



2025:CGHC:61172-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WA No. 916 of 2025

Keshkal G.N. India Bauxite Mines And Mineral Limited (J.V.C.) R/o
404 Civil Lines Opp. Chief Minister House, District- Raipur - 492001.

... Appellant

versus

1 - State Of Chhattisgarh Through Secretary, Mines And Minerals
Department, Naya Raipur, Mantralaya-492002.

2 - Chhattisgarh Minerals Development Corporation Limited
Through Its Managing Director, Sector 24, Office Block- 7a, 3rd
Floor, Nava Raipur, Atal Nagar, Raipur, Chhattisgarh.

3 - Union Of India Through Secretary, Ministry Of Mines, Address
3rd Floor, A Wing, Shastri Bhawan, New Delhi - 110001.

... Respondent(s)

(Cause title taken from CIS)

For Appellant	: Shri Kishore Bhaduri, Senior Advocate with Shri Priyanshu Gupta, Advocate.
For Respondent/State	: Shri Praveen Das, Dy. Advocate General
For Respondent No. 2	: Shri Yogesh Pandey, Advocate
For Respondent No. 3	: Shri Ramakant Mishra, DSGI

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Bibhu Datta Guru, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

16.12.2025

1. Heard Shri Kishore Bhaduri, Senior Advocate with Shri Priyanshu Gupta, learned counsel for the appellant. Also heard Shri Praveen Das Dy. Advocate General appearing for the State, Shri Yogesh Pandey, learned counsel for the respondent No. 2 and Shri Ramakant Mishra, DSGI, for Union of India/Respondent No. 3.
2. Challenge in this appeal is to the order dated 16.10.2025 passed by the learned Single Judge in WPC No. 1142/2023, whereby the writ petition preferred by the appellant/writ petitioner came to be dismissed. For the sake of convenience, the parties would be referred as per their status before the writ Court.
3. (a) The case of the petitioner is that the Government of Madhya Pradesh, by notification dated 19.06.1981 (Annexure P/1), reserved the right of mining of Bauxite ore in Kanker and Narayanpur Tahsils of District Bastar in favour of M.P. State Mining Corporation Limited (MPSMC). Pursuant thereto, joint

prospecting mining was approved vide notification dated 18.11.1981 and Belpahar Refractories Limited conducted prospecting operations and submitted a geological investigation report for Bauxite in the notified area.

(b) Subsequently, vide order dated 22.11.1985 (Annexure P/3), the State Government nominated MPSMC as an agent for Bauxite mining in Kanker, Kondagaon and Narayanpur areas of District Bastar, subject to conditions, including that MPSMC would be the owner of the mines and comply with the Mines Act, 1952. Upon reorganization of the State on 01.11.2000, the State of Chhattisgarh was formed and the Chhattisgarh Minerals Development Corporation (CMDC) was constituted as a State Government public sector undertaking to carry out mining operations in Chhattisgarh.

(c) The petitioner contends that a Joint Venture Agreement (JVA) dated 17.02.2003 (Annexure P/7) was executed between CMDC and the petitioner company for identification, exploration, exploitation and marketing of Bauxite ore in Kanker and Bastar Districts and for setting up a calcination plant of 100 MTPD capacity in District Kanker. Under the JVA, CMDC was required to ensure availability of Bauxite-bearing

areas to the petitioner and was allotted 25% equity in the joint venture without financial contribution, while day-to-day management was to remain with the petitioner. In furtherance thereof, CMDC applied for grant of a mining lease on 20.04.2006 for village Budhiyamari, District Kanker. A supplementary JVA dated 16.10.2008 (Annexure P/6) provided that CMDC would apply for prospecting licence/mining lease in its name and thereafter transfer the leasehold rights to the joint venture company without consideration, and that no application would be withdrawn without consent of the petitioner.

(d) The application submitted by CMDC was forwarded by the Directorate of Mining, Government of Chhattisgarh to the State Government and thereafter to the Government of India. However, the proposal was rejected on the ground that the area was reserved and not available for private persons under Rule 59 of the Mining Concession Rules, 1960. A request for reconsideration was again made by the State Government, stating that a decision had been taken to grant mining lease to CMDC for 30 years.

(e) The Government of India, Ministry of Mines, vide memo

dated 01.08.2011 (Annexure P/10), rejected the proposal on the ground that the joint venture partnership ratio and selection of the joint venture partner were not in accordance with Section 11(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (henceforth 'the MMDR Act') and the guidelines dated 24.06.2009. Subsequently, the MMDR Act was amended by the MMDR Amendment Act, 2015.

(f) Thereafter, vide memo dated 01.06.2015 (Annexure P/10), the Government of India rejected the proposal for grant of mining lease in favour of CMDC in view of Section 10A of the MMDR Amendment Act, 2015, holding that the application had become ineligible w.e.f. 12.01.2015, except for cases saved under Section 10A(2A). The State Government was, however, advised to consider grant of mining lease in favour of CMDC under Section 17A(2A) of the amended Act.

(g) Pursuant thereto, the Secretary, Mining Department, Government of Chhattisgarh issued a clarification dated 24.02.2015 directing communication to applicants whose applications had become ineligible under the amended provisions. The Managing Director of CMDC again requested reconsideration of the case in light of the judgment of the

Hon'ble Supreme Court in *Monnet Ispat and Energy Ltd. v. Union of India* [(2012) 11 SCC 1]. Though proceedings were initiated by the State Government thereafter, no final decision was taken, compelling the petitioner to file the present writ petition seeking the reliefs as claimed. The said writ petition has been dismissed by the learned Single Judge. Thus, this appeal.

4. Learned counsel for the petitioner/appellant submits that while passing the order impugned the learned Single Judge has not at all considered the facts and circumstances of the case in its true perspective. Learned counsel for the appellant submits that the impugned judgment of the learned Single Judge is legally unsustainable as it erroneously holds that the appellant lacked locus standi, ignoring that the appellant is a 74% equity holder and an integral constituent of a State-approved joint venture formed pursuant to the State's mineral development policy, and is thus a "person aggrieved" directly affected by the respondents' inaction and rejection of mining lease applications made on its behalf by CMDC under the Joint Venture Agreement. It is contended that the appellant invested more than ₹20 crores in setting up a bauxite

calcination plant solely on the basis of repeated State assurances, joint venture approvals and conduct, thereby attracting the doctrines of promissory estoppel and legitimate expectation, which were wrongly rejected by the learned Single Judge. Learned counsel further submits that the mining lease applications, filed long prior to the 2015 and 2021 amendments to the MMDR Act and in pursuance of the 1981 reservation notification, were protected under Sections 10A(2A) and 17A of the Act, and could not have been treated as lapsed without formal rejection or consideration in accordance with law. It is also argued that the retrospective application of the 2009 guidelines and the denial of parity with similarly placed CMDC joint ventures granted leases amounts to arbitrariness and hostile discrimination violative of Article 14 of the Constitution. Learned counsel submits that the learned Single Judge adopted an unduly technical approach, failed to consider the equitable jurisdiction under Article 226, misapplied the doctrine of alternate remedy, and ignored binding precedents of the Hon'ble Supreme Court, warranting interference by this Court.

5. (A) On the other hand, learned counsel for the respondents

would submit that the petitioner has no *locus standi* to file the instant petition as the proposal recommended by the Government of Chhattisgarh for grant of mining lease of Bauxite in District Bastar was received by this Ministry in the name of M/s Chhattisgarh Mineral Development Corporation and if, but not admitting, the prior approval under Section 5(1) of the MMDR Act, 1957 was to be granted it would have been granted to respondent No. 2 and not to the petitioner. As such, the petitioner has no grievance against respondent No. 3. On this ground itself, the instant writ appeal is liable to be dismissed.

(B) It is further contended that the petitioner has miserably failed to establish any right to obtain a mining lease under the MMDR Act, 1957 or the Rules framed thereunder. Neither the petitioner has been able to demonstrate any right acquired by it under the erstwhile Rule 58 of the Mineral Concession Rules, 1960 nor under Section 17A of the MMDR Act, 1957 which is reserved area for conservation. It has been further contended that any application of the petitioner for grant of mining lease has become ineligible by virtue of Section 10A(1) of the MMDR Act, 1957 with effect from 12.01.2015.

(C) Learned counsel would submit that that again on 01.06.2015, the Central Government vide its memo dated 12.01.2015 has rejected the application as it has become ineligible in view of Section 17(A) of the MMDR Amendment Act, 2015 and on 22.06.2020 respondent No. 2 again sent a letter to the State Government for grant of mining lease under Section 17(2A) of the MMDR Act, 1957 which has been rejected by the State Government on 21.07.2020 but the same has also not been challenged by the petitioner in this petition. It is pertinent to mention here that the MMDR Act, 1957 has been further amended and proviso to Section 10(A)(2)(b) of the MMDR Act, 1957 has been amended on 28.03.2021 which provides that all those pending applications which are pending on the date of amendment were deemed to have been lapsed on 09.07.2021. He would pray for dismissal of the present appeal.

6. We have heard learned counsel for the parties and perused the material available in the record.
7. Learned Single Judge after appreciating the issue in detail has dismissed the writ petition by framing following three points, which read thus :

- Point No. 1** : Whether the guideline dated 24.06.2009 by which the ratio of shares has been prescribed for JV partners, is applicable retrospective or not?
- Point No. 2** : Whether the application submitted by respondent No. 2 become ineligible in view of amendment in Section 10 (A)(2) of the MMDR Amendment Act, 2015, subsequent amendment on 28.03.2021 and it can be saved or not?
- Point No. 3** : Whether the petitioner has *locus standi* to file this petition when the application submitted by respondent No. 2 has been rejected on 01.08.2011 after lapse of 12 years and there is alternate remedy of filing revision under the MMDR Act, 1957 is available?

8. In respect of point No.1, the learned Single Judge observed that it is expedient for this Court to go through with the guideline dated 24.06.2009 issued regarding submission of minerals concession proposal under Section 5(1) of the MMDR Act, 1957 as well as Section 17A of the MMDR Act, 1957 which provides reservation of area for the purpose of conservation. Section 17A(2) of the MMDR Act, 1957 which provides that the State Government may with the approval of the Central

Government reserve any area not already held under any prospecting license or mining lease for undertaking prospecting or mining licence through a Government Company or Corporation owned or controlled by it and where it is proposed to do so, it shall by notification in the official gazette specify the boundaries of such area and the mineral and mineral in respect of which such area shall be reserved. Accordingly, the State Government vide its notification dated 19.06.1981 has reserved the area for mining operation for which respondent No. 2 which is a government company has sought lease. Section 17A of the MMDR Act, 1957 is reproduced below:-

“Section 17A. Reservation of areas for purposes of conservation.—(1) The Central Government, with a view to conserving any mineral and after consultation with the State Government, may reserve any area not already held under any prospecting licence or mining lease and, where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

[(1A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do

so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.]

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

(2A) Where in exercise of the powers conferred by sub-section (1A) or sub-section (2), the Central Government or the State Government, as the case may be, reserves any area for undertaking prospecting or mining operations, the State Government shall grant prospecting licence or mining lease, as the case may be, in respect of such area to such Government company or corporation:

Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, the State Government shall grant the prospecting licence or mining lease, as the case may be, only after obtaining the previous approval of the Central Government.

(2B) Where the Government company or corporation is desirous of carrying out the prospecting operations or mining operations in a joint venture with other persons, the joint venture partner shall be selected through a competitive process, and such Government company or corporation shall hold more than seventy-four per cent. of the paid up share capital in such joint venture.

(2C) A mining lease granted to a Government company or corporation, or a joint venture, referred to in sub-sections (2A) and (2B), shall be granted on payment of such amount as may be prescribed by the Central Government.

(3) Where in exercise of the powers conferred by sub-section (1A) or sub-section (2) the Central Government or the State Government, as the case may be,] undertakes prospecting or mining operations in any area in which the minerals vest in a private person, it shall be liable to pay prospecting fee, royalty, surface rent or dead rent, as the case may be, from time to time at the same rate at which it would have been payable under this Act if such prospecting or mining operations had been undertaken by a private person under prospecting licence or mining lease."

9. This Section specifically provides that it should be a Government Company or a Corporation owned or controlled by it whereas from Clause 14 of the Joint Venture Agreement between the petitioner and respondent No. 2, it is quite vivid that it is controlled by the petitioner only. Clause 14 of the Joint Venture Agreement is again reproduced here:-

"14. The day to day working of the Joint Venture shall be fully under the control and management of the second party and in case the second party desires to bring in any collaborator either domestic and/or foreign for the said project the same shall be finalized by the Second Party and if required they may consult the first party for assistance. Such intention shall have to be expressed in writing to the First party before hand."

10. Thus, it is to be seen that who has control over the function of JVC. From perusal of Clause 14 of the Joint Venture Agreement, it is quite vivid that the entire control over the functioning of the JVC lies upon the petitioner which is violation of Section 17(2) of the MMDR Act, 1957. On this count alone, the order passed by the Union of India rejecting the proposal of the State Government to grant mining lease in favour of respondent No. 2, cannot be found faulty or suffers from perversity or illegality warranting interference by this Court.
11. Further submission of the learned senior counsel for the petitioner that the guideline dated 24.06.2009 cannot be given retrospective effect, is misconceived as this guidelines are issued to carry out the provisions of Section 17(2)(A) of the MMDR Act, 1957 to ascertain that who has the control over the functioning of the JVC for that a criteria has been taken into consideration to asses who is in control of the JVC. For that only the ratio has been formulated which is to carry out the provisions of the Act. Clause 9.2 of the guideline provides that the JV to whom the PL/ML is proposed to be given subsequently by transfer under Rule 37 of the Mining Concession Rules, 1960 must necessarily conform to the

principles of the reservation i.e. the ownership or control of the company conducting operations lies with the State Government. Clause 9.3 of the guideline provides that if any public undertaking enters into joint venture with private sector company in order to exploit in a reserved area, the process of selection of such joint venture partners should also satisfy the norms set out in Section 11(3) of the MMDR Act, 1957. These guidelines are neither replacing the statute nor overriding but it is supplement to carry out the provisions of the MMDR Act, 1957, as such the submission of made by learned Senior counsel for the petitioner that it cannot be applicable in the case of the petitioner, is liable to be rejected, accordingly, it is rejected. The law with regard to issuance of circular and its object has been continuously subject matter of examination before Hon'ble the Supreme Court and the High Court and the Courts have held that clarificatory order can be given retrospective effect as it can throw light on substantive provision by principle of *contermporanea expositio*, as such the guidelines are applicable in the case of the petitioner without any reservation with full force. Hon'ble Supreme Court in **Tamil Nadu Electricity Board & another v. Status Spinning**

Mills Limited & another, reported in **(2008) 7 SCC 353** in paragraph 29 has held as under:-

“29. The clarification issued by the State during pendency of the appeals should have, therefore, been considered by the High Court in its proper perspective. If it is clarificatory in nature, it could be given a retrospective operation. Such a question, however, should have been posed and answered. Furthermore, the letter dated 1.08.1997 was issued as some confusion arose. When a subordinate legislation is made by the State Government, it must be done in terms of the constitutional provision. An executive order is also issued keeping in view the rules and executive business. It may not have the force of law but the same may come within the purview of the well-known principle of *contemporaneous expositio*. Rules of executive construction are also relevant.”

12. It is also well settled position of law that executive instruction cannot override the statutory provision but they are meant to supplement the law or to carry out the provisions of law and the guideline issued by respondent No. 3 is to assess whether as per Section 17(2)(A) of the MMDR Act, 1957, the petitioner falls within the category of such Government Company or Corporation, as such the guideline dated 24.06.2009 is applicable upon the petitioner.
13. Hon'ble the Supreme Court in the case of **Accountant General, State of Madhya Pradesh Vs. S.K. Dubey and**

another [(2012) 4 SCC 578 has examined the power of State Government to issue executive instructions and has held in paragraphs 31 & 33 as under:-

“31. Subject to the provisions of the Constitution, the executive power of a State extends to the matters with respect to which the legislature of the State has power to make laws. This is what is provided in Article 162 of the Constitution. In other words, the executive power of the State executive is coextensive with that of the State Legislature.

33. The Constitution Bench of this Court in *Lalit Mohan Deb* [(1973) 3 SCC 862 : 1973 SCC (L&S) 272] said: (SCC p. 867, para 9)

“9. It is true that there are no statutory rules regulating the selection of assistants to the selection grade. But the absence of such rules is no bar to the administration giving instructions regarding promotion to the higher grade as long as such instructions are not inconsistent with any rule on the subject.” In *Union of India v. Central Electrical & Mechanical Engg. Service (CE&MES) Group ‘A’ (Direct Recruits) Assn., CPWD* [(2008) 1 SCC 354 : (2008) 1 SCC (L&S) 173] , this Court held that the executive instructions could fill in gaps not covered by the rules but such instructions cannot be in derogation of the statutory rules.”

14. Again Hon’ble the Supreme Court in case of **Union of India and another Vs. Vs. Ashok Kumar Aggarwal [(2013) 16 SCC 147]** has held paragraphs 58 to 60 as under:-

“58. A Constitution Bench of this Court while dealing

with a similar issue in respect of executive instructions in *Sant Ram Sharma v. State of Rajasthan* [AIR 1967 SC 1910] , held : (AIR p. 1914, para 7)

“7. ... It is true that the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.”

59. The law laid down above has consistently been followed and it is a settled proposition of law that an authority cannot issue orders/office memorandum/executive instructions in contravention of the statutory rules. However, instructions can be issued only to supplement the statutory rules but not to supplant it. Such instructions should be subservient to the statutory provisions. (Vide *Union of India v. Majji Jangamayya* [(1977) 1 SCC 606 : 1977 SCC (L&S) 191], *P.D. Aggarwal v. State of U.P.* [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 272] , *Paluru Ramkrishnaiah v. Union of India* [(1989) 2 SCC 541 : 1989 SCC (L&S) 375 : (1989) 10 ATC 378 : AIR 1990 SC 166], *C. Rangaswamaiah v. Karnataka Lokayukta* [(1998) 6 SCC 66 : 1998 SCC (L&S) 1448] and *Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation* [(2011) 5 SCC 435 : AIR 2011 SC 2220].)

60. Similarly, a Constitution Bench of this Court, in *Naga People's Movement of Human Rights v. Union of India* [(1998) 2 SCC 109 : 1998 SCC (Cri) 514 : AIR 1998 SC 431] , held that the executive instructions have binding force provided the same have been issued to fill up the gap between the statutory provisions and are not inconsistent with the said provisions.”

15. Thus, it is quite vivid that since the executive instructions are supplement to carry out the provisions of law, as such they are applicable in the case of the petitioner without any reservation and Point No. 1 was answered against the petitioner and in favour of respondents No. 1 & 3. Accordingly, it is held that the guidelines are to carry out the provisions of the MMDR Act, 1957, therefore, theory of retrospective applicability is not applicable in the present facts and circumstances of the case.
16. As far as point No.2 is concerned, the reconnaissance operation and reconnaissance permit have been defined in Section 3(ha) & 3(hb) respectively and Section 10A as amended on 12.01.2015 in view of MMDR Amendment Act, 2015 which read as under:-

“Section 3 (ha)- reconnaissance operations” means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;

Section 3 (hb)- reconnaissance permit” means a permit granted for the purpose of undertaking reconnaissance operations;

“Section 10A- Rights of existing concession holders and applicants.—(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:—

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

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government;

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

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

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government; answered

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government."

17. From perusal of Section 10A(2) of the MMDR Act, 1957, only the category/status of the applications which have been enumerated in this section will only be remained ineligible for consideration. Learned Senior counsel for the petitioner would submit that from the report pertaining to reconnaissance survey and sampling of Bauxite (Annexure P/2), they will be eligible for grant of mining lease even after the MMDR Amendment Act, 2015 & 2021 is being considered by this Court. From the report (Annexure P/2) itself, it is quite vivid that the survey sampling of Bauxite from different plateau were done from December 1981 and February 1992 and the present JVC with the petitioner has been constituted on

17.02.2003. Sub-section 4 provides that if any proposed lease holder has not applied for grant of prospecting licence or mining lease as the case may be within a period of three months after the expiry of reconnaissance permit or prospecting licence as the case may be or within such further period not exceeding six months as may be extended by the State Government, will be held eligible whereas from the report itself, it is quite vivid that the reconnaissance survey was carried out from December, 1981 to February, 1982 and within six months, respondent No. 2 has not applied for prospecting licence or mining lease, therefore, the petitioner cannot take any defence to treat respondent No. 2, is eligible for grant of mining lease or his application has not become eligible, therefore, the submission made by learned Senior counsel for the petitioner that the respondent has committed illegality in holding that respondent No. 2 has become ineligible in view of the amendment in the MMDR Act, 1957 on 12.01.2015, deserves to be rejected.

18. There is another reason for holding the petitioner to be ineligible in view of further amendment in the MMDR Act, 1957 on 28.03.2021 which provides that all those pending

applications which are pending on the date of amendment were deemed to have been lapsed on 09.07.2021 in view of insertion of proviso to Section 10(A)(2)(b) of the MMDR Act, 1957. Thus, the application submitted by respondent No. 2 for all the reasons as detailed hereinabove have become ineligible or lapse as no recommendation was made to the Central Government by the State Government for considering the case of respondent No. 2 for grant of mining lease. Accordingly, Point No. 2 was also answered by the learned Single Judge against the petitioner and in favour of respondents No. 1 & 3.

19. With respect to point No.3, from the material available on record it is apparent that mining lease was likely to be granted to respondent No. 2 though the petitioner may be a member of joint venture with it even from the Joint Venture Agreement dated 17.02.2003, all the lease PL/ML have to be first granted to respondent No. 2 who in terms of their Joint Venture Agreement, will be transferred to the petitioner but respondent No. 2 has not approached this Court whose interest is adversely affected by the order or inaction of respondents No. 1 & 3, therefore, the petitioner has no authority to challenge the same even if it has invested the

amount as alleged by the petitioner but no right has been directly affected by action of respondents No. 1 & 3, therefore, he cannot be held to be aggrieved person. The 'aggrieved person' has been defined in legal dictionary according to which it means a person must show that he has a more particular or peculiar interest of his own beyond that of the general public in seeing that the law is properly administered and such harm or loss is not wrongful in the eye of law because it does not result in injury to a legal right or a legally protected interest. From the records of the case, it is demonstratively clear that the petitioner has not been denied or deprived of a legal right. The petitioner has not sustained injury to any legally protected interest. The petitioner has not been subjected to legal wrong and has suffered no grievance and he has no legal peg for a justifiable claim to hand on, therefore, the petitioner is not a "person aggrieved" and respondent No. 2 has not approached this Court whose interest is adversely affected by the order or inaction of respondents No. 1 & 3, as such the petitioner has no authority to challenge the same even if it has invested the amount as alleged by the petitioner as no right has been directly affected

by action of respondents No. 1 & 3

20. Hon'ble the Supreme Court in various decisions has considered the word 'person aggrieved', particularly in case of **Babua Ram and others Vs. State of U.P. and another [(1995) 2 SCC 689]** wherein it has been held as under:-

"17. In Collins English Dictionary, the word "aggrieved" has been defined to mean "to ensure unjustly especially by infringing a person's legal rights". In Webster Comprehensive Dictionary, International Edition at page 28, aggrieved person is defined to mean "subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights". In Strouds Judicial Dictionary, Fifth Ed., Vol. 1, pages 83-84, person aggrieved means "person injured or damaged in a legal sense". In Black's Law Dictionary, Sixth Ed. at page 65, aggrieved has been defined to mean "having suffered loss or injury; damnified; injured", aggrieved person has been defined to mean "One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word "aggrieved" refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."

18. The person aggrieved must, therefore, be one who has suffered a legal grievance because of a decision pronounced by Civil Court giving higher compensation for an acquired lands similar to his own while he is denied of such higher compensation

for his land because of operation of Section 18 read with Section 31 of the Act resulting in affectation of his pecuniary interest in his acquired land is directly and adversely in that award of the Collector made under s. 11, he becomes as such aggrieved person and entitled to avail of the right and remedy conferred upon him under Section 28A(1) to make good his denied right to receive compensation in excess of the amount awarded by the Collector/L.A.O. Acceptance of the contention of Shri G.L. Sanghi, learned senior counsel and his companions, that person who under protest received payment of compensation for their lands but failed to avail of the right and remedy under Section 18 waiting in the wings for success of the land owners of the adjoining lands to get higher compensation under Section 28-A(1) as person aggrieved robs the poor and inarticulate who by reason of their poverty or ignorance failed to avail of the right and remedy under Section 18, and creates not only invidious discrimination between same class of person similarly situated but would be highly unjust arbitrary offending Article 14 of the Constitution, apart from flying in the face of express animation of the statute as espoused in its Statement of Objects and Reasons and the Financial Memorandum. In this context, we make it clear that we have looked into Statement of Objects and Reasons and the Financial Memorandum to know what is in that induced the introduction of the Bill but not as an aid to interpret Section 28-A(1). Therefore, we have no hesitation to hold that any interested person in the land acquired under the same Notification published under Section 4(1) who failed to avail the right and remedy under Section 18(1) read with second proviso to Section 31(2),

becomes a person aggrieved under Section 28-A(1) of the Act, when the owner of the another land covered by the same notification is awarded higher compensation by the Civil Court on a reference got made by him under Section 18.”

21. Again Hon’ble the Supreme Court in case of **Northern Plastics**

Ltd. Vs. Hindustan Photo Films Mfg. Co. Ltd. and others

[(1997) 4 SCC 452] has held in paragraph 10 as under:-

“10.....But it order to earn a locus standi as 'person aggrieved' other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us. In this connection we may refer to a Constitution Bench judgment of this Court in the case of *Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay* [(1970 (2) SCC 484)]. Question before the Constitution Bench in that case was as to whether Advocate General of the High Court who was be to issued a notice in disciplinary proceedings by the Bar Council as per the provisions of Section 35(2) of the Advocate Act, 1961 had locus standi to prefer an appeal against the order of the disciplinary authority under Section 37 of the Advocates Act before Bar Council of India. A majority of the Constitution Bench took the view that the Advocate General had no such locus standi. He could not be said to be a 'person aggrieved' by the decision of the disciplinary authority exonerating the concerned delinquent advocate.

Mitter, J., speaking for the majority considered the question in the light of the statutory settings of the Act and observed that to decide the question one had to look at the proceedings of this kind. We may refer to the pertinent observations in this connection made in paras 9 and 10 of the Report of the said judgment of Mitter, J.:

"Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to Section 11 of the Code of civil procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions or submission. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.

Innumerable statutes both in England and in India give the right of appeal to 'a person aggrieved' by an order made and the provisions of such statutes have to be construed in each case to find out whether the person preferring an appeal falls within that expression. As was observed in *Robinson v Currey* [7 QBD 465] the words 'person aggrieved' are 'ordinary meaning put upon them'.

According to Halsbury's Laws of England (Third Edition, Vol.25), page 293, footnote 'h':

'.....the expression is nowhere defined and must be construed by reference to the context of the enactment in which it appears and all the circumstances.' Attempts have however from time to time been made to define the expression in various cases. In *Ex parte Sidebotham* *In re Sidebotham* [14 Ch D 458 at 465] it was observed by James.L.J.:

'But the words 'person aggrieved' do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something."

22. Hon'ble the Supreme Court in case of **Shripal Bhati & another Vs. State of Uttar Pradesh & others [(2020) 12 SCC 87]** has examined the issue relating to aggrieved person and has held that unless injury is suffered personally a person cannot be said to be aggrieved and has no *locus standi*. Hon'ble the Supreme Court in paragraph 25 has held as under:-

"25. For the aforesaid facts and reasons the challenge made by the appellants to the appointment and absorption of respondent no. 4 is not tenable and they have no locus standi in the matter. It may be relevant to refer to the observations made by this Court in the case *Jasbhai*

Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed & Ors. [AIR 1976 SC 578], relied upon by the High Court, holding that unless injury is suffered personally a person can not be said to be aggrieved and has no locus standi:

"48. In the light of above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore, he is not a 'person aggrieved' and has no locus standi to challenge the grant of 'No Objection Certificate'."

23. Thus, by action of respondents No. 1 & 3, the right of the petitioner is not directly adversely affected, as such he has no *locus standi* to file this petition.
24. As far as the guidelines dated 24.06.2009, by which the ratio of shares has been prescribed for Joint venture partners whether the same is applicable retrospective or not is concerned, the learned Single Judge has rightly observed that the guidelines are issued to carry out the provisions of Section 17(2)(A) of the MMDR Act 1957 to ascertain that who has the control over the functioning of the JVC and by relying upon the decision rendered by the Supreme Court in the matter of **Status spinning Mills Ltd. (Supra)**, the learned Single Judge

observed that though the executive instructions cannot override the statutory provision, but they are meant to supplement the law or to carry out the provisions of law. The guidelines issued by the respondent No. 3 is to assess whether as per Section 17(2)(A), the petitioner falls within the category of such government company or corporation and held that the guidelines dated 24.06.2009 is applicable to the petitioner.

25. As far as the amendment in Section 10 (A)(2) of the MMDR Amendment Act 2015 and subsequent amendment dated 28.03.2021 which clearly provides that all those pending applications which are pending on the date of amendment were deemed to have been lapsed on 09.07.2021, in view of insertion of proviso to Section 10(A)(2)(b) of the MMDR Act, 1957 and hence, the applications submitted by the respondent No. 2 has become ineligible and lapse as no recommendations was made to the Central Government by the State Government for considering the case of respondent No. 2 for grant of mining lease.
26. As far as non challenge of rejection of application by respondent No. 2 with whom the petitioner having the JVA and after lapse of 12 years is concerned, it is noteworthy to

mention here that neither the petitioner nor respondent No. 2 has challenged the order dated 01.08.2011 by which the application of respondent No. 2 for considering of proposal made by State Government for grant of mining lease, has been rejected and the order dated 01.06.2015 by which again the proposal of the State Government has been rejected as it has become ineligible w.e.f. 12.01.2015, is not subject matter of challenge before any forum, therefore, the order passed by the learned Single Judge is just and proper.

27. In view of foregoing, we are of the considered view that the learned Single Judge after appreciating the entire facts and circumstances in its true perspective has rightly observed that the petitioner has no locus to file the petition and also observed that the executive instruction cannot override the statutory provision. The order passed by the learned Single Judge is just and proper warranting no interference of this Court.
28. The scope of interference in an intra-court appeal is limited to cases where the order of the learned Single Judge suffers from patent illegality, perversity, or jurisdictional error. In the present case, we find that the learned Single Judge has rightly

dismissed the writ petition.

29. Accordingly, the writ appeal is **dismissed**. However the petitioner would be at liberty to avail the remedy as may be available to him under the provisions of law, if so advised.

Sd/-
(Bibhu Datta Guru)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice

Shoaib

Head note

The executive instruction cannot override the statutory provision but they are meant to supplement the law or to carry out the provisions of law.