article 226 of the Constitution was maintainable against the said Trust which was admittedly not a statutory body or authority under Article 12 of the Constitution as it was a private trust running an educational institution. The High Court held that the writ petition was maintainable and the said view was upheld by this Court in the aforesaid judgment.

46. The discussion which is relevant for our purposes is contained in paras 15 to 20 of *Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] . However, we would like to reproduce paras 15, 17 and 20, which read as under: (*Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] , SCC pp. 698-700)

"*15*. If the rights are purely of a private character no mandamus can issue. If the management of the college is purely a private body with no public duty mandamus will not lie. These are two exceptions to mandamus. But once these are absent and when the party has no other equally convenient remedy, mandamus cannot be denied. It has to be appreciated that the appellant Trust was managing the affiliated college to which public money is paid as government aid. Public money paid as government aid plays a major role in the control, maintenance and working of educational institutions. The aided institutions like government institutions discharge public function by way of imparting education to students. They are subject to the rules and regulations of the affiliating university. Their activities are closely supervised by the University authorities. Employment in such institutions, therefore, is not devoid of any public character. [See, *The Evolving Indian Administrative Law* by M.P. Jain (1983), p. 226.] So are the service conditions of the academic staff. When the University takes a decision regarding their pay scales, it will be binding on the management. The service conditions of the academic staff are, therefore, not purely of a private character. It has super-added protection by University decisions creating a legal right-duty relationship between the staff and the management. When there is existence of this relationship, mandamus cannot be refused to the aggrieved party.

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17. There, however, the prerogative writ of mandamus is confined only to public authorities to compel performance of public duty. The "public authority" for them means every body which is created by statute — and whose powers and duties are defined by statute. So government departments, local authorities, police authorities, and statutory undertakings and corporations, are all "public authorities". But there is no such limitation for our High Courts to issue writs "in the nature of mandamus". Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". It can be issued "for the enforcement of any of the fundamental rights and for any other purpose".

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20. The term "authority" used in Article 226, in the context, must receive a liberal meaning unlike the term in Article 12. Article

12 is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied."

(emphasis supplied)

47. In para 15 the Court in *Andi Mukta Sadguru* [*Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust* v. *V.R. Rudani*, (1989) 2 SCC 691] spelled out two exceptions to the writ of mandamus viz.: (*i*) if the rights are purely of a private character, no mandamus can issue; and (*ii*) if the management of the college is purely a private body "with no public duty", mandamus will not lie. The Court clarified that since the Trust in the said case was an aided institution, because of this reason, it discharges public function, like government institution, by way of imparting education to students, more particularly when rules and regulations of the affiliating university are applicable to such an institution, being an aided institution. In such a situation, the Court held that the service conditions of academic staff were not purely of a private character as the staff had superadded protection by the University's decision creating a legal right and duty relationship between the staff and the management. Further, the Court explained in para 20 that the term "authority" used in Article 226, in the context, would receive a liberal meaning unlike the term in Article 12, inasmuch as Article 12 was relevant only for the purpose of enforcement of fundamental rights under Article 32, whereas Article 226 confers power on the High Courts to issue writs not only for enforcement of fundamental rights but also non-fundamental rights. What is relevant is the dicta of the Court that the term "authority" appearing in Article 226 of the Constitution would cover any other person or body performing public duty. The guiding factor, therefore, is the nature of duty imposed on such a body, namely, public duty to make it exigible to Article 226.

48. In *K. Krishnamacharyulu* [*K. Krishnamacharyulu* v. *Sri Venkateswara Hindu College of Engg.*, (1997) 3 SCC 571 : 1997 SCC (L&S) 841] , this Court again emphasised that where there is an interest created by the Government in an institution to impart education, which is a fundamental right of the citizens, the teachers who impart the education get an element of public interest in performance of their duties. In such a situation, remedy provided under Article 226 would be available to the teachers.

49. However, both the decisions referred to above pertain to educational institutions and in the said cases, the function of imparting education was treated as the performance of the public duty, that too by those bodies where, the aided institutions were discharging the said functions like government institutions and the interest was created by the Government in such institutions to impart education.

50. In *Satimbla Sharma* [*Satimbla Sharma* v. *St Paul's Senior Secondary School*, (2011) 13 SCC 760 : (2012) 2 SCC (L&S) 75] , the school therein was initially established as a mission school by Respondent 2. The school adopted the 10+2 system in 1993 and got affiliated to the Himachal Pradesh Board of School Education. Before Independence in 1947, the school was receiving grant-in-aid from the British Indian Government and thereafter from the Government of India up to 1950. Between 1951 and 1966, the school received grant-in-aid from the State Government of Punjab. After the State of Himachal Pradesh was formed, the school received grant-in-aid from the Government of Himachal Pradesh for the period between 1967 and 1976. From the year 1977-1978, the Government of Himachal Pradesh stopped the grant-in-aid. In such circumstances, the teachers of the school were paid less than the teachers of the government schools and the Government-aided schools in the State of Himachal Pradesh. This led to filing of a writ petition in the High Court of Himachal Pradesh seeking a direction to pay the salary and allowances on a par with the teachers of government schools and the Government-aided schools. A learned Single Judge of the High Court allowed the writ petition and directed the respondents therein to pay to the writ petitioners therein salary and allowances on a par with their counterparts working in the government schools from the dates they were entitled to and at the rates admissible from time to time. Respondents 1 and 2 therein preferred letters patent appeal before the Division Bench of the High Court. The appeal came to be allowed and the writ petition filed by the teachers was dismissed."

xxiv) Reliance has also been placed by learned AGI on **State of Rajasthan v. Sharwan Kumar Kumawat**[12], to contend that the decision taken by the Government in accordance with a policy in public interest cannot be fettered by applying the principle of Legitimate Expectation. It is contended that the same is a very weak right and if Government decides to introduce fair play, then, one cannot claim entitlement merely on the basis of pending application for extension and long relationship. Attention of this Court has been drawn towards the following observations in **Sharwan Kumar Kumawat (*supra*): -**

> ***"Discussion***
> ***Vested right***
> **17.** It is far too settled that there is no right vested over an application made which is pending seeking lease of a government land or over the minerals beneath the soil in any type of land over which the government has a vested right and regulatory control. In other words, a mere filing of an application ipso facto does not create any right. The power of the Government to amend, being an independent one, pending applications do not come in the way. For a right to be vested there has to be a statutory recognition. Such a right has to accrue and any decision will have to create the resultant injury. When a decision is taken by a competent authority in public interest by evolving a better process such as auction, a right, if any, to an applicant seeking lease over a government land evaporates on its own. An applicant cannot have an exclusive right in seeking a grant of licence of a mineral unless facilitated accordingly by a statute : (*Hind Stone* [*State of T.N.* v. *Hind Stone*, (1981) 2 SCC 205] , SCC pp. 219-20, para 13)
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> "*13*. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GOMs No. 1312 (2-12-1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission

12 (2023) 20 SCC 747

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

(emphasis supplied)

Fundamental right

18. The question of applicants not having fundamental right in mining is no longer res integra, *Monnet Ispat & Energy Ltd.* v. *Union of India* [*Monnet Ispat & Energy Ltd.* v. *Union of India*, (2012) 11 SCC 1] may shed some light : (SCC pp. 81-82, para 133)

"No fundamental right in mining

133. The appellants have applied for mining leases in a land belonging to the Government of Jharkhand (erstwhile Bihar) and it is for iron ore which is a mineral included in Schedule I to the 1957 Act in respect of which no mining lease can be granted without the prior approval of the Central Government. It goes without saying that no person can claim any right in any land belonging to the Government or in any mines in any land belonging to the Government except under the 1957 Act and the 1960 Rules. No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted

reconnaissance operation in any land belonging to the Government. It is apt to quote the following statement of O. Chinnappa Reddy, J. inHind Stone[State of T.N. v. Hind Stone, (1981) 2 SCC 205] (SCC p. 213, para 6) albeit in the context of minor mineral,

'6. ... The public interest which induced Parliament to make the declaration contained in Section 2 ... has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals.'

He went on to say : (Hind Stone case [State of T.N. v. Hind Stone, (1981) 2 SCC 205] , SCC p. 217, para 10)

'10. ... The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed ... at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present.' "

(emphasis supplied)

Legitimate expectation

19. Legitimate expectation is a weak and sober right as ordained by a statute. When the Government decides to introduce fair play by way of auction facilitating all eligible persons to contest on equal terms, certainly one cannot contend that he is entitled for a lease merely on the basis of a pending application. The right being not legal, apart from being non-existent, it can certainly not be enforceable. The principle of law on these aspects, as settled decades ago in *State of T.N.* v. *Hind Stone* [*State of T.N.* v. *Hind Stone*, (1981) 2 SCC 205] , is being reiterated from time to time. (*Monnet Ispat & Energy* [*Monnet Ispat & Energy Ltd.* v. *Union of India*, (2012) 11 SCC 1] , SCC pp. 106 & 110, paras 183 & 188)

"*Principles of legitimate expectation*

183. As there are parallels between the doctrines of promissory estoppel and legitimate expectation because both these doctrines are founded on the concept of fairness and arise out of natural justice, it is appropriate that the principles of legitimate expectation are also noticed here only to appreciate the case of the

appellants founded on the basis of the doctrines of promissory estoppel and legitimate expectation.

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188. It is not necessary to multiply the decisions of this Court. Suffice it to observe that the following principles in relation to the doctrine of legitimate expectation are now well established:

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188.3. Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.

188.4. The legitimate expectation is different from anticipation and an anticipation cannot amount to an assertable expectation. Such expectation should be justifiable, legitimate and protectable.

188.5. The protection of legitimate expectation does not require the fulfilment of the expectation where an overriding public interest requires otherwise. In other words, personal benefit must give way to public interest and the doctrine of legitimate expectation would not be invoked which could block public interest for private benefit."

(emphasis supplied)

20. *Kerala State Beverages (M&M) Corpn. Ltd.* v. *P.P. Suresh* [*Kerala State Beverages (M&M) Corpn. Ltd.* v. *P.P. Suresh*, (2019) 9 SCC 710 : (2019) 2 SCC (L&S) 821] : (SCC pp. 719-20, paras 14-20)

"B. *Legitimate expectation*

14. The main argument on behalf of the respondents was that the Government was bound by its promise and could not have resiled from it. They had an indefeasible legitimate expectation of continued employment, stemming from the Government Order dated 20-2-2002 which could not have been withdrawn. It was further submitted on behalf of the respondents that they were not given an opportunity before the benefit that was promised, was taken away. To appreciate this contention of the respondents, it is necessary to understand the concept of legitimate expectation.

15. The principle of legitimate expectation has been recognised by this Court in *Union of India* v. *Hindustan Development Corpn.* [*Union of India* v. *Hindustan Development Corpn.*, (1993) 3 SCC 499] If the promise made by an authority is clear, unequivocal and unambiguous, a person can claim that the authority in all fairness should not act contrary to the promise.

16. *M. Jagannadha Rao, J. elaborately elucidated on legitimate expectation inPunjab Communications Ltd.* v. *Union of India* [*Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727] . *He referred* (at SCC pp. 741-42, para 27) *to the judgment inCouncil of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] *in which Lord Diplock had observed that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which* : (*Punjab Communications case* [*Punjab Communications Ltd.* v. *Union of India*, (1999) 4 SCC 727] , SCC p. 742, para 27)

'*27. …* (*i*) *he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there have been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or*

(*ii*) *he has received assurance from the decision-maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn*.' (AC p. 408)

17. Rao, J. observed in this case, that the *procedural* part of legitimate expectation relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The *substantive* part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit, that it will be continued and not be substantially varied, then the same could be enforced.

18. *It has been held by R.V. Raveendran, J. inRam Pravesh Singh* v. *State of Bihar* [*Ram Pravesh Singh* v. *State of Bihar*, (2006) 8 SCC 381 : 2006 SCC (L&S) 1986] *that legitimate expectation is not a legal right. Not being a right, it is not enforceable as such*. It may entitle an expectant : (SCC p. 391, para 15)

'*15*. … (*a*) to an opportunity to show cause before the expectation is dashed; or

(*b*) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice.'

Substantive Legitimate Expectation

19. An expectation entertained by a person may not be found to be legitimate due to the existence of some countervailing consideration of policy or law. [H.W.R. Wade & C.F. Forsyth : *Administrative Law* (Eleventh Edn., Oxford University Press, 2014).] *Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government*. [*Hughes* v. *Deptt. of Health & Social Security*, 1985 AC 776, 788 : (1985) 2 WLR 866 (HL).]

20. The decision-makers' freedom to change the policy in public interest cannot be fettered by applying the principle of substantive legitimate expectation. [*Findlay, In re*, 1985 AC 318 : (1984) 3 WLR 1159 (HL).] *So long as the Government does not act in an arbitrary or in an unreasonable manner, the change in policy does not call for interference by judicial review on the ground of a legitimate expectation of an individual or a group of individuals being defeated*."

(emphasis in original and supplied)"

xxv) Reliance has also been placed by learned AGI on the judgment of learned Division Bench of Hon'ble Bombay High Court in **Sugati Beach Resort Pvt. Ltd. v. Union of India & Ors.**[13], wherein it was observed as under: -

"**5.** We have heard the learned Counsel for the parties. We have also perused the documents as placed on record. It is not in dispute that the

[13] 2017 SCC OnLine Bom 9418

petitioner is a beneficiary of lease deed dated 10 October, 1997 which was in respect of the tourist complex which was granted to the petitioner under a tender dated 7 May, 1997 which was described as under:

> "……leasing out the entire tourist complex (Flamingo Resort) Ghoghla, Diu, i.e. tourist cottages and Bar-cum-Restaurant and Conference Hall, described in the Schedule annexed to these presents at Ghoghala-Diu……"
>
> This extract is taken from Sugati Beach Resort Pvt. Ltd. v. Union of India, 2017 SCC OnLine Bom 9418 : (2018) 1 Mah LJ 939 at page 941
>
> It is not in dispute that the lease was for a period of twenty years and the same expired in May, 2017. The clauses relevant in the context of the present dispute are clauses 2, 11, 16, 25 and 28 which read thus:
>
> "2. The lease initially shall be for a period of 20 years which may be renewed for a further period of 10 years at the option of the Lessor at the market rates prevailing at the end of the said period of 20 years and other things being equal, the lessee shall have first preference for allotment of Tourist Complex.
>
> …… …… ……
>
> 11 The lessee shall not make any structural or other additions or alterations in the tourist complex or affix or attach thereto any fitting or fixtures or fastening whatsoever without the written permission of the Collector, Diu.
>
> …… …… ……
>
> 16. The leasee shall provide the furniture and the other equipment of good quality for the cottages and shall also provide all vessels, utensils, cutlery, crockery and all other equipment necessary for running the complex and maintain the same in good hygienic condition to the satisfaction of the Tourism
>
> Department, Diu. Similarly, good quality of table linen, bed sheets etc. shall also be provided for by the leasee.
>
> …… …… ……
>
> 25. The leasee shall construct at its own cost a swimming pool at appropriate place along with its maintenance within the complex with the approval of Collector, Diu and within the first three years of lease period. After the expiry of the lease period the assets will be the property of u.t. Administration of Daman and Diu.

28. The Collector, Diu, reserves the right to amend, revoke or modify the lease at his discretion as well as to withdraw all or any of the Terms and Conditions at any stage without assigning any reason whatsoever."

(emphasis supplied)

6. Perusal of the above clauses clearly indicate that the rights as conferred under the lease agreement on the petitioner to use and utilize the lease property were restricted. It is not in dispute that the lease period was initially for twenty years and there is no mandate under the agreement, for the respondent to renew the same in favour of the petitioner. In any case clause 2 which uses the word "may be renewed" is however would be subject to the conditions as contained in clause 28. The parties have agreed to qualify clause (2) by clause (28) by which the Collector, Diu reserves the right to amend, revoke or modify the lease at his discretion and also withdraw all or any of the conditions at any stage without assigning any reason whatsoever.

7. On the above clear terms as contained in the lease agreement entered between the parties, we do not find that the approach of the respondent-Union Territory Administration is in any manner arbitrary or contrary to law in issuing the order dated 13 October, 2017 in deciding not to grant further extension of lease to the petitioner but to initiate bidding process through retender for entering into a fresh lease. In any event the action to reauction the said government property for a fresh lease to be entered into is being done after completion of twenty years of lease and it is not something premature before the lease period could expire. The petitioner had adequate notice in view of the terms and conditions of the lease deed that at the end of the lease period of twenty years, a consequence of this nature is the fall out of the agreed terms and conditions of the lease deed. It also cannot be accepted that the petitioner being in this business is not aware of the policy of the Union Territory Administration.

8. We are also not impressed on the submission as urged on behalf of the petitioner that there is legitimate expectation of the petitioner for extension of lease in favour of the petitioner. This for the reason that if it was to be so then, clause (2) and clause (28) of the lease deed would not have been framed in the manner they appear in the lease deed, or clause 28 of the lease deed would not have formed part of the lease deed. We

also cannot accept the contention of the petitioner only because certain construction is made and amounts are spent, there would be legitimate expectation of continuation of lease period. Whatever expenditure was incurred or investment made during past twenty years during the subsistence of the lease, was for commercial exploitation of leased property and the petitioner has already reaped financial benefits by commercial use of the lease land in a tourist place like Diu. We, therefore, outrightly reject the submissions of the petitioner on legitimate expectation.

9. We are of the clear opinion that there is nothing arbitrary in the order dated 13 October, 2017 passed by the respondents calling upon the petitioner to vacate the suit premises and to grant an opportunity to the petitioner to enter into an ad hoc agreement of three months to continue in the premises till the tender process is completed. It appears to be the policy of the respondents to avail of a maximum benefit from the Government property and gain more revenue by initiating a new tender process. There would be nothing wrong in such a policy if the Union Territory Administration in public interest desires to enhance its revenue in such a manner. It therefore cannot be said that such a policy would breach any of the legal rights much less fundamental rights of the petitioner. There cannot be any fundamental right guaranteed to the petitioner to compel the respondent-Union Territory Administration to enter into a lease only with the petitioner. It is not the case that the petitioner is precluded from participating in fresh tender which may be floated by the Union Territory Administration and compete with the other market players. However, the intention of the petitioner is to avoid such fresh participation in the fresh bids to be invited by the Union Territory Administration and in some manner hang on to the property raising such untenable contentions as noted by us above.

10. Apart from the above observations, we are also surprised at the approach of the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution when the dispute that the petitioner is raising is purely under a lease deed, a contract between the parties, and the contentions as raised are in the nature of a challenge to the terms and conditions of the contract on a spacious plea that the lease deed created an absolute right in the petitioner for extension of the lease, however, which we see none."

In view of the aforesaid, it is submitted that there would be nothing wrong in a policy if the Government in public interest desires to enhance its revenue and merely, because the petitioner has made certain construction or substantial investment or spent amount for improvement in a leasehold property, it cannot on said basis, claim Legitimate Expectation of continuation of PSC in its favour.

xxvi) Reliance has also been placed on the judgment of Hon'ble Supreme Court in **Silppi Constructions Contractors v. Union of India & Anr.**[14], to contend that the Courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters as the same are purely administrative decisions and falls within the realm of contract. These decisions are neither judicial nor quasi-judicial and the State must be given sufficient leeway in this regard. Attention of this Court has been drawn towards the following paragraphs: -

> **"25.** That brings us to the most contentious issue as to whether the learned Single Judge of the High Court was right in holding that the appellate orders were bad since they were without reasons. We must remember that we are dealing with purely administrative decisions. These are in the realm of contract. While rejecting the tender the person or authority inviting the tenders is not required to give reasons even if it be a State within the meaning of Article 12 of the Constitution. These decisions are neither judicial nor quasi-judicial. If reasons are to be given at every stage, then the commercial activities of the State would come to a grinding halt. The State must be given sufficient leeway in this regard. Respondents 1 and 2 were entitled to give reasons in the counter to the writ petition which they have done.
>
> **** **** ****

14 (2020) 16 SCC 489

29. However, as far as the first objection is concerned, merely because extension of time has been granted, it does not in any manner mean that the Department has come to the conclusion that the contractor is not at fault. Sometimes extension is granted because a lot of money has already been invested and cancellation of contract and appointment of new contractors would lead to unnecessary litigation and increase in costs. We may also point out that though we have held that the petitioner firm can challenge the correctness of the material used against the sister concern, we cannot lose sight of the fact that in the present case the sister company has not got its enlistment renewed. Some of the adverse remarks were conveyed to the sister company much prior to the issuance of notice inviting tenders in the present case. The sister company not only did not get its enlistment renewed but also did not care to even represent against the adverse remarks. It has been pointed out to us that as per the Manual on Contracts, 2007 if any adverse remarks are conveyed to the enlisted contractor the said contractor has a right to represent against the same. If no representation is made it is obvious that the contractor has accepted the adverse remarks. In this case the adverse remarks were accepted by the sister company. At the least, there was acquiescence if not acceptance. Therefore, this was a factor which could be taken into consideration by the respondents.

30. The eligibility criteria provided in the tender lays down that there should be no adverse remarks in the WLR of the competent engineering authority. Admittedly, there are adverse remarks in work load return (WLR) of the sister company. It is obvious that the sister company having realised that it would not be awarded any contract neither got its enlistment renewed nor tried to submit the tender. The Directors of the sister company tried to get over these insurmountable objections by applying for the tender in the name of the petitioner firm. Not only are the names similar but as pointed above, all the Directors of the sister company are partners in the petitioner firm. Therefore, these adverse remarks passed against the sister company could not be ignored.

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34. It was faintly contended that the requirement of being a company would be only for MES enlisted contractors and not for other contractors. The answer to this lies in the eligibility criteria for other contractors referred to above wherein it has been clearly mentioned that they should

meet the enlistment criteria of Class "SS" MES Contractors. Even otherwise it would be a travesty of justice if enlisted contractors should only be limited companies and unlisted unknown contractors, could be a firm, individual, etc. This is not the purpose of the criteria.

35. In view of the above discussion, we find no merit in the petitions which stand dismissed vide order dated 21-6-2019. Application(s), if any, shall also stand dismissed."

Thus, it is contended that merely because extensions were granted to the petitioner, the same would not lead to conclusion that the petitioner's application for extension must be allowed.

xxvii) At last, learned AGI has submitted that the petitioner in their petition had suppressed material facts and had not placed on record letters/correspondences, as pointed out hereinbefore, which would be relevant for the adjudication of the present petition. The issues raised by the petitioner are disputed questions of facts for which they could have invoked arbitration in terms of the PSC as well as Extension Policy and this Court under Article 226 of the Constitution cannot exercise its jurisdiction to adjudicate on such questions. It is the case of respondent No.2 that if the present petition is allowed, the same would defeat the larger public interest as the Government as a trustee/custodian could do best of the natural resources to generate revenue as it has power to call for competitive bids in terms of the Extension Policy. It is further pointed out that no right was vested in the petitioner to claim extension for a period of 10 years either in the PSC or in the Extension Policy. It is further submitted that the impugned decision was purely administrative in nature and the petitioner is at liberty to take part in the fresh bids which would be called by respondent Nos.1 and 2. Thus, it is submitted

that the present petition be dismissed as the same is not maintainable in the present form.

xviii) Reliance has also been placed by learned AGI on following judgments in support the aforesaid submissions: -

a. **Joshi Technologies International v. Union of India[15];**
b. **Natural Resources Allocation, In re: Special Reference No. 1 of 2012;[16]**
c. **K.D. Sharma v. Steel Authority of India Limited and Ors.[17];**
d. **Sisters of Our Lady Fatima v. State of Maharashtra and Ors.[18];**
e. **National High Speed Rail Corporation Limited v. Monetecarlo Limited and another[19];**
f. **C.K. Achuthan v. State of Kerala and Ors.[20];**
g. **Narang's International Hotels Private Limited v. Delhi International Airport Limited[21];**
h. **Nagpur Improvement Trust and Another v. Jain Kalar Samaj[22].**

SUBMISSIONS ON BEHALF OF RESPONDENT NO.4/ONGC

5. Learned ASG for respondent No.4/ONGC has made the following submissions: -

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[15] **(2015) 7 SCC 728**
[16] **(2012) 10 SCC 1**
[17] **(2008) 12 SCC 481**
[18] **2025 SCC OnLine Bom 399**
[19] **(2022) 6 SCC 401**
[20] **1959 SC 490**
[21] **2021 SCC OnLine Del 4197**
[22] **2024 SCC OnLine Bom 3257**

i) He has submitted that ONGC has 50% participating interest (PI) in the PSC and the same was valid till 29.06.2023. The application made on behalf of the petitioner seeking extension of PSC for a period of 10 years under the extension of policy was dismissed by respondent No.1 *vide* impugned letter dated 19.09.2025. It is further submitted that after the expiry of PSC purely as an interim measure of facilitation to continue petroleum operations, pending the decision of contract extension, the said five interim extensions were granted to the petitioner and no right of continuing the operations was as such promised to the petitioner. It is further submitted that after passing the impugned rejection letter, ONGC has not been allowed to take over the petroleum operations by the petitioner in pursuance of the directions given in paragraph 3 of the rejection letter. It is the case of ONGC that the overall operation operations at the subject oil field*, i.e.,* production, process, product, dispatch, and maintenance of all the stationary and non-stationary assets, are being carried out by various contractors and there are total 15 contractors engaged by the operator for this block. It is further the case of ONGC that it has established an effective plan for transition and takeover protocols to ensure that ongoing production and safety critical operations continue without disruption and as a part of the transition plan, it has already identified a team comprising of 30 experience professionals, which are currently posted at ONGC's Hazira Pant, to assume control of the subject oil block. It is further submitted that the short payment of profit petroleum is wholly on account of the petitioner and there is no short payment of profit petroleum by ONGC. It is further pointed out that the petitioner has unilaterally deducted SAED from Government's share of profit petroleum. It has been argued that since respondent No.4/ONGC has been precluded from taking over the oil block,

the petitioner ought to be directed to honour, all demands, dues, liabilities etc., until the takeover is effectuated. It is further pointed out that this Court has to look upon the conduct of the petitioner, and state of events which have transpired after passing of the impugned rejection order. Attention of this Court has been drawn towards a letter dated 19.09.2025, addressed to Chairman and Managing Director of ONGC/respondent No.4 by respondent no.1 for immediate takeover of assets and petroleum operations in subject block and it is contended that since then, ONGC has not been allowed to take over the position of the subject oilfield by the petitioner.

ii) With respect to the contention of petitioner that it is a lessee under Transfer of Property Act, it is the submission of learned ASG that the petitioner is a "tenant-at-sufferance" and has no right to remain in the subject premises. It is further submitted that the contract in the present case is determinable in nature and it relates to infrastructure project as specified in the Schedule of Specific Relief Act, 1963[23]. It is therefore contended that this Court cannot grant any injunction with respect to such contract as the same is expressly prohibited under Section 20A of the SRA. Further, it is contented that the contract in the present case is not specifically enforceable in terms of Section 14 of the SRA as the same is determinable in nature.

iii) It is thus, prayed that the present petition is not maintainable and the same be dismissed and the petitioner be directed to handover the possession of the subject oil field to respondent No.4/ONGC in terms of the direction given in the impugned rejection order/letter.

[23] **For short, 'SRA'**

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

6. Learned Senior Counsel for the petitioner have made the following rejoinder submissions: -

i) It is submitted that the petition is maintainable in the present form inasmuch as there is no disputed question of facts to be determined or adjudicated by this Court. It is further submitted, without prejudice to other contentions, that even if the PSC is contractual in nature, the action of relevant authorities is amenable to writ jurisdiction of this Court under Article 226 of the Constitution. It is the case of the petitioner that the mining in the present case is not conventional as the subject oil field is situated in ocean and in the middle of the sea where the pillars have been rigged into sea bed. Attention of this Court has been drawn towards Sections 4, 5, 6, 12 of Oil Fields (Regulation and Development) Act, 1948, and it is contended that the PSC emanates from these provisions, and therefore, it has statutory force. It is further submitted that initially the subject oil field was leased out to respondent No.4/ONGC, and PSC had four parties with their respective Participating Interests (PI) and it is respondent No.4/ONGC which has defaulted in payment of profit petroleum and royalty to the Government of India during the period of interim extensions provided to the petitioner from 2023 till September 2025. As per petitioner, it was only a co-lessee with respondent No.4/ONGC during the said period. Attention of this Court has also been drawn towards Articles 77, 166, 297, 298, 299 of the Constitution of India and it is contended that origin of PSC and power of Government to

enter into contract for exploration of natural resources of the country emanates from these provisions and thus, the same is in nature of a statute and has statutory force and amenable to writ jurisdiction under Article 226 of the Constitution of India.

ii) Learned Senior Counsel, while placing reliance on a judgment of learned Division Bench of this Court in **Union of India v. Vedanta Ltd. and Ors. (*supra*)**[24], has submitted that in the said case, it has been held that the Extension Policy of 2017 enacted by respondent No.1 is in the nature of statute and has statutory force. Reliance has been placed on following paragraphs of the said judgment: -

> **"56.** The Central Government has formulated a Pan India extension policy for grant of extension to the existing PSCs in respect of all the "Pre-NELP Exploration Blocks" stipulating therein that during the extended period it shall have 10% higher share of Profit Petroleum. The policy has been issued under Rule 5(3) of the PNG Rules and thus, by virtue of Article 32.1 of the PSC would fall under the term "applicable laws".
>
> **57.** The executive power of the Government to regulate and distribute the manner of sale of Natural Resources has been upheld by the Hon'ble Supreme Court in several decisions. Under Entry No. 53 of List-I of Schedule VII read with Article 39(b) of the Constitution of India, the Union has the power, jurisdiction and authority to take a policy decision as has been done in the present case by issuing the policy decision dated 7th April, 2017, to subserve the common good. Article 39(b) of the Constitution of India is extracted hereinunder for ready reference:—
>
> "*39. Certain principles of policy to be followed by the State. - The State shall, in particular, direct its policy towards securing -*
>
> *(a) xxx xxx xxx*

[24] **2021 SCC OnLine Del 1336**

(b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

58. It has been held by Hon'ble Supreme Court in *Reliance Natural Resources Ltd.* v. *Reliance Industries Ltd.* (supra) in paragraphs 77 and 78 as under:—

"77. In the light of the above, the executive of the Union of India enjoys its constitutional powers under Article 73 and Article 77(3) in order to fulfil the objectives of the Directive Principles of State Policy relating to distribution of natural gas. This natural gas is a material resource under Article 39(b). In view of this, along with the contemplation of the Government's policy for the utilisation of natural gas under Article 21.1 and the decision of this Court referred to above, the executive decided that distribution would include within its ambit acquisition, including acquisition of privately owned material resources. ***The framing of the "gas utilisation policy" in identifying the priority sectors, and allocating the requisite quantities in accordance with the needs of the said sectors and subjecting marketing freedom to the order of priority and guidelines framed is very much in accordance with law. Consequently, Article 21.1 and Article 21.3 should be read in consonance with the gas utilisation policy and the latter is neither inconsistent with the provisions of the Constitution, nor the Oilfields (Regulation and Development) Act, 1948; the Petroleum and Natural Gas Rules, 1959 and the articles of the Production Sharing Contract referred to above.***

78. To put it clearly, both in terms of the gas utilisation policy and the Production Sharing Contract, the Government in the capacity as the executive of the Union can regulate and distribute the manner of sale of natural gas through allotments and allocation which would subserve the best interests of the country."

(Emphasis supplied)

59. Further, in *Energy Watchdog* v. *CERC*, reported as (2017) 14 SCC 80, in paragraphs 48 and 57, Supreme Court held as under:—

"***Change in law***

48. *It has been submitted on behalf of the counsel for the respondents, that the guidelines of 19-1-2005, as amended by the*

18-8-2006 Amendment, make it clear that any change in law, either abroad or in India, would result in the consequential rise in price of coal being given to the power generators. Since various provisions of the guidelines as well as the power purchase agreements are referred to, we set them out herein:

xxx xxx xxx

57. *Both the letter dated 31-7-2013 and the* ***revised Tariff Policy*** *are statutory documents being issued under Section 3 of the Act* ***and have the force of law****. This being so, it is clear that so far as the procurement of Indian coal is concerned, to the extent that the supply from Coal India and other Indian sources is cut down, the PPA read with these documents provides in Clause 13.2 that while determining the consequences of change in law, parties shall have due regard to the principle that the purpose of compensating the party affected by such change in law is to restore, through monthly tariff payments, the affected party to the economic position as if such change in law has not occurred. Further, for the operation period of the PPA, compensation for any increase/decrease in cost to the seller shall be determined and be effective from such date as decided by the Central Electricity Regulation Commission. This being the case, we are of the view that though change in Indonesian law would not qualify as a change in law under the guidelines read with the PPA,* ***change in Indian law certainly would****."*

(*emphasis supplied)*

60. We were informed by the Solicitor General that the policy which is applicable uniformly to all the PSCs entered into by the Government was framed after due consideration with the stakeholders, including the respondents herein. The policy has been framed under the Rules of Business under Article 166 of the Constitution of India and under the aegis of the Cabinet Committee of Economic Affairs. **Thus, in view of the source of power to issue the policy and the aforesaid judgments, we find force in the contention of the appellants that the policy decision of the Union of India dated 7 April, 2017 has statutory force."**

In view of the aforesaid, learned Senior Counsel for the petitioner has submitted that the aforesaid case had arisen out of dispute between the same

parties regarding similar PSC. In the aforesaid circumstances, wherein dispute was with respect to the entitlement of UOI to 10% increase in the share in profit petroleum under PSC on account of extension of its tenure, it has been held by learned Division Bench that the Extension Policy of 2017 has statutory force. It is thus, the case of the petitioner that respondent Nos.1 and 2 cannot lay emphasis on the fact that the dispute(s) arising out of the said Extension Policy are not amenable to writ jurisdiction.

iii) It is, therefore, the case of the petitioner that the extension policy has statutory force and the source of PSC is in Constitution and the same is not an ordinary contract. It is submitted that non-extension of PSC in favour of the petitioner will have huge economic impact as the business involved in more than Rs.1 Lakh Crore and a large number of workers/persons employed by the petitioner would then be rendered unemployed. It is further the case of the petitioner that even in purely contractual relationship, it is to be seen that how Government has entered into contract and any arbitrariness in taking decision under such contracts, which has statutory force, can be subject to judicial review under Article 226 of the Constitution. Reliance has been placed following portion of judgment of learned Coordinate Bench of this Court in **W.P. (C) No. 11599/2015 in Vedanta Limited & Ors. v. Union of India & Ors.**[25]: -

> "**Issues**
> I. Did the order dated 14.12.2015, passed by this Court, foreclose a final examination by the Court as to whether a remedy by way of a writ is maintainable in the facts and circumstances of this case?

[25] **2018:DHC:3625**

II. If the answer to issue No. I is in the affirmative, did a remedy by way of writ petition lie in the instant case?
III. If the answers to issues No. I & II are in the affirmative, can the petitioners seek extension of the existing tenure of the PSC beyond 14.05.2020 i.e. till 14.05.2030 unimpeded by the fact that a New Policy has come into play?
IV. What is the scope and effect of Article 2.1, which obtains in the PSC in issue?
V. If Article 2.1 entitles the petitioners to extension of tenure of the PSC, is the refusal to extend the tenure by the respondents arbitrary and unfair?

Issue No. I

62. A careful perusal of the order dated 14.12.2015 would show that the Court had not foreclosed the issue with regard to whether or not in the instant case, a remedy by way of writ would be available to the petitioners. The observations made were tentative in nature. The Court, at that juncture, was of the view that notwithstanding the objections taken qua the maintainability of a writ, the procrastination displayed by the respondents qua the issue of extension of tenure of the PSC, necessitated its intercession in the matter. The idea was to nudge the respondents to take a call in the matter in terms of its obligation under PSC. At that stage, clearly, the legal tenability of a wrong call could not have been tested.

62.1 Therefore, the argument advanced on behalf of the respondents, in particular, respondent No.1/GOI, that since a decision had been taken, the writ petition had worked itself out and consequently, rendered infructuous, to my mind, is a submission which is completely unsustainable. In any event, in my view, the order dated 14.12.2015 was only an interim order which could not have precluded further arguments that the petitioners would have wanted to advance in the matter. In fact, right from inception, the stand of the petitioners has been, (given the construct of Article 2.1 of the PSC) that the respondents have no choice but to extend the tenure for the PSC for another 10 years, once, the stage of commercial production of gas is reached. Further, there are no such observations in the order which would prevent examination of the issue, that is, whether or not a writ petition would lie in matter of like nature.

**** **** ****

> 67.4. Therefore, as indicated above, given the facts and circumstances of the case, there would be no bar in entertaining a writ petition, even though the dispute arising between the parties falls within the realm of a contract.
>
> **** **** ****
>
> 71. Thus, for the foregoing reasons, the writ petition is allowed. Respondent No.1/GOI will extend the PSC dated 15.05.1995, pertaining to the Rajasthan Block, for a period of 10 years beyond its current term i.e. till 14.05.2030 as envisaged in Article 2.1 of the PSC, on the same terms and conditions. Since, the decision of the Board of Directors of respondent No.3, taken at its meeting held on 28.12.2017, was arrived at, in the backdrop of the New Policy being notified, the same would be disregarded. Respondent No.3's earlier decision dated 08.07.2016 will hold the field."

It is further submitted that learned Coordinate Bench in the aforesaid case in similar circumstances had entertained the writ petition and the same was also upheld by learned Division Bench.

iv) On facts, learned Senior Counsel has submitted that the decision of respondent Nos.1 and 2 in rejecting the application of the petitioner seeking extension of PSC was arbitrary as no dispute was ever raised by said respondents during the 25 years of their relationship with the petitioner. It is further submitted that respondent Nos.1 and 2 had not adhered to the timeline provided in Clause 1 of the extension policy with respect to submission, consideration and approval of request for extension of contract. As per said Clause, after submission of the application respondent No.2/DGH had to make recommendation to respondent No.1/MoPNG within six months of such submission. It is pointed out that it was not done so in the present case. It is further the case of the petitioner that as per Clause 2 which provides for

'Fiscal Parameters for Extension', and particularly in Clause 2.1 thereof, the petitioner has been paying the Government share of profit petroleum during the period of interim extension of PSC after 2023 at 10% higher rate what was existing under PSC before 2023. It has been argued that the same would have been a relevant consideration for extension of PSC in favour of the petitioner; however, respondent Nos.1 and 2 have not taken into account the same in the rejection letter/order. It is further submitted that the petitioner was granted five interim extensions after expiry of PSC on 29.06.2023 till the rejection of it's application seeking extension and the performance of the petitioner, during the said period and even 25 years of relationship was not taken into account. It is further submitted that the letters relied upon by learned AGI to show that the petitioner was in default for payment of profit petroleum to the share of Government is an afterthought as no issues were ever raised with respect to such payments prior to the petitioner's filing of application seeking extension of PSC. It is further submitted that if the situation was such that there were issues of payment of profit petroleum or for that matter royalty (this as per petitioner was to be paid by ONGC) to the Government, then question which arises is that why five extensions were granted to the petitioner and if same was the case, then no interim extension should have been granted to the petitioner. It is further submitted that it is only after the application for extension was moved by the petitioner, issues with respect to payment of profit petroleum and outstanding dues were raised by the aforesaid respondents and the same has been done in an arbitrary manner as it was merely an afterthought. Without prejudice to the aforesaid contentions, it has been submitted that the petitioner has, in fact, paid all its dues as referred to in the impugned rejection letter corresponding to its participating interest

under PSC. It is pointed out that respondent No.2/DGH, in complete disobedience of its own policy, had not followed the timeline within which it had to submit its recommendation to respondent No.1/MoPNG and the said recommendation by respondent No.2 which was to be submitted within six months of submission of application by the petitioner/contractor was submitted on 29.12.2021. It is further pointed out that the application for grant of extension of PSC was not only submitted by the petitioner; however, same was submitted by all the parties to the existing PSC. Attention of this Court has been drawn towards the note of contentions filed on behalf of respondent no.4/ONGC wherein, it has been stated that, "There were no default lapses on part of Respondent-ONGC and the dues and outstanding amount referred to in the impugned rejection letter were attributable to the petitioner alone", and it is submitted that the aforesaid stand of respondent no.4 is incorrect and contrary to the arrangement as provided under PSC as the royalty under PSC was to be paid by the lessee/ONGC and the petitioner's liability was only to pay profit petroleum corresponding to its participating interest. It is further submitted that, in case, there is any shortfall in payment of royalty to the Government, then the same will be attributable to respondent No.4/ONGC as after expiry of PSC in 2023, ONGC had not paid the same. It is further submitted that if only hurdle in allowing the application of the petitioner for extension of PSC was default in payment of royalty and profit petroleum, then, the same was not attributable to the petitioner as there were no dues on behalf of the petitioner when application for extension of PSC was made. Attention of this Court has been drawn towards the following averments made in additional affidavit dated 19.12.2025 filed on behalf of the petitioner: -

"4. It is thus clear that as late as end of the year 2021, there was no case of any real shortfall of payments on behalf of the Petitioner. Even otherwise, the Rejection Letter refers to alleged non-payments as follows:

(i) Short payment of Profit Petroleum due to recovery of excess Drilling cost and Geostatistical Inversion Study - USD 14.54 million.

(ii) Deduction of Special Additional Excise Duty (SAED) from Government's share of Profit Petroleum for Q2 FY 2022-23 to Q2 FY 2024-25 - USD 10.13 million.
(iii) Audit Exceptions - Dues relating to settlement of audit exceptions for the period up to FY 2020-21 - USD 1.54 million.

(iv) The Rejection Letter alleges that the required SRF was USD 43 .2 million and that there was a shortfall of USD 4.9 million

5. All these payments stand made by the Petitioner whether warranted or unwarranted. To resolve the dispute regarding extension of the PSC, the Petitioner made an offer on 24.11.2025 and pursuant thereto made payment of an amount of INR 695 .49 crores (including INR 66.98 crores mentioned in the Rejection Letter) to the Government on 02.12.2025 with an understanding that it will consider the PSC extension."

It is further submitted that as per impugned rejection letter, the dues were of royalty and not of profit petroleum and even otherwise, the petitioner in order to resolve all the disputes as pointed out hereinabove, has, during the pendency of the present petition, paid all the outstanding dues as stated in the impugned rejection letter. It is the case of the petitioner that the reasons stated in the impugned rejection letter/order were merely an afterthought inasmuch as the recommendations of respondent no.2/DGH were absent with respect to the issues with management of mineral oil operations, continuation of petroleum operations without PSC, lease or interim permission, and, creation of encumbrance on assets of the block as mentioned in sub-clauses a, b , c, of

paragraph (iv) of the impugned rejection letter/order. It is further pointed out that the aforesaid dues were not brought to the notice of the petitioner, prior to the filing of extension application. It is further the case of the petitioner that respondent Nos.1 and 2, while acting in arbitrary manner, had directed the petitioner to handover the possession to ONGC and cease from carrying out any further petroleum operation operations at the subject oil block; however, it has not taken into account that respondent No.4/ONGC had not paid Rs.455 Crores in 2021 and was itself in default of payment of royalty. Attention of this Court has been drawn towards a letter dated 13.09.2021 addressed to ONGC by respondent No.2/DGH with respect to payment of requisite royalty under the provisions of Oil Fields (Regulation and Development) Act, 1948, and it is contended that respondent No.4/ONGC was in default of payment of royalty to the Government and this non-payment of royalty along with penalty royalty was the only consideration in rejection of petitioner's application for extension. In view of the same, it is submitted by learned Senior Counsel for the petitioner that the non-payment of royalty along with penalty royalty was attributable to respondent No.4/ONGC and not the petitioner.

v) Learned Senior Counsel for the petitioner has also drawn attention of this Court towards DGH's recommendation dated 29.12.2021 regarding the petitioner's application seeking extension of PSC and it is submitted that in the said letter/recommendation, respondent No.2/DGH had recommended that the petitioner/contractor may be directed to forthwith clear the pending statutory dues and fulfil the prescribed conditions under the Extension Policy as pointed out hereinbefore, for consideration of application for extension of PSC submitted by the petitioner. It is pointed out that the petitioner has during

the pendency of the present petition paid all the dues as mentioned in the impugned rejection letter/order corresponding to its PI.

vi) Attention of this Court has also been drawn towards the recently enacted Petroleum and Natural Gas Rules, 2025, particularly on Rules 5 and 10 which provides for application for grant of petroleum lease and extension of term of petroleum lease respectively. Rule 10(8) provides that, on the expiry of period of 180 days, if the application for extension has not been decided by Central Government or the State Government the same shall be deemed to have been approved. Thus, it is contended that necessity of prompt decision on such application has been now given statutory force, and therefore, the unnecessary delay on part of respondent No.2/DGH in deciding the petitioner's application of extension suffers from vice of arbitrariness.

vii) It is further submitted that the case of the respondent no.2 that they are well within their right to invite fresh bids for development of area and award the field to most competitive bid is contrary to the extension policy as a respondent Nos.1 and 2 had not taken into account Clauses 3.2 (e) & (f) and 4.1 of the extension policy and has arbitrarily rejected the petitioner's application for extension. It is submitted by learned Senior Counsel for the petitioner that Clause 5 of the policy is attracted in the event of failure to comply with conditions mentioned in Clauses 3 and 4; however, in the present case, the past performance of the petitioner, the technical expertise report submitted along with the application seeking extension, and the cumulative a achievement of drilled wells in production since inception, have not been taken into account by respondent Nos.1 and 2.

viii) Learned Senior Counsel for the petitioner has responded to the judgments relied on by learned AGI during the course of arguments by way of following submissions: -

a) With respect to **Himalayan Flora & Aromas (*supra*)**, it is submitted that the petitioner is seeking extension under extension policy enacted in 2017 which has statutory force. As per Clause 4 of said policy, past performance of the applicant/contractor has to be favourably considered. It is submitted that respondent no.2/DGH's recommendation dated 29.12.2021 reflects that the petitioner satisfied all the criteria mentioned in Clauses 3 and 4 of the extension policy and same was the reason for granting five interim extensions. It is further submitted that the petitioner has legitimate expectation that its application would be decided in accordance with the extension policy of 2017.

b) With respect to **Joshi Technologies International Inc. (*supra*)**, it is submitted that promissory estoppel can be invoked in cases of contracts under Article 299 of the Constitution and the present petition is maintainable as public law element is involved. It is further submitted that State in its executive capacity, even in contractual field is obligated to act fairly and cannot discriminate arbitrarily.

c) With respect to **Natural Resources Allocation, In re, Special Reference No.1 of 2012**, it is submitted that revenue maximisation is not the sole way of serving public good and same is not the object of policy of distribution of petroleum resources and the oil blocks must be exploited with utmost expedition in the overall interest of the country.

d) With respect to **K.D. Sharma v. SAIL (*supra*)**, it is submitted that the petitioner has not made any concealment or misrepresentation, and thus, this judgement is irrelevant.

e) With respect to **Sharwan Kumar Kumawat (*supra*)**, it is submitted that the said case is irrelevant and not applicable to the facts in the present case. It is submitted that in the present case application for extension was made under extension policy of 2017 which was enacted by the Government itself. It is further submitted that the legitimate expectation also arises from the past conduct of the Government as in the present case the petitioner was granted five extensions without any mention of any default.

f) With respect to **Army Welfare Education Society (*supra*)**, it is submitted that legitimate expectation is in the realm of public law and the petitioner's legitimate expectation arises not only from the past conduct in granting five interim extensions but also from the extension policy which has a statutory force.

g) With respect to **Reliance Natural Resources Ltd. (*supra*)**, it is submitted that the said judgement holds that government policy would be applicable to the pricing and the same would be binding on respondent Nos.1 and 2. It is further submitted that reliance placed on Article 297 of the Constitution by respondent No.2 is misconceived as petitioner's case is not that grant of petroleum excavation lease is not vested with the Union. It is further submitted that the petitioner is not claiming any right over the subject oil field and is only seeking enforcement of Government's extension policy in its favour.

h) With respect to **Sugati Beach Resort Pvt. Ltd. (*supra*)**, it is submitted that the extension policy of the Government itself take care of revenue maximisation by requiring 10% additional profit during the extended period. It is pointed out that the Government is receiving this additional revenue after the expiry of PSC on 29.06.2023 and the same continued during the period of extensions till 2025.

i) With respect to **Silppi Constructions Contactors (*supra*)**, it is submitted that even in contractual relations, the State is obligated to act fairly and reasonably. It is submitted that the petitioner has complied with all the requirements of extension policy of 2017 and the default is on the part of ONGC in respect of its liability to pay royalty.

ix) In view of the aforesaid submissions, it is submitted on behalf of the petitioner that the petition is maintainable in the present form and it is prayed that if this Court finds that the writ is maintainable then, a *status quo* order may be granted and respondent Nos.1 and 2 be directed to reconsider the application of the petitioner seeking extension of PSC by giving a proper hearing in accordance with the extension policy before respondent No.2/DGH and notice may be issued in the present petition and respondents be given an opportunity to file reply.

7. Learned AGI for respondent No.2/DGH, while rebutting the aforesaid arguments raised by learned Senior Counsel on behalf of the petitioner, has submitted that the present case is not with respect to termination or grant of contract and the impugned rejection letter/order is purely an administrative decision on the basis of the parameters laid down in policy for grant of extension of PSC and the principles of reasonableness, fairness, and justness are not applicable to the present case. It is further submitted that the parameters provided in the extension policy have not been fulfilled in the present case and therefore the application of the petitioner seeking extension of PSC was rejected. It is further the case of respondent no.2 that the present petition has been filed by the petitioner by suppressing material facts and non-disclosure of material which had bearing on the outcome of the decision of the case. Reliance has been placed on letter dated 21.09.2021 with respect to Government Audit for 2018-19 of subject oil block whereby, attention of the petitioner was drawn towards the fact that all statutory dues and payment due to the Government should have been cleared and the contractor/petitioner should not be defaulter to the Government or any account. It is, therefore,

submitted that non-payment of royalty was not the only consideration in rejecting the application of the petitioner for extension of PSC. It is further submitted that after recommendations were made by respondent no.2/DGH on 29.12.2021, several letters with respect to short payment of profit petroleum and royalty dues to Government of India were addressed to the petitioner along with audit reports. However, said dues were not cleared by the petitioner. It is further the case of respondent no.2 that the petitioner could have invoked arbitration in terms of Clause 6 of the extension policy, if it felt that the decision of rejection was not in accordance with the policy. Thus, it is submitted that the present petition is not maintainable and the same may be dismissed.

8. Learned ASG for respondent no.4/ONGC has submitted that the letter dated 13.09.2021 issued by respondent No.2/DGH with regard to non-payment of royalty by ONGC was subsequently withdrawn and the test for the maintainability of the present petition is that whether the reliefs sought by the petitioner can be granted. It is further submitted that the interim extensions had given no right to the petitioner to continue with PSC and the same was purely an internal measure of facilitation to continue petroleum operations, pending the decision on contract extension.

9. *Per contra*, learned Senior Counsel for the petitioner have submitted that the present petition is maintainable as the extension policy was transparent mechanism for inviting public investment and as held by learned

Coordinate Bench in **Vedanta** (***supra***)[26], the extension policy had statutory force. It is further submitted that the arbitration could not have been invoked as the PSC had expired in 2023, and further, in terms of the policy, the arbitration could have been involved during the period of extensions only. It is pointed out that the interim extensions granted to the petitioner have also expired. Thus, it is submitted that the present petition is maintainable and the reliefs sought by way of the present petition can also be granted.

ANALYSIS AND FINDINGS

10. Heard learned Senior Counsel for the petitioner, learned AGI for respondent No.2/DGH and learned ASG for respondent No.4/ONGC and perused the records.

11. It has been vehemently argued that on behalf of respondent Nos. 2 and 4 that the present writ petition is not maintainable and the same should be dismissed *in limine.*

12. It is a matter of record that the PSC signed between the petitioner and the Government of India had a covenant with respect to the extension of the same, which reads as under: -

> "ARTICLE 2
> DURATION
>
> 2.1 The term of this Contract shall be for a period of twenty five (25) years from the Effective Date, unless the Contract is terminated

[26] **2018:DHC:3625**

> earlier in accordance with its terms, but may be extended by the Government for a further Period not exceeding five (5) years; provided that in the event of Commercial Production of Non Associated Natural Gas, the Contract may be extended by the Government for a period up to but not exceeding thirty five (35) years ·from the Effective Date."

13. During the tenure of the PSC, the Government of India came out with the aforesaid Extension Policy titled as "**Policy for the Grant of Extension to the Production Sharing Contracts signed by Government of India awarding Pre-New Exploration Licensing Policy (PreNELP) Exploration Blocks.**". Object of the said extension policy at the sake of repetition and for completeness is reproduced as under: -

> "No. O-19025/07/2014-ONG-D-V - The Government of India has approved a policy for granting extension to the Production Sharing Contracts (PSCs) signed by Government of India awarding Pre-New Exploration Licensing Policy (Pre-NELP) Exploration Blocks, to have a transparent and defined framework for granting extension. This will help the operators in planning their investments and operations in these fields which will help in optimal exploitation of the reserves."

14. A perusal of the same would demonstrate that the said policy was brought in with its main objective as optimal exploitation of the reserves. The policy was thus introduced to enable a contractor, whose tenure of PSC is ending, to seek extension for the same by making necessary arrangements for investment/planning, which would be evaluated as per the criteria provided for in the policy. This being the objective, Clause (1) provides that the contractor should submit the application duly approved by the Operating Committee for extension to the Ministry of Petroleum and Natural Gas (MoPNG) at least two years in advance to the expiry date of the contract but

not more than six years in advance. It also provides that a copy of the said application is to be sent to DGH (respondent No. 2), who would make a recommendation to the Ministry within six months of submission of the application by the contractor and the decision by the Government will be taken within three months of the receipt of the proposal from respondent No.2/DGH. This Clause signifies the importance of timeline for such extensions. The said timeline, admittedly, was not adhered to by the respondent No.1. Further, as per Clause 1 of the policy, the application for extension has to be sent with the approval of the Operating Committee. The Operating Committee as per Article 1.63 of the PSC means, the committee established by that name in the Operating Agreement pursuant to Article 7, which provides for Operatorship, Operating Agreement and Operating Committee. The Operating Committee included a member representative of respondent No.4/ONGC.

15. The Extension policy, thereafter, in Clause 2 provides for Fiscal Parameters for Extension, Prerequisites for Evaluation (Clause 3) and Criteria for Evaluation of Request (Clause 4). Clause – 5 of the said policy reads as under: -

> "5. In the event of failure to comply with any of the above conditions, mentioned in clauses 3 and 4 above, Government shall have the option to invite fresh bids for further development of the area and to award the field to the most competitive bid. Government would also take into account pending arbitration while considering extension requests."

16. The case of respondent No. 2 is that the petitioner could not satisfy the conditions mentioned in Clauses-3 and 4, and therefore, the extension was not granted to it.

17. It is pertinent to note that Clause 9 of the Extension Policy provides as under: -

> "**9. Other conditions:**
>
> a) Government shall have the right to stipulate any further conditions specific to any particular Production Sharing Contract.
>
> **b) Government shall reserve the right not to extend PSC without assigning any reason thereof.**
>
> c) The condition stipulated in this policy will override the existing provision of the PSC.
>
> d) In case any contractor is not agreeable to this policy then the field will be considered for rebidding, on as is where is basis. Government would also have the right to assign the same to National Oil Companies (NOCs) i.e. ONGC or OIL."
>
> **(emphasis supplied)**

18. As per the aforesaid sub-clause "b", the Government has reserved its right not to extend the PSC without assigning any reasons. However, in the present case, the respondent No.1 has not exercised this right and has chosen to give reasons for non-extension. In this background, the communication/letter dated 29.12.2021 by respondent No.2/DGH to MoPNG/respondent No.1 with respect to the consideration of application for extension of PSC submitted by the petitioner/contractor is significant which has been reproduced as under: -

"Ministry of Petroleum & Natural Gas
Government of India

Ref: DGH/PF/PSC EXTENSION/CB-OS/2/2021 29.12.2021

Additional Secretary (Exploration) Government of India
Ministry of Petroleum and Natural Gas,
Shastri Bhawan, New Delhi -110001

Subject: Application for grant of extension of PSC in CBIOS-2 Block.

Sir,

Production Sharing Contract (PSC) for CB/OS-2 Block was signed on 30th June 1998 and the same is due to expire on 29th June 2023. Contractor, vide letter dated 29.06.2021(Annexure-1), has applied for extension of the term of PSC under the PSC Extension Policy for Pre-NELP blocks dated 07.04.2017 for a period of 10 years beyond the existing PSC period (i.e. till 29 June 2033).

2. **The extension application has been duly examined at DGH in line with the PSC Extension Policy dated 07.04.2021 (Annexure-II) including Para 1, Para 3.2 and other relevant provisions under the Policy.** In this context, it may be noted that Para 3.2 of the Policy stipulates that certain conditions are required to be fulfilled for consideration of PSC extension application. One of these conditions is as under.

Quote 3.2 (g)

All the statutory dues and payment due to Government should have been cleared and the contractor should not be a defaulter to the Government on any account.

Unquote

3. **It is observed that the extension application submitted by the contractor does not conform to Para 3.2 (g) of the Policy as there are statutory dues on account of short paid royalty and penal royalty to the tune of INR 4,55,24,27,628 (provisional as of 30.06.2021), which has been duly notified to the Contractor from time to time by DGH.**

The latest notifications have been issued on 13.09.2021 and 21.09.2021 (Annexure- III). However, the Contractor is yet to pay pending dues to GoI.

4. Therefore, it is recommended that the Contractor may be directed to forthwith clear the pending statutory dues and fulfill the prescribed conditions under the said Policy for consideration of application for extension of PSC submitted by the Contractor.

This has approval of DG, DGH."

(emphasis supplied)

It is pertinent to note that this communication was sent to respondent No.1/MoPNG as per Clause 1 of the Extension Policy with respect to recommendation by respondent No.2/DGH.

19. The aforesaid letter refers to notification issued on 13.09.2021 to respondent No.4/ONGC which reads as under: -

"Ministry of Petroleum & Natural Gas
Government of India

DGH/CF/Royalty/21-22/004 Date: 13.09.2021

To Mr Sandeep Gupta
ED-Chief JVOG
Oil & Natural Gas Corporation Ltd
5, Nelson Mandela Marg
Vasant Kunj
New Delhi 110070

Subject: Payment of requisite Royalty under the provisions of the Oilfields (Regulation and Development) Act 1948 for the Block CB-OS-2 for the period up to FY 2020-21.

Ref: DGH letters dated 23.08.2021, 25.03.2021 & 16.01.2021 and ONGC letter dated 27.08.2021 and earlier correspondences on the subject.

Sir,

Reference may kindly be made to the above correspondences on the subject matter.

It is hereby reiterated that the lessee, as holder of a Petroleum Mining Lease (PML) is under statutory obligation to pay Royalty under the provisions of The Oilfields (Regulation and Development) Act 1948 and Petroleum and Natural Gas Rules 2003 and amendments therein, at the rates for the time being specified in the Schedule in respect of that mineral oil, and within the prescribed time.

Accordingly, as has been notified earlier, the requisite Royalty in respect of Block CB-OS/2 has not been paid to Government of India. The total amount of shortfall of Royalty up to FY 2020-21 is INR 1,20,94,79,889 (provisional) along with penal Royalty of INR 3,34,29,47,739 (provisional) thereupon up to 30th June 2021 which may please be remitted at the earliest along with penal royalty up to the date of payment failing which the same may be treated as violation of ORD Act and Rules.

However, as requested by you vide your letter dated 27th August 2021, you may fix a meeting with MoPNG on this issue. The same can be attended by the concerned DGH officials.

This is issued with the approval of the competent authority."

(emphasis supplied)

20. During the course of arguments, these communications were placed on record by learned Senior Counsel for the petitioner, and the submission on behalf of learned ASG for ONGC/respondent No. 4, in response to aforesaid letter, was that the same was subsequently withdrawn by respondent No. 2/DGH.

21. During the course of the proceedings, learned AGI has also placed on record communications by way of an affidavit between petitioner and respondent No. 2/DGH whereby, it was emphasised that the issues of statutory dues as well as short payment of profit petroleum and other issues of audit exceptions for the subject oil block had been raised. It is also a matter of record that during the pendency of the application seeking extension of PSC, the petitioner was given 5 interim extensions from 30.06.2023 to 29.09.2024.

22. It is pertinent to note that in one of the communications dated 22.03.2022 relied upon by learned AGI, addressed to the contracting parties including respondent No.4/ONGC, in paragraph 5, it was recorded as under: -

> "5. The Licensee/Lessee of the Block has already been requested to remit the short-paid Royalty (reference is invited to DGH letter dated 14.09.2021, wherein the short-paid amount of INR 12,94,79,889 (provisional) upto the Financial year 2020-21 calculated upto 31.03.2021 along with applicable penal Royalty as per PNG rules was already communicated). The Licensee/Lessee is again requested to remit the short-paid Royalty along with penal royalty."

23. In another letter dated 28.01.2025 which has been placed on record, it is recorded as under: -

> "Your attention is invited to the above captioned subject, whereby DGH/GoI has directed you to pay the Short paid GOI share of PP on account of adjustment of Special Additional Excise Duty (SAED) while remitting the GOI share of PP. However, till date the said amount has not been deposited.
>
> This conduct of Vedanta is serious breach of the agreed terms and conditions of the PSC causing huge financial losses to Central Exchequer.

Vedanta / CEHL is once again called upon to deposit the short paid GOI share of PP amounting to USD 10.13MM along with applicable interest on account of SAED adjustment made while remitting the GOI share of PP till 30.09.2024 within 7 days of the receipt of this letter. In case the amount is not paid within 7 days, GOL may initiate actions under Article 30 of the PSC.

The forgoing is without prejudice to the GOI's right under the PSC and applicable law."

24. The perusal of the impugned rejection letter would reflect that the primary issues which were raised by respondent No. 2 was with regard to Clauses 3.2 (g) and 4.1 (b) of the Extension Policy which read as under: -

"**3. Prerequisites for Evaluation**

3.2 ….

**** **** ****

(g) All the statutory dues and payment due to Government should have been cleared and the contractor should not be a defaulter to the Government on any account.

**** **** ****

4. Criteria for Evaluation of Request

4.1 ….

**** **** ****

(b) Contractor should have complied with the provisions of creation of Site Restoration Fund (SRF) and Site Restoration Plan (SRP) as per PSC. Wherever PSC does not provide for SRF and SRP, the Contractor should propose SRF and SRP as a part of extended Contract."

25. The aforesaid issues have been vehemently disputed by the petitioner. It has been contended that they were an afterthought as initially the primary issue was with respect to non-payment of royalty by ONGC/respondent No.4, which is one of the contracting parties being the lessee. On the other hand, it has been contended by learned AGI that the petitioner had not performed its obligations under the contract/PSC which had been duly noted and informed to the petitioner through various communications.

26. Thus, in these circumstances, what remedy can the petitioner avail of with respect to impugned rejection letter/order dated 19.09.2025?

26.1. The arbitration clause in the PSC is provided under Article 33, relevant recitals/covenants of which reads as under: -"

ARTICLE 33

SOLE EXPERTS, CONCILIATION AND ARBITRATION

33.1 The Parties shall use their best efforts to settle amicably all disputes, differences or claims arising out of or in connection with any of the terms and conditions of this Contract or concerning the interpretation or performance thereof.

33.2 Except for matters which, by the terms of this Contract, the Parties have agreed to refer to a Sole Expert and any other matters which the Parties may agree to so refer, any dispute, difference or claim arising between the Parties hereunder which cannot be settled amicably may, subject to Article 33.11, be submitted by any Party to arbitration pursuant to Article 33.3. Such Sole Expert shall be an independent and impartial person of international standing with relevant qualifications and experience appointed by agreement between the Parties. Any Sole Expert appointed shall be acting as an expert and not as an arbitrator and the decision of the Sole Expert on matters referred to him shall be final and binding on the Parties and not subject to arbitration. If the Parties are unable to agree on a Sole Expert, the matter may be referred to arbitration.

33.3 Subject to the provisions herein, the Parties hereby agree that any unresolved dispute, difference or claim which cannot be settled amicably within a reasonable time may, except for those referred to a Sole Expert under Article 33.2 and subject to Article 33.11, be submitted to an arbitral tribunal for final decision as hereinafter provided.

33.4 The arbitral tribunal shall consist of three arbitrators. The Party or Parties instituting the arbitration shall appoint one arbitrator and the Party or Parties responding shall appoint another arbitrator and both Parties shall so advise the other Parties. The two arbitrators appointed by the Parties shall appoint the third arbitrator, who shall act as presiding Arbitrator. ,,

The aforesaid arbitration clause is with respect to the dispute arising out of the performance of the PSC in respect of various terms of the same. Admittedly, no claim or dispute was raised by the Government of India seeking arbitration with respect to non-payment of royalty and penal royalty or shortfall in share of profit petroleum to the Government. The dispute here is with respect to denial of request of extension on the grounds mentioned

hereinbefore, and, for such redressal there is no alternate mechanism provided for in the PSC or in the Extension Policy.

26.2. The arbitration clause provided in Clause 6 the Extension Policy reads as under: -

> "**6. Seat of Arbitration:**
>
> The seat of arbitration will be at Delhi, India, for Production Sharing Contracts during extension period, notwithstanding any other provision in the existing PSC and will be subject to the Indian Arbitration & Conciliation Act, 1996, as amended from time to time."

The aforesaid clause is in continuation to the Article 33 of the PSC and only provides that the seat of arbitration would be in Delhi, for Production Sharing Contracts, during extension period. The aforesaid clause will not be applicable in the present circumstances as the dispute is with respect to non grant of extension by respondent No.1. Thus, in the considered opinion of this Court the petitioner has no alternate efficacious remedy available *qua* the impugned rejection letter/order dated 19.09.2025.

27. There is no dispute with regard to the contention raised on behalf of respondent No.2 by learned AGI that the contracts of the nature like in the present case, which may be in the realm of private contracts, is with respect to natural resources, and therefore, the constitutional mandate and public interest will outweigh the right of the contractor as there is no absolute right for extension of PSC. It is also not in dispute that the PSC by its very nature cannot be considered as a mere regular commercial contract and "public trust

doctrine", in cases, like the present one, pertaining to exploitation of natural resources has to be read into. It is also not in dispute that the aforesaid policy which is applicable to all petroleum blocks across the country has to be uniformly applied and that the Government will always have the right not to extend the same in larger national interest and as a trustee of natural resources which are held by the Government of India as interpreted by the Hon'ble Supreme Court in **Natural Resources Ltd. v. Reliance Industries Ltd. (*supra*).**

28. The issue raised in the present petition is whether the impugned rejection letter/order by respondent No.1/MoPNG was in consonance with the Extension Policy of 2017 framed by itself. It cannot be disputed that the policy has a statutory force and is binding on both the parties. Any decision in pursuance of that policy, as per settled law, has to be fair and reasonable. It is also not in dispute that any decision taken by the Government of India in pursuance of a statute or a policy framed thereunder can be judicially reviewed, *albeit*, in limited circumstances, and if, the such decision suffers from the vice of arbitrariness, then, the Constitutional Courts in exercise of Articles 226 of the Constitution can interfere with such decision.

29. This Court in exercise of Article 226 of the Constitution will be circumspect in interfering with the commercial wisdom of the Government with regard to extension and non-extension of the contract or for that matter whether the contract ought to be extended or not but it can surely for a limited purpose examine the process by which such a decision has been arrived at in case where there is an allegation of unfairness. As pointed out hereinbefore, in

terms of Clause-9 the Government has reserved its right in the policy not to extend the contract without assigning any reason. However, the same has not been invoked in the present case.

30. Learned Senior Counsel on behalf of the petitioner has vehemently argued that all the reasons assigned in the final impugned decision are an afterthought inasmuch as from the very inception, the issue raised by respondent no. 2 was non-payment of statutory dues on account of short payment of royalty and penalty royalty, which as per respondent no. 2 was due from the lessee who is respondent No.4/ONGC. Various communications indeed have been placed on record by learned AGI to show that the similar issues with respect to petitioner were also raised by respondent no. 2 regarding short payment of share in profit petroleum to the Government; however, the same has been disputed by the petitioner. It is on this ground, it is contended that there was no opportunity given for the petitioner to explain its stand with regard to payment of said dues, which, during the course of present proceedings, without prejudice, has been paid.

31. At this stage, useful reference can be made to the judgment of Hon'ble Supreme Court in **Manohar Lal Sharma v. Narendra Damodardas Modi and Ors.**[27]**,** wherein, the Hon'ble Supreme Court was dealing with four writ petitions filed as public interest litigations, challenging the procurement of 36 Rafale fighter jets (Medium Multi-Role Combat Aircrafts-MMCR) by Inter-Governmental Agreement (IGA) of 2016, on ground that certain newspapers

[27] **(2019) 3 SCC 25: 2018 SCC OnLine SC 2807**

reported a statement claimed to be made by former President of France, Francois Hollande, to the effect that the French Government were left with no choice in the matter of selection of Indian Offset Partners. While disposing of the aforesaid group of writ petitions, the Hon'ble Supreme Court set out the parameters of judicial scrutiny of governmental decisions and observed and held as under**: -**

> **"5.** Adequate military strength and capability to discourage and withstand external aggression and to protect the sovereignty and integrity of India, undoubtedly, is a matter of utmost concern for the nation. The empowerment of defence forces with adequate technology and material support is, therefore, a matter of vital importance.
>
> **6.** Keeping in view the above, it would be appropriate, at the outset, to set out the parameters of judicial scrutiny of governmental decisions relating to defence procurement and to indicate whether such parameters are more constricted than what the jurisprudence of judicial scrutiny of award of tenders and contracts, that has emerged till date, would legitimately permit.
>
> **7.** Parameters of judicial review of administrative decisions with regard to award of tenders and contracts has really developed from the increased participation of the State in commercial and economic activity. In *Jagdish Mandal* v. *State of Orissa* [*Jagdish Mandal* v. *State of Orissa*, (2007) 14 SCC 517] this Court, conscious of the limitations in commercial transactions, confined its scrutiny to the decision-making process and on the parameters of unreasonableness and mala fides. In fact, the Court held that it was not to exercise the power of judicial review even if a procedural error is committed to the prejudice of the tenderer since private interests cannot be protected while exercising such judicial review. The award of contract, being essentially a commercial transaction, has to be determined on the basis of considerations that are relevant to such commercial decisions, and this implies that terms subject to which tenders are invited are not open to judicial scrutiny unless it is found that the same have been tailor-made to benefit any particular tenderer or a class of tenderers. (See *Maa Binda Express Carrier* v.

North-East Frontier Railway [*Maa Binda Express Carrier* v. *North-East Frontier Railway*, (2014) 3 SCC 760]).

8. Various judicial pronouncements commencing from *Tata Cellular* v. *Union of India* [*Tata Cellular* v. *Union of India*, (1994) 6 SCC 651] , all emphasise the aspect that scrutiny should be limited to the Wednesbury principle of reasonableness and the absence of mala fides or favouritism.

*** *** ***

10. In *Reliance Airport Developers (P) Ltd.* v. *Airports Authority of India* [*Reliance Airport Developers (P) Ltd.* v. *Airports Authority of India*, (2006) 10 SCC 1] the policy of privatisation of strategic national assets qua two airports came under scrutiny. A reference was made in the said case (at SCC p. 49, para 57) to the commentary by Grahame Aldous and John Alder in their book *Applications for Judicial Review, Law and Practice*:

> "*57.* … 'There is a general presumption against ousting the jurisdiction of the courts, so that statutory provisions which purport to exclude judicial review are construed restrictively. *There are, however, certain areas of governmental activity, national security being the paradigm, which the courts regard themselves as incompetent to investigate, beyond an initial decision as to whether the Government's claim is bona fide*. In this kind of non-justiciable area judicial review is not entirely excluded, but very limited. It has also been said that powers conferred by the Royal Prerogative are inherently unreviewable but since the speeches of the House of Lords in *Council of Civil Service Unions* v. *Minister for the Civil Service* [*Council of Civil Service Unions* v. *Minister for the Civil Service*, 1985 AC 374 : (1984) 3 WLR 1174 (HL)] this is doubtful. Lords Diplock, Scaman and Roskili (sic.) [To be read as "Roskill".] appeared to agree that there is no general distinction between powers, based upon whether their source is statutory or prerogative but that judicial review can be limited by the subject-matter of a particular power, in that case national security. *Many*

> *prerogative powers are in fact concerned with sensitive, non-justiciable areas, for example, foreign affairs, but some are reviewable in principle, including the prerogatives relating to the civil service where national security is not involved*. Another non-justiciable power is the Attorney General's prerogative to decide whether to institute legal proceedings on behalf of the public interest."
>
> (emphasis supplied)
>
> **11.** It is our considered opinion/view that the extent of permissible judicial review in matters of contracts, procurement, etc. would vary with the subject-matter of the contract and there cannot be any uniform standard or depth of judicial review which could be understood as an across the board principle to apply to all cases of award of work or procurement of goods/material. The scrutiny of the challenges before us, therefore, will have to be made keeping in mind the confines of national security, the subject of the procurement being crucial to the nation's sovereignty.
>
> **** **** ****
>
> **15.** It is in the backdrop of the above facts and the somewhat constricted power of judicial review that, we have held, would be available in the present matter that we now proceed to scrutinise the controversy raised in the writ petitions which raise three broad areas of concern, namely, (*i*) the decision-making process; (*ii*) difference in pricing; and (*iii*) the choice of IOP."

32. Following the aforesaid judgment of Hon'ble Supreme Court in **Manohar Lal Sharma (*supra*)**, the learned Division Bench of Hon'ble Bombay High Court in **BVG India Ltd. Through its Authorised representative Sangram Sawaant v. State of Maharashtra, through its Chief Secretary and Others[28],** had observed as under: -

[28] **2021 SCC OnLine Bom 412**

> "**24.** We may thus observe that the terms and conditions of a tender can undoubtedly be fixed and arrived at by the tendering authority depending upon the need, expectations, exigencies and other surrounding circumstances in relation to a work being tendered. Such a freedom to arrive at legitimate terms and conditions in inviting public offers cannot in any manner be taken away. The cherished principles of free play in the joints and the liberty to choose a contractor, on terms and conditions fixed by the tendering authority in public interest, cannot be taken away. Hence, for a given work, as to what would be the ideal terms and conditions for a contract to be entered into, is completely within the domain of the tendering authority. The Court would not have any expertise to sit in appeal over the tender conditions, the role of the Court is triggered only qua the decision making process. The decision making process would be tested on the touchstone of Wednesbury unreasonableness, malafides and apparent arbitrariness. In the event there is material before the Court indicating that any tender condition is inserted malafide or to suit the needs of a particular bidder and which violates the principles of fairness, non-discrimination and non arbitrariness as enshrined in Article 14 of the Constitution, the Court would certainly exercise powers of judicial review to test the decision making process."

33. Assuming, *arguendo*, if the decision in pursuance of the aforesaid Extension Policy was taken by the Government of India for awarding extension of PSC to a contractor, the same would be, undoubtedly, within the realms of commercial wisdom of the Government of India. However, if a third party in public interest points out to certain anomalies or terms which would not be in national interest, then the same could be examined by the Constitutional Court in exercise of its power of judicial review. In these circumstances, it cannot be argued that the power of judicial review of the Constitutional Court, in examining such a decision, is completely excluded. Fairness in all executive decisions is the essence of the Right to Equality as provided for under Article 14 of the Constitution of India. If any dispute is raised with respect to fairness of such an action, then, the same can be

examined, *albeit*, for limited purposes by the Constitutional Court especially when there is no other alternative remedy.

34. In the present case, the petitioner has raised certain issues, as noted hereinabove leading upto the impugned rejection letter/order, which require consideration and the same cannot be properly adjudicated without an appropriate response/counter affidavit on behalf of concerned respondents.

35. In view of the aforesaid, submissions on behalf of respondent Nos.2 and 4 raising preliminary objection with respect to maintainability of the present petition and its dismissal *in limine* cannot be accepted.

36. Issue notice.

37. Let response/counter affidavit on behalf of the respondents be filed within a period of 4 weeks with an advance copy to the learned counsel appearing on behalf of the petitioner. Rejoinder thereto, if any, be filed within 2 weeks thereafter.

38. In the meantime, the parties shall maintain *status quo*.

39. List before Roster Bench on 27.02.2026.

40. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

JANUARY 06, 2026*/bsr/ns*