
(1975) 12 DEL CK 0003

In the Delhi High Court

Case No : Letters Patent Appeal No. 49 of 1975

Eklara China Clay Works and Others

APPELLANT

Vs

Ashwin and Co. and Others

RESPONDENT

Date of Decision : 16-12-1975

Acts Referred:

Citation : AIR 1976 Delhi 283 : (1976) ILR Delhi 297

Hon'ble Judges : T.V.R. Tatachari, C.J.; M.R.A Ansari, J

Bench : Division Bench

Advocate : R.M. Mehta, S.K. Dholakia, Subhash Oberoi, A.H. Mehta, I.N. Shroff, K.M. Mehta, R.P. Kapur, Urmila Kapoor, Urmila Sirur and S. Dalal, for the Appellant;

Judgement

T.V.R. Tatachari, C.J.

(1) These two Letters Patent Appeals Nos. 49 and 55 of 1975 are cross-appeals. Both have been filed against the judgment of a learned single Judge of this Court, H. L. Anand J. dated February 27, 1975, in Civil Writ Petition No. 1087 of 1974, whereby the learned single Judge allowed the Writ Petition, quashed an order of the Central Government, dated August 3, 1974, which was impugned in the Writ Petition, and remanded the matter to the Central Government with a direction that the Central Government should decide the matter afresh in the light of the judgment after giving an opportunity to the petitioner in the Writ Petition and to such other person or persons as the Central Government may consider necessary of making a representation.

(2) The appellants in Letters Patent Appeal No. 49 of 1975 are (1) M/s Eklara China Clay Works through its partner, Shri Krishnalal Iswarlal Patel, (2) Shantilal Ishwarlal Patel. (3) Amratlal Iswarlal Patel. and (4) Gordhanbhai Ishwarlal Patel. The respondents in the aforesaid Letters Patent Appeal are (1) M/s Ashwin & Co., a registered firm having its office at Bombay, (2) The State of Gujarat through the Secretary to the Government of Gujarat, (3) The Union of India through the Secretary to the Government of India, Ministry of Steel and Mines, and (4)

Krishnalal Iswarlal Patel. The aforesaid appellants were respondents 3, 5, 6 and 7 in the Writ Petition. Respondent 1 in the appeal was the petitioner in the Writ Petition and respondents 2, 3 and 4 were respondents 1, 2 and 4 in the Writ Petition.

(3) Letters Patent Appeal No. 55 of 1975 was filed by M/s Ashwin & Co., the petitioner in the Writ Petition, against the judgment of the learned single Judge in so far as the same was against it. The respondents in the said appeal are the same as the respondents in the Writ Petition.

(4) For a proper appreciation of the contentions of the parties in the two appeals, it is necessary to state the various facts which led to the filing of the Writ Petition by M/s Ashwin & Co. One Ishwarlal Jesinghbhai Patel was working registered firm M/s Eklara China Clay Works situated at Ahmedabad. On April 16, 1937, Idar State gave a mining lease of certain lands in village Ekiera inclusive of survey numbers 626, 629 and river-bed to Ishwarlal Jesinghbhai Patel for a period of twenty one years. The said State gave a mining lease of certain lands in village Arsodia on May 22, 1939, to M/s Somnath B. Bhatt & Co. (hereinafter referred to as the S.B.B. & Co.) We are, however, not concerned with the said lands in village Arsodia. In 1941, Idar State cancelled the lease granted to Ishwarlal Jesinghbhai Patel on the ground that the mining operations were not being properly carried out. On a representation by Ishwarlal Jesinghbhai Patel, Idar State, by Order No. 659, dated February 16, 1941, allowed him to continue the operations, but restricting the lease to an area known as "A" to "M" which did not include survey Nos. 626 and 629 and river-bed. On March 3, 1941, the Mining Engineer, Idar, prepared a map showing the area A to M granted to Ishwarlal Jesinghbhai Patel, and the remaining area which was taken away from the earlier lease of Ishwarlal Jeshinghbhai Patel was granted to S.B.B. & Co.

(5) On June 10, 1948, Idar State was merged with Bombay State. The Government of Bombay informed Ishwarlal Jesinghbhai Patel that the lease of the area A to M granted to him by Idar State was not binding on it, and on December 30, 1950, the Government of Bombay cancelled the said lease. The Government of Bombay, however, changed its mind subsequently and wrote to Ishwarlal Jesinghbhai Patel on April 7, 1951, proposing to grant him a revised fresh lease under certain terms and conditions under the Mineral Concession Rules, 1949, and suggesting that he might apply for a fresh lease, if he so desired. Ishwarlal Jesinghbhai Patel, however, applied on July 27, 1951, for a fresh mining lease for all the lands in Eklara village including the area granted to S.B.B. & Co. But, on April 15, 1955, the Government of Bombay granted a mining lease to Ishwarlal Jesinghbhai Patel in respect of only a smaller area in Eklara village excluding the area granted to S.B.B. & Co. in that village. Ishwarlal Jesinghbhai Patel did not like the same and executed no lease deed. As the lease was to be executed within six months from April 15, 1955, and no such lease was executed, the grant was to be deemed to have been revoked under Rule 28A of the Mineral Concession Rules, 1949..

(6) S. B. B. & Co. had been doing mining business under the name of M/s. Sabar Valley Koaline and Starch Industries (Ltd.) Co. In 1952 the said company was ordered to be wound up, and its assets were purchased on July 1, 1955, by M/s. Ashwin & Co., a registered firm having its office at Bombay. On September 30, 1959, the lease given to M/s. S. B. B. & Co. expired, and on January 11, 1960, the Government of Bombay issued a notification (which was published in the Gazette on January 18, 1960) under Rule 67 of the Mineral Concession Rules, 1949, regarding the lands of S. B. B. & Co. which included survey numbers 626 and 629 and river-bed, declaring that the said lands became available for re-grant with effect from February 18, 1960. Thereupon, Ishwarlal Jesinghbhai Patel applied for a lease of the said lands on January 15, 1960. An entry to the effect that the lands were available for re-grant was made in the standard register on February 1, 1960. Subsequently, on February 15, 1960, the Government of Bombay issued a corrigendum correcting the notification so as to read that the lands were available for re-grant with effect from February 22, 1960, instead of February 18, 1960. An entry as per the corrigendum was made in the standard register sometime between February 18, 1960, and February 20, 1960.

(7) On February 22, 1960, several parties, including Ishwarlal Jesinghbhai Patel and M/s. Ashwin & Co. applied for mining lease in respect of the said lands. Reports were sent by the Collector to the State Government regarding the various applications. On March 16, 1960, the Government of Bombay passed an order rejecting the application of Ishwarlal Jesinghbhai Patel, dated January 15, 1960, as being premature according to the provision in Rule 68 of the Mineral Concession Rules, 1949, inasmuch as the entry had not been made in the standard register by that date, but had been made subsequently on February 1, 1960. On April 8, 1960, the Government passed an order granting a mining lease to M/s. Ashwin & Co. in respect of the said lands in pursuance of its application filed on February 22, 1960. The Government sent a letter to Ishwarlal Jesinghbhai Patel on April 18, 1960, informing him about the rejection of his application filed on February 22, 1960, on the ground that the lease had been granted to another party.

(8) Ishwarlal Jesinghbhai Patel thereupon filed a Writ petition, Spl. C. A. No. 542 of 1960, in the High Court of Bombay on April 22, 1960, challenging the aforesaid orders of the Government of Bombay. Subsequently, on the bifurcation of Bombay and Gujarat, the said Writ Petition was transferred to the High Court of Gujarat and was re-numbered as Spl. C. A. No. 273 of 1960. On January 9, 1963, the High Court of Gujarat dismissed the Writ Petition, but granted leave to appeal to the Supreme Court on June 30, 1964. The appeal was numbered as C. A. No. 583 of 1965 in the Supreme Court and the same was, however, dismissed on March 19, 1968, on the ground that Ishwarlal Jesinghbhai Patel had not pursued the remedy of revision to the Central Government available to him under the Mines and Minerals (Regulation and Development) Act, 1957 and the Mineral Concession Rules, 1960.

(9) Ishwariar Jesinghbhai Patel, thereupon filed a review application on May 13, 1968, before the Central Government under Rule 57 of the Minerals Concession Rules, 1949, but the said application was returned by the Central Government on the ground that it was not in the prescribed form. Ishwariar Jesinghbhai Patel then filed a revision application before the Central Government in the prescribed form on June 18, 1968, under Rule 54 of the Mineral Concession Rules, 1960. This revision was directed against the two orders of the Government of Bombay, dated March 16, 1960, and April 18, 1960, whereby his two applications for mining lease had been rejected. The Central Government sent notices to all concerned parties including M/s. Ashwin & Co. and the Government of Gujarat for their comments on the revision application of Ishwariar Jesinghbhai Patel. The notice to M/s. Ashwin & Co. was sent on June 28, 1968. and it submitted its comments on October 4, 1968. It is common ground that the comments of other parties also were received sometime in 1968.

(10) While the matter was thus pending, Ishwariar Jesinghbhai Patel died on January 28, 1972. His legal representatives (1) Shantilal Ishwariar Patel, (2) Arnratlal Ishwariar Patel, (3) Gordhanbhai Ishwarlal Patel and (4) Niranjanlal Krishnalal Patel, applied on March 28, 1972, for the grant of a certificate of approval under Rule 4 of the Mineral Concession Rules, 1960, and the certificate was granted to them on April 1, 1972, by the Government of Gujarat. "The said legal representatives then wrote a letter to the Central Government on April 21, 1972, making an enquiry about the revision application filed by Ishwariar Jesinghbhai Patel, and informing the Government that their father had expired, and that they were the legal heirs of the deceased. It may be stated here that the aforesaid legal representatives Nos. 1 to 3 are the sons of the deceased Ishwariar Jesinghbhai Patel, and legal representative No. 4 is the son of another son of Ishwariar Jesinghbhai Patel, Krishnalal Ishwariar Patel, who is stated to have not been given any right or interest in the estate of late Shri Ishwariar Jesinghbhai Patel under a will said to have been executed by Ishwariar Jesinghbhai Patel. They also requested in that letter that the decision in the revision may be communicated in their names. They wrote another letter on March 24, 1973, restricting their claim for mining lease to Survey Nos. 626, 629 and river-bed for the reason that their factory was dependent upon the raw material from those areas.

(11) Then, on August 3, 1974, the Central Government passed an order on the revision application of Ishwariar Jesinghbhai Patel holding (1) that Rule 67 of the Mineral Concession Rules, 1949, had not been properly followed by the State Government as the notification regarding the area being available for re-grant was not made thirty days in advance; (2) that the State Government did not consider the matter taking into consideration the matters specified in Section 11(3) of the 1957 Act; and (3) that the order of the State Government, dated April 18, 1960, did not indicate the reasons which prompted the State Government to pass that order. In view of those infirmities, the Central Government set aside the order, dated" April 18, 1960, as well as the order,

dated April 8, 1960, granting lease to M/s. Ashwin & Co. only in so far as it pertained to Survey Nos. 626, 629 and river-bed, and directed the State Government to reconsider the matter in accordance with law and pass a speaking order on merits. It added that while doing so the State Government should take into consideration all the relevant material put forth by the contesting applicants including M/s. Ashwin & Co. as well as the petitioner in the revision with regard to their preferential claims for grant of the lease.

(12) Thereupon, M/s. Ashwin & Co. filed Writ Petition No. 1087 of 1974 in this High Court out of which the present Letters Patent Appeals have arisen. The Writ Petition came up for hearing before H. L. Anand J. Three contentions were urged before him on behalf of the petitioner, M/s. Ashwin & Co.

(13) The first contention was that the claim of Ishwarlal Jesinghbhai Patel for the grant of a mining lease was based on his personal qualifications, experience and resources, that it did not constitute an enforceable or heritable right and merely held out a prospect of an eventual grant of a lease in his favor, that his claim as well as his application for a mining lease, Therefore, died with him, and his legal representatives could not be imp leaded either on the principle embodied in Order 22 of the CPC or under the Act of 1957 or the Rules of 1960, that the said submission derived support from the fact that no provision has been made in the Act or in the rules with regard to substitution of legal representatives in the place of a deceased applicant, that the application of Ishwarlal Jesinghbhai Patel for the grant of a mining lease as well as the proceeding before the Central Government in the revision petition which was only a continuation of the original proceeding stood abated, and that there was thus no subsisting proceeding before the Central Government in which it could exercise its authority or jurisdiction and pass the impugned order.

(14) In answer thereto, it was contended on behalf of the Union of India and the other respondents in the Writ Petition that neither the application nor t

(15) The second contention was that Rule 67 of the Mineral Concession Rules, 1949, which were then applicable, had been fully, or at least substantially, complied with in granting the license in favor of M/s. Ashwin & Co., and that the proceedings leading to the grant by the State Government were not vitiated for non-compliance with the provisions of the said Rule as has been held by the Central Government in the impugned order.

(16) The third contention was that the impugned order of the Central Government, in so far as it was based on the ground that the order of the State Government sanctioning the grant of the lease in favor of M/s. Ashwin & Co. was not a speaking order, was not justifiable because, even though it was a fact that the State Government did not give any reason in its order, the petitioner, M/s. Ashwin & Co., had not been given by the Central Government an opportunity of being heard with reference to the said contention, and if it had been so given, it would have been open to it to justify the order of the State Government either

on its own terms or with reference to the two reports of the Collector and the comments of the State Government on the revision application of Ishwarlal Jesinghbhai Patel

(17) The learned Judge, by his judgment, dated February 27, 1975, held-

(1)that on the death of Ishwarlal Jesinghbhai Patel, his claim or application for the grant of a mining lease as well as his revision application in so far as it sought for the grant of a mining lease to him died with him and abated, and the legal representatives of the deceased could not be substituted for him or be allowed to press the claim for the grant of a mining lease in the place of the deceased;

(2)that there was, however, no abatement of the revision application in so far as it sought for the setting aside of the order of the State Government granting the lease in favor of M/s. Ashwin & Co., and the Central Government was, Therefore, competent to deal with that order;

(3)that the requirement of Rule 67 of the Mineral Concession Rules, 1949, had been fully satisfied and the proceedings were not vitiated; and

(4)that the contention that the order of the State Government was not a speaking order had not been raised before the Central Government by any of the parties at any stage of the proceedings, and none of the parties before the Central Government had, Therefore, an opportunity to make their submissions in that behalf for the consideration of the Central Government, that M/s. Ashwin & Co. was, Therefore, fully justified in its grievance that the Central Government had arrived at a conclusion on a point which was never raised before it and in respect of which M/s. Ashwin & Co. had no opportunity to make its submissions before the Central Government, and that if it had been given an opportunity, it would perhaps have been able to satisfy the Central Government either that the order of the State Government did not suffer from any vice or that it was justified in the light of the reports of the Collector. the comments of the State Government and other material placed before the Central Government.

In that view, the learned Judge allowed the Writ Petition, quashed the impugned order of the State Government, dated August 3, 1974, and remanded the matter to the Central Government with a direction that the Central Government should decide the matter afresh in the light of his judgment after giving an opportunity to M/s. Ashwin & Co. and to such other person or persons as the Central Government may consider necessary of making a representation.

(18) It is against the said judgment that M/s. Eklara China Clay Works through its partner Krishnalal Ishwarlal Patel and three out of the four legal representatives of Ishwarlal Jesinghbhai Patel filed Letters Patent Appeal No. 49 of 1975. The fourth legal representative, Krishnalal Ishwarlal Patel, was impleaded as respondent 4. M/s. Ashwin & Co., the State of Gujarat, and the Union of India were impleaded as respondents I to 3 respectively. M/s. Ashwin & Co.

also, feeling aggrieved by the judgment to the extent it was against it, filed Letters Patent Appeal, No. 55 of 1975, as a cross-appeal, impleading the State of Gujarat, the Union of India, M/s. Eklera China Works and the four legal representatives of the deceased Ishwarlal Jesinghbhai Patel, as respondents I to 7, respectively.

(19) We shall first deal with the contentions urged by the learned counsel for the appellants in L.P.A. No. 49 of 1975. He contended firstly that the principle of abatement of proceedings on the death of a party does not apply to applications for mining lease or revision applications under the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concession Rules, 1949 and 1960. The argument was that the said Act and the Rules are a complete Code in themselves and do not contain any provision regarding the substitution of a legal representative on the death of an applicant for a mining lease or a revision petitioner, and that the provisions in Order 22 of the CPC are not applicable.

(20) It is true that the Act and the Rules are a complete Code in themselves as observed by the Supreme Court in *State of Assam and Others Vs. Om Prakash Mehta and Others*, . It is also true that the provisions in the Mineral Concession Rules, 1949, and the Act of 1957, are silent as to what happens on the death of an applicant for a mining lease or a party to a revision petition. Even in the Mineral Concession Rules, 1960, the only provision made is that contained in Rule 13. The said Rule, prior to its amendment on February 2, 1971, provided merely that on the death of an applicant for the grant of a prospecting license before the order granting him a prospecting license is passed, his application for the grant of a prospecting license shall be deemed to have been rejected and the fee paid by him shall be refunded to his legal representative, and that in the case of an applicant in respect of whom an order granting prospecting license is passed but who dies before the deed referred to in Rule 15(1) is executed, the order shall be deemed to have been revoked on the occurrence of the death and the fee paid shall be refunded to the legal representative of the deceased. By the aforesaid amendment, a change was made and it was provided that where an applicant for a prospecting license died before the order granting the license, the application for the grant of a license shall be deemed to have been made by his legal representative. The amended rule no doubt introduced an element of substitution and conferred a right on the legal representative to continue the proceedings as if he had been the original applicant. But, it has to be noted that the aforesaid rule deals with an application for the grant of a prospecting license and not with an application for the grant of a mining lease. No such provision has been made as regards an applicant for a mining lease or a revision petitioner.

(21) The question, Therefore, is whether the principle of abatement applies to the case of an applicant for a mining lease or a revision petitioner. The said "principle of abatement is that a proceeding by or against a person would abate unless the right to sue or the liability to be sued survives to or against his legal

representative, and where the right or liability is personal to the deceased person, it does not survive to or against his legal representative. It is a general principle recognised in jurisprudence and has been incorporated in Order 22 of the Code of Civil Procedure. However, the provisions in Order 22" are applicable only to suits or appeals within the meaning of the CPC and, as such, "are not applicable to proceedings under the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concession Rules which form a self-contained Code. But, the principle underlying the provisions in Order 22 of the Code of Civil Procedure, being a general principle, has, in our opinion, to be held to be applicable to proceedings under the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concession Rules in the absence of any provision of law to the contrary. The broad proposition suggested by the learned counsel that the principle does not apply at all, cannot be accepted."

(22) In this connection, the learned counsel referred to some decisions regarding the applicability of the provisions in Order 22 of the CPC to revisions. In *Babulal and Another Vs. Mannilal*, , it was held that Order 22 of the CPC applies to the case of suits and by virtue of Rule 11, also to the cases of appeals, that it does not govern the cases of revision applications, and that section 141 of the CPC also does not make the provisions of Order 22 applicable to the cases of revisions as it applies only to the cases of proceedings of original nature. The decisions in *Jowala Singh Prem Singh and others v. Malkan Nasirpur and others*, Air 1959 Punjab 171(3); *Ram Saran Dass Tara Chand Vs. Ram Richhpal L. Mannu Lal and Another*, ; and *Union of India Vs. Ganga Datt and Others*, , are also to the same effect. On the other hand, the learned counsel for M/s Ashwin & Co., referred to the decision in *Shankar Ramchandra Abhyankar v. Krishnaji Dattatraya Bapat*, 1970 Supreme Court 1(6), wherein the Supreme Court observed as follows :-

" The right of appeal is one of entering a superior Court and invoking its aid and interposition to redress the error of the Court below. Two things which are required to constitute appellate jurisdiction are the existence of the relationship of superior and inferior Court and the power on the part of the former to review decisions of the latter. When the aid of the High Court is invoked on the revisional side it is done because it is superior Court and it can interfere for the purpose of rectifying the error of the Court below. Section 115 of the CPC circumscribes the limits of that jurisdiction, but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior Court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in wider, and larger sense."

The above observations were made by the Supreme Court in dealing with the question whether a person whose revision against an order was dismissed by the High Court could thereafter challenge the order again under Article 226 of the Constitution. The learned counsel for M/s. Ashwin & Co. sought to argue that

revisional jurisdiction is virtually the appellate jurisdiction of the High Court, and that Order 22 of the CPC which has been held to apply to appeals would also be applicable to revisions, and the decisions cited by the learned counsel for the legal representatives cannot be regarded as good law. We consider that it is not necessary to go into this question in the present case, as all the above decisions deal with revisions under the Code of Civil Procedure, while we are concerned in the present case with a revision before the Central Government under the Mines and Minerals (Regulation and Development) Act and the Mineral Concession Rules, and the aforesaid decisions cannot be of any assistance in the present case.

(23) The second contention of the learned counsel for the appellants in Letters Patent Appeal No. 49 of 1975 was that even if the principle of abatement was applicable, there was no abatement on the death of Ishwarlal Jesinghbhai Patel on the facts of the present case. The argument was that on the filing of the revision application on June 18, 1968, in the proper form by Ishwarlal Jesinghbhai Patel, the Central Government sent notices to all the concerned parties for comments, and all the comments had been received by the Central Government in 1968, that the receipt of the comments of all the concerned parties amounted to the conclusion of the hearing of the revision by the Central Government, that Ishwarlal Jesinghbhai Patel died on January 28, 1972, i.e., after the said conclusion of the hearing, and that on the analogy of the provision in Order 22 Rule 6 of the Code of Civil Procedure, it should be held that there was no abatement since the death of Ishwarlal Jesinghbhai Patel was after the conclusion of the hearing and before the order was passed in the revision. It is true that Order 22 Rule 6 provides that there shall be no abatement by the death of either party between the conclusion of the hearing and the pronouncing of the judgment. But, as already pointed out by us, the provisions in the CPC do not, as such, apply to the proceedings under the Mines and Minerals (Regulation and Development) Act, 1957, and the Mineral Concession Rules. Even the principle underlying the aforesaid provision cannot be invoked by the learned counsel inasmuch as there is no provision for "hearing" in the aforesaid Act of 1957 or the Mineral Concession Rules as in the Code of Civil Procedure. No procedure for the disposal of the revisions preferred to the Central Government has been provided in the 1949 Rules or in the Act of 1957. In the 1960 Rules, such a procedure has been prescribed in Rules 54 and 55. According to that procedure, on the receipt of the application for revision, the Central Government is to send copies of the application to the State Government and to all the imp leded parties for their comments, and on receipt of the said comments it is to send the comments to the other parties calling upon them to make such further comments as they may like to make. Rule 55(3) provides that the revision application and the communications containing the comments and counter comments shall constitute the "records" of the case. Rule 55(4) provide that after considering the said records, the Central Government may pass such order as it may deem just and proper. It has to be noted that no such a thing as ""hearing" has been

provided for even in 1960 Rules unlike the procedure in the Code of Civil Procedure. Therefore, the "hearing" of the revision cannot be said to be concluded on the receipt of the comments and counter comments, and it can be said to continue up to the moment when the Central Government decides to pass the order, because till that moment it is open to the Government to call for further comments or give personal hearing. The procedure prescribed in the Rules does not contemplate any particular stage or point of time when the Central Government concludes the hearing and reserves the pronouncement of its order as under the Code of Civil Procedure. We are, Therefore, of the opinion that the principle underlying the provision in Order 22 Rule 6 of the CPC is in applicable to the revision proceedings under the Act of 1957 and the Mineral Concession Rules, and that the contention of the learned counsel cannot be accepted.

(24) The third contention of the learned counsel was that even if the principle of abatement was applicable, the learned single Judge was not right in holding that there was abatement in the present case on the death of Ishwarlal Jesinghbhai Patel so far as his claim in the revision for a mining lease in his favor is concerned. This contention also is not tenable. It has been decided by the Supreme Court in *C. Buchivenkata Rao Vs. The Union of India (UOI) and Others*, , that the provisions in the Mineral Concession Rules, 1949, show that the rights which an applicant may have for the grant of a mining lease, on the strength of an alleged superior claim cannot be separated from his personal qualifications. In other words, the claim or right of an applicant for the grant of a mining lease under the aforesaid provisions is personal to him and cannot survive his death. It, Therefore, follows that, as held by the learned single Judge, the claim of Ishwarlal Jesinghbhai Patel for the grant of a mining lease abated on his death, and his prayer in the revision before the Central Government for the grant of a lease in his favor did not survive. Consequently, the revision filed by him against the orders of the Government of Bombay, dated March 16, 1960, and April 18, 1960, questioning the said orders whereby the State Government had dismissed his application for a mining lease, dated January 15, 1960, as being premature, and rejected his application for a mining lease, dated February 22, 1960, respectively, has to be held to have abated on the death of Ishwarlal Jesinghbhai Patel.

(25) However, there is one other aspect to be considered as regards the revision filed by Ishwarlal Jesinghbhai Patel before the Central Government. Rule 57 of the Mineral Concession Rules, 1949, provided that any person aggrieved by an order of a State Government refusing to grant a mining lease may, within two months of the date of the receipt of that order, apply to the Central Government for reviewing the same. Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, provides that-

"The Central Government may, of its own motion or on an application made within the prescribed time by an aggrieved party, revise any order made by a

State Government or other authority in exercise of the powers conferred on it by or under this Act."

RULE 54(1) of the Mineral Concession Rules, 1960, provides that-

"Any person aggrieved by any order made by the State Government or other authority in exercise of the powers conferred on it by the Act or these rules may, within two months of the date of the communication of the order to him, apply to the Central Government in triplicate in Form N for revision of the order . . ."

It has to be noted that while Rule 57 of the 1949 Rules and Rule 54(1) of the 1960 Rules provide for an application by an aggrieved party, Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, empowers the Central Government to revise an order made by a State Government, either on its own motion or on an application by an aggrieved party. Ishwarlal Jesinghbhai Patel filed the revision before the Central Government on May 30, 1968, in the first instance, and then again on June 18, 1968, in a proper form. The latter revision may be taken as the effective one for deciding the present case. By that revision, Ishwarlal Jesinghbhai Patel obviously invoked the revisional power of the Central Government. The statutory provision for that power of revision is Section 30 of the Act of 1957. Ishwarlal Jesinghbhai Patel questioned in the revision only the two orders of the State Government relating to his claim for a mining lease, and not the order of the State Government, dated April 8, 1960, whereby a mining lease was granted to M/s. Ashwin & Co. We have held above that the revision application had abated in so far as Ishwarlal Jesinghbhai Patel's claim for a mining lease in his favor was concerned. The Central Government, however, passed the impugned order, dated August 3, 1974, setting aside not only the order of the State Government, dated April 18, 1960, rejecting the application of Ishwarlal Jesinghbhai Patel, but also the order of the State Government, dated April 8, 1960, granting a mining lease to M/s. Ashwin & Co. in view of three infirmities found by it in the proceedings of the State Government.

(26) As stated earlier, the learned single Judge held that the Central Government was competent to deal with the order of the State Government granting lease to M/s. Ashwin & Co., set it aside and remand the proceedings, for the reasons that Section 30 of the Act of 1957 does not confer any right to a party aggrieved, but merely confers on the Central Government a power to revise any order made by the State Government either on the motion of any aggrieved party or on its own motion, that once Ishwarlal Jesinghbhai Patel set in motion, the revisional jurisdiction of the Central Government, the latter became properly seizer of the entire matter with regard to the grant of a license to one and the rejection of the applications of all the others and was competent to decide the entire matter, that by filing the revision petition, the deceased had set the machinery in motion and his death did not divest the Central Government of its revisional power, that the effect of the death of the aggrieved party was confined to the extent the aggrieved party sought a direction in its own favor and to that extent the revision

may be said to have become infructuous because the right to a lease on a license was based on personal qualifications, but the same was not true of the other part of the matter before the Central Government, namely, the legality or the propriety of the order of the State Government in so far as it sanctioned the grant of a lease in favor of another person, that, to that extent the Central Government was entitled to take the proceedings to their logical conclusion with a view to set aside an improper or illegal order either because of non-compliance with the provisions of law or otherwise or because there were other contestants apart from the successful party and the party who may have died and that there was, Therefore, no abatement of the revision petition in so far as it sought the setting aside of the order of the State Government granting lease in favor of M/s. Ashwin & Co. This view of the learned single Judge was in favor of the appellants in L.P.A. No. 49 of 1975, and, herefore, the learned counsel for the said appellants did not question the same before us. It was, however, questioned by the learned counsel for M/s. Ashwin & Co. in his cross-appeal, L.P.A. No. 55 of 1975, and we shall consider the same in dealing with that appeal.

(27) The fourth contention of the learned counsel for the appellants in Letters Patent Appeal No. 49 of 1975 was that the learned single Judge erred in holding that the requirement of Rule 67 of the Mineral Concession Rules, 1949, had been fully satisfied, and that the order of the State Government granting mining lease in favor of M/s. Ashwin & Co. was not vitiated on that ground. As stated earlier, the Central Government took the view that Rule 67 of the Mineral Concession Rules, 1949, had not been properly followed by the State Government as the notification regarding the area being available for re-grant was not made thirty days in advance. The learned single Judge, however, took the contrary view.

(28) For a proper appreciation of this point, it is necessary to .set out Rules 67 and 68 of the Mineral Concession Rules, 1949. They read as under:-

"67.Availability of areas for re-grant to be signified by Entry in Standard Register
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No area which was previously held under a prospecting license or a mining lease shall be treated as available for re-grant unless an entry to that effect has been made in Standard Register. The date from which the area shall be treated as available for re-grant shall be notified in the official Gazette of the State at least 30 days in advance.

Explanation:-For the purpose of this rule, the Registers required to be maintained under Rules 20 and 33 shall be deemed to be Standard Registers.

68.Premature applications- Applications for grant of a prospecting license or a mining lease in respect of areas which have been previously held under a prospecting license or a mining lease but in respect of which there is no entry in the Standard Registerars provided in Rule 67 shall be deemed to be premature and shall be disposed of by the State Government accordingly. The fee paid shall be refunded."

(29) Rule 67 consists of two parts. The first part provides that no area which was previously held under a prospecting license or a mining lease shall be treated as available for re-grant, unless an entry to that effect has been made in the standard register. Rule 33 of the Rules of 1949 provides that a register of mining leases shall be maintained by the State Government specifying, as far as may be, the particulars specified in Rule 20. One of the particulars specified in Rule 20 is that in 20(18), viz., "the date from which the area is available for re-grant". Thus, "unless an entry is made in the standard register to the effect that the area in question is available for re-grant. the area cannot be treated as being so available." Although the first part of Rule 67 does not make a reference to the date from which the area is available, it has to be read with Rule 33 and Rule 20(18), and when so read it is clear that "it is not enough to state in the standard register that the area is available for re-grant, but the date from which the area is available for re-grant should also be stated in the entry in the register. The second part of Rule 67 provides that the date from which the area shall be treated as available for re-grant, shall be notified in the official Gazette of the State at least thirty days in advance. "The words "thirty days in advance" obviously mean thirty days in advance of the date from which the area shall be treated as available for re-grant."

(30) In the present case, the State of Bombay issued a notification on January 11, 1960, under Rule 67, declaring that the area in question had become available with effect from February 18, 1960. It was published in the Gazette on January 21, 1960. An entry to that effect was made in the standard register on February 1, 1960. Then, a notification was issued on February 15, 1960, under Rule 62A of the Mineral Concession Rules, 1949, changing the date February 18, 1960, to February 22, 1960, and the same was published in Gazette Extraordinary on February 17, 1960. It was common ground before us that an entry to that effect was made in the standard register between February 18, 1960 and February 20, 1960. The argument of the learned counsel was that the language of Rule 67 shows that the entry in, the standard register mentioned in the first part of Rule 67 should be made before the notification is published in the Official Gazette under the second part of Rule 67, and that since in the present case, the publication in the Gazette was on January 21, 1960, before the entry was made in the standard register on February 1, 1960, the requirement of Rule 67 should be held to have not been complied with as opined by the Central Government. The learned counsel pointed out that even if the notification published in the Gazette on February 17, 1960, by way of rectification of the date is to be taken into consideration, it was also prior to the making of the entry regarding the new date, February 22, 1960. Thus, according to the learned counsel, the making of the entry in the standard register had not preceded the publication in the Gazette on both the occasions and hence there was non-compliance with the requirement in Rule 67.

(31) The question, therefore, is whether the entry in the standard register mentioned in the first part of Rule 67 should necessarily be made before the

publication in the Gazette under the second part of Rule 67. In our opinion, the question has to be answered in the negative for two reasons. "The first reason is that a plain reading of Rule 67 shows that the two parts of the Rule are distinct and there is nothing expressly stated in it to show either any dependence of one part on the other or a limitation such as is suggested by the counsel. To read such dependence or limitation into the Rule would amount to a re-writing of the Rule which is not permissible. The second reason is that Rule 67 cannot be read in isolation, and has to be read along with Rule 68 which deals with premature applications. The latter Rule states that an application for a prospecting license or a mining lease shall be deemed to be premature if no entry in the standard register had been made by the date of the application. It thus contemplates the possibility of the filing of applications prematurely, and made a provision regarding the same. Normally, members of the public who are desirous of obtaining a prospecting license or a mining lease would know about the availability of the area with effect from a particular date only when the same has been published in the Gazette. If, as contended by the learned counsel, the publication in the Gazette should always be made after the entry has been made in the standard register, there would never be a premature application such as is contemplated by Rule 68, and Rule 68 would be otiose. An interpretation which renders a provision made by the legislature otiose should be avoided, and an interpretation which gives effect to all the provisions enacted by the legislature should be adopted." Therefore, we consider that, on a reading of the provisions in Rules 67 and 68, it has to be held that it is immaterial whether the entry is made in the standard register under Rule 67 before or after the publication in the Gazette, and in both the cases the provisions in Rule 67 have to be held to have been complied with. In that view, the argument of the learned counsel cannot be accepted.

(32) The question then arises as to what would be the earliest date for filing applications for a prospecting license or for a mining lease. The answer is that it is the date mentioned in the Gazette Notification as the date with effect from which the area would be available for re-grant. This is because an application can be made only after the area is available for re-grant. This is implicit in the very requirement that the area is to be signified as being available for re-grant. We may take a hypothetical case by way of illustration. Suppose the Gazette Notification is made on the 1st day of March in an year. The date from which the area would be available for re-grant has to be not less than thirty days thereafter. Let us, Therefore, assume that the date is stated in the notification as the 2nd day of April in that year. Since the entry in the standard register has also to mention the date from which the area would be available for re-grant, the entry has to be made sometime before the said date of availability. Let us assume that the entry is made on 20th of March in that year. With reference to the above hypothetical dates, we may consider what the earliest date would be for filing an application. There is no question of filing the application before 1st March as a member of the public would come to know about the availability only

after the publication in the Gazette, and even if any application is filed prior to 1st March, it would be rejected by the State Government as premature since the entry in the standard register had not been made by that date. For the same reason, there is no question of filing the application prior to 20th March. There is again no question of filing an application prior to 2nd April as it would be an application even before the area was available for re-grant, and even if filed, it would for that reason be rejected by the State Government as being premature. It thus follows that the earliest date for filing the application would be 2nd April. If more than one application is filed on that date, the State Government would determine the priority according to the provisions in the Act and the Rules in that behalf. On the other hand, supposing that the entry in the standard register is made prior to the Notification in the Gazette, say on February 25 in that year, the Notification in the Gazette is made on 1st March and the date of availability of the area for re-grant is mentioned in the entry in the standard register and in the Gazette Notification as 2nd April, even then the position would be the same, namely, an application filed prior to 2nd April would be premature inasmuch as the area had not become available for re-grant, and the earliest date for filing an application would be 2nd April.

(33) In its order, dated August 3, 1974, the Central Government held that there were defects which vitiated the procedure by which the State Government had notified the area in question, and in pointing out the first defect, observed that the corrigendum, i.e. the Notification published in Gazette Extraordinary on February 17, 1960, did not cure the infirmity inherent in the original notification published on January 21, 1960. "inasmuch as the date from which the area shall be treated as available for re-grant could not be earlier than March 1, 1960, i.e. a clear 30 days after the date when the notification appears, and that too after the entry in the Register was made." In saying that the date from which the area shall be treated as available for re-grant could not be earlier than March 1, 1960, the Central Government was obviously under the impression that the "30 days in advance" mentioned in Rule 67 are to be calculated from the date of the entry in the standard register, and in that view calculated the 30 days from February 1, 1960, the date on which the entry was first made in the standard register. It was clearly a misconception of the provision in Rule 67 as pointed out by the learned single Judge. The words "30 days in advance" occur in the second part of Rule 67 which refers to the notification in the Official Gazette and not to the entry in the standard register. It is quite plain that it is the notification in the Gazette that is to be 30 days in advance of the date from which the area is available for re-grant, and not the entry in the standard register. The learned single Judge rightly held that the requirements of Rule 67 were fully satisfied and the contrary view of the Central Government was erroneous.

(34) The fifth contention of the learned counsel for the appellants in L.P.A. No. 49 of 1975 was that the two orders, dated April 8, 1960, and April 18, 1960, passed by the State Government granting a mining lease to M/s. Ashwin & Co. by the former and refusing to grant the same to Ishwarlal Jesinghbhai Patel by the

latter, were not speaking orders in that they did not give any reason for either of the orders, that the Central Government was, Therefore, justified in treating the same as an infirmity and setting aside the said orders, and that the learned single Judge ought to have upheld the said view of the Central Government and affirmed the order of the Central Government instead of remanding the case again to the Central Government. As stated earlier, the State Government, by its order, dated April 8, 1960, merely purported to sanction the grant of a mining lease to M/s. Ashwin & Co., and by its order, dated April 18, 1960, merely purported to inform Ishwarlal Jesinghbhai Patel that after careful consideration of all relevant points the Government had sanctioned the areas in favor of another applicant, and that the application of Ishwarlal Jesinghbhai Patel was, Therefore, rejected. The argument of the learned counsel was that u/s 10(3) of the Act of 1957, on the receipt of an application for a mining lease, the State Government has to grant or refuse to grant the lease "having regard to the provisions of the Act and the rules made there under", that section 11(2) of the said Act provides that where two or more persons have applied for a mining lease in respect of the same land the applicant whose application was received earlier shall have a preferential right for the grant of the lease over an applicant whose application was received later, that the proviso to Section 11(2) provides that where any such applications are received on the same day, the State Government may grant the mining lease to such one of the applicants as it may deem fit after taking into consideration the matters specified in Section 11(3), namely :-

(A) any special knowledge of, or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(B) the financial resources of the applicant;

(C) the nature and quality of the technical staff employed or to be employed by the applicant; and

(D) such other matters as may be prescribed, that Rule 32 of the 1949 Rules contains similar provisions regarding priority, that all the said provisions contemplate the giving of reasons" by the State Government for its choice of the grantee from out of the various applicants, and that since the State Government had not given any such reasons in its orders, the same were clearly vitiated by the said omission.

(35) In support of his argument, the learned counsel referred to the decisions in P. Narasimha Reddy Vs. District Magistrate, Cuddapah, Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu, ; Bharat Raja Vs. The Union of India (UOI) and Others, ; Jagannath Kashinath Kavalekar Vs. Union of India and Others, ; and Travancore Rayon Ltd. Vs. Union of India (UOI), and submitted on the basis of those decisions that in the present case there were number of applicants, and the merit and demerit of each applicant had to be considered objectively, and that since a revision lies to the Central Government the State Government had to give reasons, because it is only then that an aggrieved applicant can know in

what way he was aggrieved and make an effective and satisfactory representation in his revision application to the Central Government. Similar argument was advanced before the learned single Judge, and in reply thereto it was submitted on behalf of M/s. Ashwin & Co. that the said objection was not raised in the revision application before the Central Government, that M/s. Ashwin & Co. made comments only on the grounds taken in the revision application, that the Central Government, in its order, dated August 3, 1974, considered the points on which M/s. Ashwin & Co. had no opportunity to answer, and that if opportunity had been given to it, it would have satisfied the Central Government that the orders of the State Government had to be considered Along with the material available on record before the State Government such as the reports of the Collector which support and justify the orders of the State Government. The learned single Judge felt that M/S. Ashwin & Co. was fully justified in its grievance with regard to the conclusion of the Central Government as to the validity of the orders of the State Government, and that the Central Government had arrived at a conclusion on a point which was never raised before it and in respect of which M/s. Ashwin & Co. had no opportunity to make its submissions before the Central Government. In that view, the learned single Judge considered that it would not be proper for him to decide the question as to the validity of the orders of the State Government on the ground that it did not give any reasons in the orders, and that the proper order to be passed in the Writ Petition would be to set aside the impugned order of the Central Government, dated August 3, 1974, and remand the matter to the Central Government for deciding the matter afresh in the light of his judgment after giving an opportunity to M/s. Ashwin & Co. and to such other person or persons as the Central Government may consider necessary of making a representation.

(36) As admittedly, the point regarding the omission by the State Government to give reasons in its orders was not raised in the revision application, and as the Central Government considered the said point on its own without giving an opportunity to M/s. Ashwin & Co. to reply to the same, we are of the opinion that the learned, single Judge was justified in not deciding the point himself and remanding the case to the Central Government for deciding the matter afresh. We are, Therefore, unable to accept the contention of the learned counsel.

(37) The sixth contention of the learned counsel was that in passing the impugned order, dated August 3, 1974, the Central Government did not violate any rules of natural justice, and that the argument on behalf of M/s. Ashwin & Co. that it would have supported the orders of the State Government if opportunity had been given to it by the Central Government, was not proper, as it was for the State Government to give the reasons and not for M/s. Ashwin & Co. There is no force in this contention. It has to be remembered that the point regarding the omission to give reasons was not raised in the revision. If it had been raised, both M/s. Ashwin & Co. and the State Government would have given their answers to the point in their comments. At least, when the Central Government wanted to rest its order, inter alia, on the said omission, it should

have given an opportunity to M/s. Ashwin & Co. as well as the State Government. It is, Therefore, not correct to say that the orders of the Central Government did not violate the principles of natural justice.

(38) The seventh contention of the learned counsel for the appellants in L.P.A. No. 49 of 1975 was that before passing the aforesaid orders, the State Government had not obtained the prior approval of the Central Government as required by the first proviso to Rule 32 of 1949 Rules. The said proviso empowers the State Government, in a case where more than one application in respect of the same land is received on the same day, to grant the mining lease to such one of the applicants whom it considers to be the most suitable after taking into consideration the matters specified in Rule 32(2) and after obtaining the prior approval of the Central Government. Admittedly, this contention was not raised in the revision before the Central Government, and the Central Government did not rest its order, dated August 3, 1974, on the said absence of approval. It was not raised in the Civil Writ Petition and was not urged before the learned single Judge. In the circumstances, it would be unfair to the opposite party to permit the appellants to raise this point for the first time in this Letters Patent Appeal. We, Therefore, hold that it is not open to the appellants to raise this point at this stage.

(39) The eighth contention was that there was no ground for interference under Article 226 of the Constitution and issuance of a Writ of Certiorari by the learned single Judge. There is no force in this contention. The Central Government did not give an opportunity to M/s. Ashwin & Co. regarding certain points considered by it on its own, particularly the point that the orders of the State Government were not speaking orders. The order of the Central Government was thus vitiated. As held in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, a Writ of Certiorari can be issued where the procedure adopted is opposed to principles of natural justice. Also, the complaint in the Writ Petition was that the revision application before the Central Government had abated and so there was no revision application subsisting before the Central Government, and that the Central Government had, Therefore, no jurisdiction to allow the revision application and remand the case. The learned single Judge could consequently issue a Writ of Certiorari under Article 226 of the Constitution.

(40) The ninth and the last contention of the learned counsel for the appellants in L.P.A. No. 49 of 1975, was that the notification/ corrigendum published in the Gazette on February 17, 1960, changing the date from February 18, 1960, to February 22, 1960 was not valid, because it did not conform to the provisions in Rule 62A of the 1949 Rules. The argument was that the original notification issued on January 11, 1960, was correct in itself inasmuch as the date of the availability of the area was mentioned in it as February 18, 1960, which was more than thirty days from the date of the notification and, Therefore, there was no error apparent on the face of the notification within the meaning of Rule 62A. This point was not raised either in the revision application before the Central

Government or in the Writ Petition. It was not urged before the learned single Judge. It is not, Therefore, open to the appellants to raise it for the first time in the Letters Patent Appeal. Even otherwise, there is no force in the argument. Rule 62A empowers the Central Government to rectify, on its own motion, any mistake or error apparent on the face of the record. The original notification was issued on January 11, 1960, mentioning the date of availability of the area for re-grant as February 18, 1960. But, the notification was published in the Gazette only on January 21, 1960. Consequently, the requirement of 30 days was not satisfied. Thus, on the day of the notification/corrigendum published in the Gazette on February 17, 1960, there was an error or mistake in the original notification in that the date February 18, 1960, would be contrary to the requirement of thirty days between the date of the publication of the original notification in the Gazette and the date of availability of the area for re-grant. That was clearly an error on the face of the original notification, which could be rectified by issuing the subsequent notification on February 17, 1960, under Rule 62A. The contention of the learned counsel cannot, Therefore, be accepted.

(41) For all the foregoing reasons. Letter Patent Appeal No. 49 of 1975 is dismissed, but in the circumstances without costs.

(42) As regards Letters Patent Appeal No. 65 of 1975, filed by M/s. Ashwin & Co., the contention urged on its behalf was that the learned single Judge erred in holding that there was no abatement of the revision application in so far as it sought for the setting aside of the order of the State Government granting mining lease in favor of M/s. Ashwin & Co. and that the Central Government was competent to deal with the said order in the revision application. The learned counsel submitted that the revision application abated in its entirety, and not partially. He also pointed out that only the orders rejecting the applications of Ishwarlal Jesinghbhai Patel for mining lease were challenged in the revision application, and the order granting mining lease to M/s. Ashwin & Co. was not specifically challenged. There is no force in this contention. It is true that Ishwarlal Jesinghbhai Patel challenged in his revision application only the orders of the State Government rejecting his applications for the grant of the mining lease. It is also true that he did not specifically question in his revision application the order of the State Government granting the mining lease to M/s. Ashwin & Co., and notwithstanding the same the Central Government considered the validity of the order of the State Government granting mining lease to M/s. Ashwin & Co. and set aside the same. But, the Central Government could do so for the following reasons.

(43) The rejection of the application of Ishwarlal Jesinghbhai Patel for mining lease and grant of mining lease to M/s. Ashwin & Co. are connected with one another, and yet they are distinct matters. They are connected with one another for the following reasons. The area that became available for re-grant was one area. Both Ishwarlal Jesinghbhai Patel and M/s. Ashwin & Co. applied for mining lease in respect of the same area. Under the Act and the Rules, the State

Government has to consider the applications of all the applicants and choose the person to whom the grant can be made in accordance with the Act and the Rules. When it so chooses and grants mining lease to one of them, it has necessarily to reject "the applications of the others by the same order or by different orders. Thus, the orders granting to one applicant and rejecting the applications of the others are inter-connected. When Ishwarlal Jesinghbhai Patel applied for revision of the orders rejecting his applications, it was implicit in it that he also sought the setting aside of the order by which mining lease was granted to M/s. Ashwin & Co. If the Central Government was inclined to allow his revision application, set aside the order of the State Government rejecting his application and direct the grant of the mining lease to him, it had necessarily to set aside the order of the State Government granting mining lease to M/s. Ashwin & Co. Therefore, the circumstance that Ishwarlal Jesinghbhai Patel challenged in the revision application only the order of the State Government rejecting his application for mining lease, was immaterial, because in considering the revision application, the Central Government had necessarily to consider which of the two orders, i.e. the order of rejection and the order of grant, was the proper and valid order.

(44) But, though the orders of the State Government under the Act and the Rules granting lease to one applicant and rejecting the applications of the other applicants are interconnected as pointed out above, they are still distinct from each other and operate separately in respect of the respective applicants. If a revision application is filed by an aggrieved applicant, each one of the applicants would be in the position of a revision petitioner although the revision application is filed by one of them, because the claim of each one of them is his own separate claim and falls to be considered even though the revision application has been filed only by one applicant. So, if the applicant whose application had been rejected by the State Government dies during the pendency of the revision application to the Central Government filed by him, and his claim for a mining lease, being personal to him, stands abated, as in the present case, it becomes unnecessary for the Central Government to consider the propriety of validity of the order of the State Government reacting the application of the deceased applicant. But, the claims of the other applicants including that of the applicant to whom the lease was granted, being distinct, remain unaffected and do not abate, and the Central Government has to consider the propriety or validity of the orders of the State Government regarding those applicants. In other words, the revision application abates so far as the claim of the applicant who filed the revision application and died during the pendency of the revision application and the revision application subsists as regards the claim of the other applicants.

(45) Even if the revision application, as such, is to be regarded as not subsisting, but as having abated in its entirety, it does not disentitle the Central Government, if it so desires, to consider the propriety or validity of the order of the State Government granting the mining lease to one of the other applicants, viz. M/s. Ashwin & Co. in the present case, because the Central Government, which had come to know through the revision application about the order passed

by the State Government in favor of M/s. Ashwin & Co. in exercise of the powers conferred by or under the Act, had the power u/s 30 of the Act to consider on its own the propriety or validity of the said order, and, if necessary, revise the same.

(46) Thus, looked at in either of the above two ways, the Central Government could consider the propriety or validity of the order of the State Government granting mining lease to M/s. Ashwin & Co. This was exactly the thing done by the Central Government in the present case. It considered the propriety or validity of the proceedings of the State Government in the matter of granting mining lease to M/s. Ashwin & Co., and when it found some infirmities, it set aside the order in favor of M/s. Ashwin & Co. and remanded the case to the State Government. It had the power to do so u/s 30 of the Act of 1957 as explained above. It is true that the Central Government did not expressly purport to exercise its suo motu power u/s 30. But, when its action is support- able by the power it had, a Court should not hold the action as illegal merely because the Central Government did not expressly mention that it passed the impugned order in exercise of that power, but should uphold the order connecting it to the power that existed in the Central Government. However, as the order of the Central Government was vitiated by the violation of the principles of natural justice, the learned single Judge set aside the said order of the Central Government and remanded the case to the Central Government for fresh disposal. We are unable to find any infirmity in the judgment of the learned single Judge.

(47) No other contention has been urged in this appeal.

(48) For the foregoing reasons, the Letters Patent Appeal No. 55 of 1975 also fails, and is dismissed, but in the circumstances without costs.