
(2001) 05 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1083 of 2001

Gram Panchayat	Vs	APPELLANT
State of M.P. and Others		RESPONDENT

Date of Decision : 02-05-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Madhya Pradesh Minor Minerals Rules, 1996 — Rule 22, 37, 38, 38(1), 38(4)
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 2, 8
Mines and Minerals (Development and Regulation) Act, 1957 — Section 16
Motor Vehicles Act, 1939 — Section 47, 47(1)

Citation : (2002) 1 JLJ 73 : (2002) 2 MPLJ 401

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.N. Singh and Akhil Singh, for the Appellant; P.D. Gupta, for Respondents No. 1 to 3, K.C. Ghildiyal, for Respondent No. 4, S.L. Saxena and Rajendra Tiwari, for the Respondent

Judgement

Dipak Misra, J.

This batch of writ petitions being interconnected and interlinked, were heard analogously and are disposed of by this common order. As the factual backdrop in each case pertains to certain different aspects, for sake of clarity, it is apposite to adumbrate in a nutshell the facts in each case.

The facts as have been unfolded in W.P. No. 1083/2001 are that the Gram Panchayat, Parei, has been constituted under the provisions of Section 8 of M.P. Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as 'the Act?'). The Gram Panchayat has the power to acquire, hold and dispose of movable and immovable properties, to enter into contract and further to do other deeds as necessary for the purpose of the Petitioner/Gram Panchayat as provided under the Act. The State Government has framed a set of rules in exercise of power conferred on it u/s 16 of the Mines and Minerals (Rural Development) Act, 1957, and these rules are called Madhya Pradesh Minor Minerals Rules, 1996 (hereinafter referred to

as 'the Rules?'). These rules came into force w.e.f. 1.4.1996 wherein power to grant quarry permit in respect of minerals specified in Schedule II has been given to the concerned Gram Panchayat. The schedule II includes sand quarry and the power vests with the Gram Panchayat to grant permit for the said quarry. After coming into force of the aforesaid rules the Petitioner/Gram Panchayat had granted quarry permit for extracting sand from Ken river to Khanij Karm Udyog Co-operative Societies Limited, Respondent No.7 herein, and to that effect, an agreement was executed and royalty was fixed. On 14.1.2000, the State Government issued a letter/circular whereby it was directed that in respect of quarries mentioned in the Schedule II of the Rules 1996, the power to grant quarry permit, would be exercised by Janpad Panchayat in place of Gram Panchayat. It is averred in the writ petition that the said letter/circular was issued without an amendment of the provisions in the rules in vogue. Realising the mistake, the State Government in the Department of Mines and Minerals issued Anr. order on 19.7.2000 making it clear that till the Rules are amended, the directions contained in the order dated 14.1.2000 shall not be carried out in respect of grant of quarry lease. The aforesaid order dated 19.7.2000 was initially restricted only to the municipal area. However, subsequently, a circular was issued on 16.1.2001 whereby the aforesaid letter/circular was made applicable to the areas situated in the Gram Panchayats.

It is putforth in the writ petition that taking advantage of the order dated 14.1.2000, the Janpad Panchayat, Gaurihar, through its Chief Executive Officer, executed an agreement in favour of the Respondent No. 6 for extraction of sand from Ken river which was earlier granted by the Petitioner Gram Panchayat in favour of the Respondent No. 7. It has been stated that the Respondent No. 6 is a resident of Uttar Pradesh in whose favour the Janpad Panchayat had decided to execute a leased deed in pursuance of the order dated 14.1.2000 though it was subsequently modified and never given effect to because the necessary amendment was not incorporated in the Rules. However, for the reasons best known to the Chief Executive Officer, he had executed the leased deed for a period commencing from 12.10.2000 to 11.10.2001. As the aforesaid grant, per se, was illegal, it was assailed in a writ petition forming the subject-matter of W.P. 6582/2000 by one Jagdish Prasad. When the matter came to the notice of the Collector, Chhatarpur, Respondent No. 3, that some illegal lease had been granted by the Respondent No. 4, he cancelled the same by order dated 6.12.2000. When the writ petition was taken up on 8.12.2000, the Assistant Mining Officer was present in Court and he made a statement that the Respondent No. 6 would not be allowed to operate the lease. As it was brought to the notice of this Court that the lease granted in favour of the Respondent No. 6 was cancelled, the matter was disposed of on observing that it had been rendered infructuous. At that stage, the Respondent No. 6, the grantee, filed an appeal before the Commissioner Sagar Division, Respondent No. 2, for stay of the operation of the order dated 6.12.2000 passed by the Collector. The Respondent No. 2 passed the order of stay on 13.12.2000 despite the fact that

this Court had recorded an undertaking of the Mining Officer that the Respondent No. 6 would not be permitted to operate the mine in question. The order of stay passed by the Respondent No. 2 on 13.12.2000 has been brought on record as Annexure P/6. It is pleaded that the order passed by this Court was brought to the notice of the Respondent No. 2. He was also apprised of the order passed by the Respondent No. 4 dated 12.12.2000 cancelling the lease granted in favour of the Respondent No. 6. It is averred that a decision was taken by the Gram Sabha to the effect that the Respondent No. 7 would be allowed to continue to operate the sand mine in respect of which the permit was granted to it. The resolution dated 26.12.2000 passed by the Gram Sabha has been brought on record as Annexure P/8. An order has been issued in favour of the Respondent No. 7 on 1.2.2001, by virtue of which the Respondent No. 7 is operating the sand mines. It has been pleaded that the Respondent No. 6 not only approached the Respondent No. 2 for grant of stay but he also approached the Respondent No. 5, the Hon'ble Minister of State, Panchayat and Rural Development, M.P., and was successful in obtaining the order of stay from him. It has been averred that there is no jurisdiction vested on the Respondent No. 5 to grant stay of operation of any order passed by any competent authority or to allow continuance of the lease in favour of the Respondent No. 6. After the order was passed by the Respondent No. 5, the Respondent No. 4 was forced to pass an order on 17.2.2001 permitting the Respondent No. 6 to operate the sand mines situated at Ken river. It has been pleaded that as per distribution of power, the order which was passed by the Collector could have been assailed and heard only before the Principal Secretary, Panchayat and Rural Development Department, and not by the Hon'ble Minister of State. In this factual backdrop, the order dated 7.2.2001 passed by the Respondent No. 5 and order dated 13.12.2000 passed by the Respondent No. 2 have been called in question. It is urged in the writ petition that as per the Rules, no power is vested with the Minister of State to grant any kind of stay in favour of a person to whom lease has been granted without authority of law. It has been pleaded that when this Court had categorically recorded the stand of the Mining Officer, Respondent No. 3, that Respondent No. 6 would not be permitted to operate to quarry lease, neither the Commissioner nor the Minister of State had any authority to pass any order of stay nor grant permission in favour of the Respondent No. 6 to operate any quarry lease. It has also been urged that unless an amendment is incorporated in the Rules, the order passed by the State Government on 14.1.2000 cannot be given effect to and, more so, when necessary clarification has been issued by memorandum dated 16.2.2001. It is pleaded that under the existing Rule 7 of the Rules, it is only the Gram Panchayat which has the authority to grant quarry permit in respect of sand mine which is included in schedule II after obtaining approval of the Gram Sabha of the said Gram Panchayat and hence, the grant in favour of the Respondent No. 6 by the Respondent No. 4 is void ab initio. The propriety of order dated 17.2.2001, Annexure P/II, passed by the Respondent No. 4 has also been called in question on the ground that it being a subsequent order passed on the basis of the order passed by the Hon'ble Minister of State, is

unsustainable as the order from which it emanates is invalid in the eye of law. In this factual backdrop, prayer has been made for quashment of order contained in Annexure P/6, dated 13.12.2000 passed by the Respondent No. 2, Annexure P/10 dated 7.2.2001 passed by the Respondent No. 5 and Annexure P/11 order dated 17.2.2001 passed by the Respondent No. 4 and further to command the Respondent No. 6 not to operate on the sand mine in pursuance of the lease granted in his favour and to hold that the Petitioner Gram Panchayat has the authority to grant the lease in favour of the Respondent No. 7.

A return has been filed by the Respondent nos. 1 to 3 contending, inter alia, that in the instant case the Petitioner Gram Panchayat was empowered to issue quarry lease in respect of the sand quarry situated in Khasra No. 561/1 of village Parei admeasuring 2 hectares. On 14.1.2000, the State Government, in anticipation of the amendment in the Rules, issued the order wherein the power of quarry permit and grant of lease was given to Janpad Panchayat instead of the Gram Panchayat. Subsequently, by an order dated 19.7.2000, the said power was withdrawn from the Janpad Panchayat and the Collector was given the power to extend the period of lease/permit for a further period of three months on payment of additional royalty, and subsequently, Anr. order was passed by the State Government on 16.1.2001 whereby power to grant and renew quarry permits was reinvested in the Gram Panchayat. It is putforth that after issuance of the letter dated 14.1.2000 by the State Government, the Respondent No. 4 auctioned the said quarry and issued quarry permit in favour of the Respondent No. 6. The above action of the Respondent No. 4 was called in question in W.P. No. 6592/2000. As the State Government, by order dated 19.7.2000, had withdrawn the rights of granting quarry lease by the Janpad Panchayat, the Respondent No. 4 was directed to withdraw the grant by the order dated 6.12.2000. This fact was brought to the notice of the Court. The grant of quarry lease in favour of the Respondent No. 6 was cancelled by order dated 6.12.2000. The Respondent No. 6 challenged the said order of the Collector before the Additional Commissioner, Sagar, Division, Sagar who passed the order of stay of the order passed by the Collector. It is putforth that the Additional Commissioner had no jurisdiction to hear the appeal against the original order passed by the Collector and therefore, the order of stay is unsustainable. The Respondent No. 6 filed an appeal before the Respondent No. 5 who by order dated 7.2.2001, issued a direction to the Respondent No. 4 to issue quarry permit in favour of the Respondent No. 6. It was also directed by the Respondent No. 5 that in future, all the actions relating to grant of quarry permit should be taken in accordance with the resolution passed by the Janpad Panchayat. In pursuance of the aforesaid order passed by the Respondent No. 5, the Respondent No. 4 issued consequential order on 17.2.2001 and granted quarry lease in favour of the Respondent No. 6. It has been setforth that after the cancellation of the lease granted in favour of the Respondent No. 6, the Gram Panchayat proceeded to grant quarry permit in respect of the mine in question in favour of the Respondent No. 7 and the Respondent No. 7 is operating the quarry. It has also

been put forth that the grant of quarry lease in favour of the Respondent No. 7 has been challenged by one Rambabu Vishwakarma before the Sub-Divisional Officer, Loundi, and the proceeding is still pending before him.

A return has been filed by Respondent No. 4 pleading that after issuance of the letter dated 14.1.2000 by the State Government, the said Respondent put the quarry to auction and issued quarry permit in favour of Respondent No. 6. The State Government, by order dated 19.7.2000, had taken away the right for granting quarry permit from the Janpad Panchayat, therefore, a direction was issued by the competent authority to withdraw the grant made in favour of Respondent No. 6 and this fact was brought to the notice of this Court in W.P. 6582/2000. It has been stated that the order of cancellation dated 6.12.2000 was called in question before the Additional Commissioner, Sagar Division, Sagar, who entertained the appeal and passed an order of stay though he has no jurisdiction to entertain the appeal. The Respondent No. 5 on 7.2.2001, issued a direction to Respondent No. 4 to issue quarry permit in favour of Respondent No. 6. It has been put forth that a direction was also issued by the Respondent No. 5 that henceforth all the grants shall be made in accordance with the resolution passed by the Janpad Panchayat. In pursuance of the order dated 7.2.2001 passed by the Respondent No. 5, the Respondent No. 4 issued a consequential order on 17.2.2001 and issued permits in favour of Respondent No. 6. It has also been set forth that the grant of quarry permit by the Gram Panchayat in favour of Respondent No. 7 is illegal inasmuch as no such society is in existence and the so called chairman of the committee is a fake person.

In spite of service of notice no return has been filed by Respondent No. 5.

A counter-affidavit has been filed by the Respondent No. 6 contending, inter alia, that an advertisement dated 15.9.2000 was published in the Daily Chhattisgarh Bhraman and also, thereafter, by the Respondent No. 4 to put the sand mine at Ken river, situated under the Gram Panchayat, Parei to auction. The second advertisement was issued extending the date of auction. On 4.10.2000, the Respondent No. 4 issued the norms and procedure to be followed at the time of auction. On 11.10.2000, the auction took place in the presence of the Sarpanch of the Gram Panchayat, Parei, who also became a signatory to the proceedings of the auction. The Respondent No. 6 gave the highest bid of Rs. 2,78,000/- and the same was accepted. The Sarpanch concerned did not raise any objection indicating that the Respondent No. 7 was earlier given the quarry lease by the Gram Panchayat and it was still willing to renew it in favour of the Respondent No. 7. It has been pleaded that the upset price was fixed by the State Government at Rs. 2,50,000/-. On 18.10.2000, the Respondent No. 4 issued a letter to the Assistant Mining Officer, Chhatarpur, informing about the auction of the said mine and the acceptance of the highest bid of the Respondent No. 6. The said Respondent No. 6 was required to deposit Rs. 69,500/- with the Janpad Panchayat on 11.10.2000 and it was complied with and the balance amount was required to be deposited in two equal instalments and accordingly the

Respondent No. 6 deposited Rs. 1,04,250/- on 17.2.2001. An agreement was entered into between the Respondents No. 6 and 4 on 12.10.2000 on a registered stamp paper of Rs. 15,638/-. It has been put forth that the bed of river is not on the road side and there are fields of private individuals abutting on the bed of the river on which the said mine is situated and, therefore, the Respondent No. 6 was required to enter into an agreement with seven agriculturists whose land was coming between the mine and the main road and he had paid each one of them a sum of Rs. 20,1000/- for the whole year. These agreements have been brought on record as Annexures R/6/9 to R/6/15. It is also set forth that the Respondent No. 6 was required to construct a road for the trucks to come to the quarry so as to carry the sand and for this he spent a sum of Rs. 1,60,000/-. At this stage, while the Petitioner started working, one Jagdish Prasad filed a Writ Petition No. 6582/2000 and the Respondent No. 3 informed the Government Advocate to the effect that the lease was illegally granted to the Petitioner and the same was cancelled on 6.12.2000. On 6.12.2000, the Collector wrote a letter to the Respondent No. 4 directing him to cancel the lease granted in favour of the Respondent No. 6. On the basis of the aforesaid letter, the Respondent No. 4 vide Annexure P/7 dated 12.12.2000, cancelled the quarry permit granted in favour of the Respondent No. 4. Feeling aggrieved the Respondent No. 6 preferred a revision under Rule 57 of the Rules and the Commissioner passed an order of stay on 6.12.2000. He also challenged the order dated 12.12.2000 by way of an appeal before the Additional Collector who rejected the same in limine by order dated 6.1.2001. It is put forth that on 26.1.2001, a resolution was allegedly passed by the Gram Sabha in favour of the Respondent No. 7 directing the Sarpanch to issue a quarry permit in favour of the Respondent No. 7. It is put forth by the Respondent No. 6 that no resolution was passed by the Gram Sabha in favour of the Respondent No. 7. It is stated that when there was an order of stay by the Commissioner, the Gram Sabha could not have passed the resolution. Against the order passed in favour of the Respondent No. 7, one Rambabu filed an appeal before the SDO on 5.2.2001, who has stayed the operation of the order. Against the said order, the Petitioner-Sarpanch as well as the Respondent No. 7 went up in revision before the Additional Collector, Chhatarpur, who stayed the order of the SDO vide order dated 16.2.2001. Rambabu preferred a revision before the Commissioner against the order passed by the Additional Commissioner. Under these circumstances, the Respondent No. 6 approached the State Government on 7.2.2001 and obtained an order to the effect that the Respondents No. 2,3 and 4 should act in accordance with action taken by the Respondent Janpad Panchayat, Gaurihar. Pursuant to the said order, the Respondent No. 4 issued Anr. order dt. 17.2.2001, whereby he restored the agreement of the quarry permit in favour of the Respondent No. 6. It has been pleaded that the Hon'ble Minister has the authority under the rules of business and, accordingly, he passed the order in favour of the Respondent No. 6. It has been pleaded that when the orders of the Minister were not given effect to, the Petitioner approached the authority concerned and eventually the State Government, by order dated 22.2.2001,

directed the Collector to take action according to the Rules and inform the Department at Bhopal. The said letter has been brought on record as Annexure R/6/21. The Respondent No. 6 filed W.P. No. 866/2001 in which the complaint was made that the Respondents were not carrying out the orders of the Commissioner. This Court disposed of the petition with certain observations. It is set forth in the return that the Respondent No. 6 has spent more than Rs. 5.5 lacs but is not in a position to work peacefully. It has also been put forth that the Janpad Panchayat has the authority to grant quarry permit as the income from the quarry has exceeded Rs. 2,50,000/-. According to the Respondent No. 6, the Gram Panchayat has no authority to renew the quarry permit in favour of the Respondent No. 7, as the quarry has vested in the Janpad Panchayat. Justification has been given in favour of the instructions issued by the State Government on 14.01.2000, Annexure P/I, whereby it was directed that the Janpad Panchayat would put the quarry to auction. It has also been stated that it is not disputed that on 19.7.2000, the State Government issued the letter but the same related only to the urban areas and not to the Gram Panchayats and thereafter the State Government issued Anr. letter dated 16.1.2001 whereby it made the letter/circular dated 19.7.2000 applicable to the Gram Panchayats. It has been further pleaded that as per the Government instructions the quarry was put to auction in the presence of the Sarpanch and he had not raised any objection and hence, he cannot raise any objection at this point of time. It is also set forth that the Respondent No. 4 could not have passed the order vide Annexure P/7 in view of the existing agreement. Justification has been given highlighting that the settlement in his favour is totally defensible.

An application for intervention has been filed by one Jagdish Prasad. It is not necessary to deal with the said application as Jagdish Prasad has filed an independent writ petition forming the subject matter of 1598/2001. It is apposite to refer to the facts in brief of the said writ petition. It has been pleaded in the writ petition that the said Petitioner had preferred W.P. No. 6582/2000 which was disposed of on 8.12.2000 after recording the statement of the learned Govt. Advocate. It is put forth that by memorandum dated 16.1.2001, the State Government has directed that pending amendment of 1996 Rules, the mode of grant of quarry permit should be adhered to by the Panchayat as earlier notified vide memorandum contained in Annexure P/I and further clarified by Annexure P/2. Pursuant to the aforesaid instructions, the Gram Panchayat, Parei vide resolution dated 26.1.2000, resolved to grant quarry permit to the erstwhile permit holder, the Respondent No. 7, for a period of three months. It is put forth that the Respondent No. 6, Prem Singh, approached the State Government which resulted in passing of the order dated 7.2.2001, Annexure P/10. It has been set forth that the Minister concerned directed to give effect to the quarry permit granted by Janpad Panchayat in favour of Respondent No. 6 in accordance with rule 7 of Rule 1996. It has been stated that the exercise of powers by the Gram Panchayat is justified and interference at Government level is unwarranted. It has been pleaded that the instructions issued by the State Government vide

Annexure P 7 to grant quarry lease on obtaining advance royalty within an interval of three-three months, contravenes the essential nature of Rules 37 and 38 of 1996 Rules. It is stated that by such an order, the likes of the Petitioner are deprived of their right under Article 14 of the Constitution. It is also urged that the grant in favour of the Khanij Karm Udyog Sahkari Samiti suffers from legal infirmity and needs to be quashed. With these averments, prayer has been made for quashment of orders passed by the Additional Commissioner, State Government and the Chief Executive Officer, Janpad Panchayat, Gaurihar.

Presently, I shall proceed to state briefly the facts in W.P. No. 1750/2001 preferred by Rambabu Vishwakarma in the said writ petition, the Petitioner has prayed for quashment of orders contained in Annexure P/1, P/2, P/3, P/4, P/9, P/10, P/12 and P/13 and to command the competent authority to grant quarry permit in his favour on payment of Rs. 5.50 lacs for a period of three months. It is relevant to state here that the annexures which are prayed to be quashed are in a way relatable to the same which are challenged in other writ petitions. In the writ petition, reference has been made to Rules 6 & 7 of 1996 Rules and it has been highlighted that the issuance of circular by the Government on 14.1.2000 is against the mandate of the Rules and hence, unsustainable. It is also put forth that the circular dated 19.7.2000 is also not in consonance with 1996 Rules. It has also been pleaded that the circular dated 16.1.2001 by the State Government clarifying that till Rules are amended the Panchayats shall continue to grant permit for a period of three months on a payment of royalty, is also violative of the Rules. The entire action of the Janpand Panchayat has also been challenged on the ground of lack of jurisdiction. Entertaining of revision by the Additional Collector, Sagar has also been called in question. The order of stay passed by the Hon?ble Minister has also been assailed on the ground of lack of jurisdiction. It has been put forth that the Petitioner has submitted an application to the Gram Panchayat to obtain the quarry permit for extraction of sand from Khasra No. 56/1 on payment of 5.5 lacs but the Gram Panchayat did not give any weight to the said application. It is also alleged that the said application has not been kept on record by the Gram Panchayat for which the Petitioner sent a fax message to the concerned Collector. It has been further pleaded that the grant of quarry permit in favour of the Society by the Gram Panchayat has been challenged by the Petitioner before the SDO Loundi, who has directed stay of operation of the grant. Thereafter, the Society preferred a revision which is pending before the Additional Collector, Chhatarpur, who has directed stay of operation of the order of stay passed by the SDO. It is also set forth that a further revision has been preferred by the Petitioner before the Additional Commissioner, Sagar, who, in turn, by his order dated 3.3.2001, Annexure P/17, has stayed the order of Additional Collector. It has been pleaded that the Society is not operating the quarry lease but some other persons, in fact, are carrying on the operation. It has also been set forth that the permit could not have been renewed in favour of the Society after a period of two years and the fresh applications were required to be invited. With these averments, prayer has been

made for quashment of the relevant orders and to settle the quarry in favour of the Petitioner.

It is noteworthy to state here in W.P.no. 1598/2001 and W.P. No. 1750/2001 that no return has been filed by any of the parties. But the learned Counsel for the parties agreed to argue the matter in view of the returns filed in the writ petition preferred by the Gram Panchayat.

At the very outset, it is apposite to state here what transpired at the commencement of hearing of these writ petitions. Mr. R.N. Singh, learned senior counsel appearing for the Petitioner in W.P. No. 1083/2001, initially submitted that this Court had already decided the controversy on earlier occasion by accepting the statement of the Government Advocate and on the face of it, no other officer or even the Minister concerned could have passed any order. Mr. Rajendra Tiwari, learned senior counsel appearing for Respondent No. 6, Premsingh, contended that he was entitled to challenge the order of cancellation and the same has been challenged before the competent authority and a stay order has been obtained and, therefore, this Court may direct disposal of the appeal in accordance with law. Mr. Sanjay Agarwal, learned Counsel for the Petitioner Rambabu Vishwakarma submitted that he has preferred a revision before the Additional Commissioner challenging the grant in favour of the co-operative Society and, therefore, a direction should be issued for disposal of the revision. Mr. Ravish Agarwal, learned senior counsel in W.P. No. 1598/2001 submitted that the whole action taken by the authority is vitiated and, therefore, the order passed by the Additional Commissioner and by the concerned Minister should be quashed. After having a lengthy debate, it was suggested by this Court to the learned Counsel appearing for the parties, as the whole issue relates to the question of power/authority/ jurisdiction for grant of quarry permit and the legal consequence of the circulars issued by the State Government hence, the matter should be finally decided by this Court and the other proceedings pending before any other appellate or revisional forum should be governed by it and the parties should withdraw the said proceedings from the said forums. After considering the suggestion for some length of time, the learned Counsel appearing for the Petitioners in each case and the learned Counsel for the State fairly agreed that the matter be finally decided by this Court and the Petitioners as well as Respondents would not prosecute their appeals or revisions before any other forum. In view of this backdrop, I proceed to deal with the merits of the applications.

Now I shall enumerate the respective contentions raised by the learned Counsel for the parties. Mr. R.N. Singh, learned senior counsel appearing for the Petitioner Gram Panchayat in W.P. No. 1083/2001, has submitted that the order passed by the Respondent No. 2, the Commissioner, Sagar, and the order dated 7.2.2001, Annexure P/10, passed by the Respondent No. 5 are wholly illegal and liable to be quashed. It is urged by him that this Court had passed an order on the previous occasion by which the matter was put to rest and, therefore, no

further order could have been passed by any authority. It is also put forth by him that the Gram Panchayat has the authority to grant permit as per the rules in vogue and the same having been done, no fault should be found with the grant made in favour of the Respondent No. 7 and this Court should declare that the Chief Executive Officer of Janpad Panchayat, Gaurihar, had no authority to put the sand quarry to auction. The learned senior counsel has further submitted that the State Government has no authority to issue instructions/letter/circulars in violation of the rules in vogue and, therefore, the grant by the Gram Panchayat in favour of Respondent No. 7 the Society, is valid in law.

Mr.P.D. Gupta, learned Dy. A.G. appearing for Respondents 1 to 3, contended that the State Government, by order dated 19.7.2000, has taken away the right of grant of quarry permit from the Janpad Panchayat and, therefore, the grant of same by the Chief Executive Officer, Janpad Panchayat, in favour of Respondent No. 6 was unjustified and accordingly, the same was withdrawn by order dated 6.12.2000. It is also put forth by Mr. Gupta that the appeal before the concerned Additional Commissioner is not maintainable and, therefore, any interim order passed by him is of no consequence. However, the learned Counsel for the State submitted that the circular issued by the State Government vide Annexure P/3 dated 16.1.2000 directing the Gram Panchayat/Janpad Panchayat/Zila Panchayat to renew the lease in favour of the erstwhile lease holder on payment of advance royalty for a stipulated period, is defensible and does not suffer from any infirmity.

Mr. Rajendra Tiwari, learned senior counsel appearing for Respondent No. 6, has submitted that the Petitioner has prayed for the relief of quashment of order dated 13.12.2000, Annexure P/6, and order dated 7.2.2000. Annexure P/10, and, therefore, in this writ petition, it cannot claim that it has the right over the mines in question. It is put forth by him that the Janpad Panchayat has right over the area and once the same has been put to auction by the Chief Executive Officer, Janpad Panchayat, the same cannot be challenged by the Gram Panchayat as it is a stranger to the property in question. It is further canvassed by Mr. Tiwari that the writ Petitioners in other writ petitions did not participate in the auction which was held on 11.10.2000 and hence, they cannot agitate their grievance before this Court. It is also urged by him that the Sarpanch of the Gram Panchayat was present at the time of auction and signed the auction bid and did not raise any objection whatsoever and, therefore, he is estopped to challenge the said auction. It has been further argued by him that the Respondent No. 6 has already deposited substantial amount and spent a considerable sum in preparation of the road and therefore, at this juncture, the grant in his favour should not be annulled. The learned senior counsel has further argued that the grant in favour of Respondent No. 7, the Society, is totally illegal as the same has not been done in accordance with rules. Mr. Tiwari has further canvassed that as the period has already commenced, this Court should not exercise equitable jurisdiction in favour of the Petitioner. The learned Counsel has also contended that the Respondent No. 6 participated in the auction on the

basis of an advertisement published by a responsible public officer and having deposited quite a substantial sum and having spent a substantial amount, his right cannot be curtailed at this juncture. It has been highlighted by Mr. Tiwari that none of the Petitioners in all the three writ petitions can be regarded as persons aggrieved and, therefore, the writ application deserves to be dismissed. To buttress his submission, he has placed reliance on the decisions rendered in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .

Mr. Ravish Agarwal, learned senior counsel appearing for the Petitioner in W.P. No. 1598/2001, has contended that the grantee, Premsingh cannot claim advantage of a situation which is totally impermissible in law as the Janpad Panchayat had no authority to put the quarry to auction. It is urged by him that by the time the Chief Executive Officer had put the quarry to auction, the initial circular issued by the State Government on 14.1.2000 had already been withdrawn and, therefore, the action of the Chief Executive Officer, cannot be given the stamp of approval by any stretch of imagination. The learned senior counsel has further proposed that if eventually the right in respect of the lease rests with the Gram Panchayat, the same could not have been dealt with by any other authority as that would amount to encroachment in the rights of a Gram Panchayat conferred on it by law and Panchayat cannot be divested of its authority by any other officer who has nothing to do with the Gram Panchayat.

Mr. Sanjay Agarwal, learned Counsel for the Petitioner in W.P. No. 1750/2001, has contended that as long as the Rules are in vogue, executive instructions cannot govern the field and, therefore, the grant in favour of Premsingh is ab initio void and, similarly the grant in favour of the co-operative society, namely, Khanij Karm Udyog Co-operative Society, is also bad in law. It is put forth by him that the concept of preferential right as envisaged in Rule 38(4) of 1996 Rules has to be given a purposive meaning so that a monopoly in favour of co-operative socety is not created and there is augmentation of revenue as far as Gram Panchayat is concerned. It is also urged by him that in the name of grant of quarry permit to a co-operative society, the Gram Panchayat cannot take resort to settle it for a meagre sum or the persons who are in the helm of affairs of the Gram Panchayat cannot take recourse to a pseudo settlement. It is put forth by him that a co-operative society has to give its offer, alongwith Ors. and in cases where the offer is equal in all aspects, the concept of preferential right would rise. The learned Counsel has placed reliance on a decision rendered in the case of Sher Singh Vs. Union of India (UOI) and Others,].

Before I delve into the merits of the case, I think it apposite to advert to the preliminary objection raised by Mr. Tiwari that the rights of the Gram Panchayat cannot be determined in this writ petition in absence of a proper prayer. To appreciate the aforesaid submission of Mr. Tiwari, I have perused the relief clause of the writ petition preferred by the Gram Panchayat. I have also perused the grounds of the writ petition. In ground No. ?d?, it has been specifically urged

that as per the existing Rule 7 of the Rules, it is only the Gram Panchayat which has the authority to grant quarry permit in respect of sand which is included in Schedule II and that too, on being approved by the Gram Sabha of the said Gram Panchayat and as the Gram Sabha endorsed the continuance of Respondent No. 7, the order passed in favour of Respondent No. 6 to carry on the operations in the sand mine is without jurisdiction. In the prayer portion, it has been prayed that this Court should hold that the Petitioner Panchayat has the authority to grant quarry permit in favour of Respondent No. 7. On a perusal of the grounds and the relief clause, it appears the grievance of the Petitioner Panchayat in essence is that its rights are being taken away. True it is, a prayer in specific terms has not been made to declare that the Gram Panchayat has the right and the Janpad Panchayat does not have the right but when from the pleadings and the relief sought it flows to some extent, I am of the considered view that this Court has the jurisdiction to mould the relief. This view of mine gets fortified by the decision rendered in the case of Nilamani Mishra v. State of Orissa 71 (1999) CLT 99 wherein B.L. Hansaria, C.J. (as his Lordship then was), speaking for the Court expressed thus :

8. The next question is relatable to the grant of appropriate relief to the Petitioner. In this connection, it has been urged by Mr. Mishra that as the Petitioner has not specifically prayed for setting aside the approval accorded to the promotion of O.P. No. 4 by the Director of Secondary Education, the promotion in favour of this opposite party cannot be set aside by this Court in the present proceeding. Reference to the prayers as made by the Petitioner shows that the first of the same concerns the seniority and the second to the question of recommendation of the name of the Petitioner for promotion as the Headmaster and a direction to O.P. No. 2 to approve the same. This shows that there is no specific prayer for declaring the promotion of O.P. No. 4 as invalid in the eye of law. But then the Petitioner having prayed for any other order or direction which would afford complete relief to him, we are of the opinion that merely because of absence of any specific prayer for setting aside the approval of the promotion of O.P. No. 4 to the post of Headmaster, this relief may not be denied to the Petitioner. In taking this view, we have borne in mind certain decisions of the Apex Court which have held that Courts have very wide discretion in the matter of framing their writs to suit the exigencies of particular cases and an application cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for.? It is apposite to state here that in the aforesaid case, reference was made in the decision rendered in the cases of Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others,); Sri Satya Narain Singh Vs. District Engineer, P.W.D. and Another,); the The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others,); and B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others,). I may also hasten to add that here, the moulded relief does vary from for the prayer made in the petition in any manner and it cannot be said that by any stretch of imagination that if prayer is allowed, it would be in excess of

what has been prayed for. I am conscious that a writ Court can mould the relief but should not transgress the territories for grant of relief which, in fact, does not flow from the pleadings and if granted would be in excess of the prayer made. Quite apart from the above, learned Counsel for the parties have fairly agreed before this Court that final adjudication should be by this Court and in my considered opinion, the finality can only be attained if the inter se rights of the parties are determined keeping the submissions in view.

Presently I will proceed to deal with the inter se rights of the parties. It is to be noted here that in exercise of powers conferred by Section 15 of the Mines and Minerals (Regulation & Development) Act, 1957, the State Government has framed a set of rules called M.P. Minor Mineral Rules, 1996. The Chapter 3 of the Rules deals with powers to grant quarry lease and quarry permits. Rule 6 deals with the power to grant quarry lease. It is appropriate to reproduce the said rule:

6. Power to grant quarry lease. Quarry lease in respect of minerals specified in Schedule I and Schedule II shall be granted and renewed by the authority mentioned in column (1) for the minerals specified in column (2) subject to the extent as specified in the corresponding entry in column (3) thereof of the table below :

Authority (1) Minerals(2) Extent of Powers (3)

1. State Government Minerals specified at S. no. 1 to 5 of Schedule I. Full powers.

2. Director (i) Minerals specified at S. no. 6 and 7 of Schedule I. (i) where the area applied for exceeds 4.00 hectares for Industrial use.

(ii) Minerals specified in Schedule II. (ii) where the annual letting value of Rs. 10,00,000/- (Rs. Ten Lakh) and all clay quarries for tiles and bricks in chimney bhatto.

3. Collector Minerals specified in S. no. 6 and 7 of Schedule I. Where the area for does not exceed 4.00 hectares for Industrial use.

On a perusal of the said rule, it is apparent that certain authorities have been conferred the power to grant lease in respect of minerals specified in column (2). Rule 7 deals with power to grant quarry permit. The aforesaid rule is reproduced herein :

Power to grant quarry permit. -Quarries of annual value upto Rs. 2,50,000/- (Rs. Two lakh fifty thousand); above Rs. 2,50,000/- (Rs. Two lakh fifty thousand) but upto Rs. 5,00,000/- (Rs. Five lakh) and above Rs. 5,00,000/- (Rs. Five lakh) and upto Rs. 10,00,000/- (Rs. Ten lakh) in respect of minerals specified in Schedule II except stone quarries for crusher and clay quarries for tiles and bricks in chimney bhatta, shall, for regulating the grant and renewal or quarry permit and all purposes connected therewith including collection of royalty, stand transferred to the respective Gram Panchayats/ Janpad Panchayats and Zila Panchayats

respectively. Quarry permits shall be granted and renewed by the respective Panchayat, after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated.

Explanation : For the purpose of assessing the annual value of any quarry of mineral specified in Schedule II, if the quarry is a trade or royalty quarry, the average annual bid amount of the years 1992-93, 1993-94 and 1994-95 shall be taken into consideration and in case of quarries granted as a quarry leases, average annual royalty for the years 1992, 1993 and 1994 shall be taken into consideration. This assessment of value is for the purpose of transfer/sanctioning power of quarries to respective Zila, Janpad and Gram Panchayats at the commencement of these Rules.

On a bare reading of the aforesaid Rules, it is apparent that quarries of annual value upto Rs. 2,50,000/- in respect of minerals specified in Schedule II except stone quarries for crusher and clay quarries for tiles and bricks in chimney bhatta, shall, for regulating the grant and renewal of quarry permit and all purposes connected therewith including collection of royalty, stand transferred to the respective Gram Panchayat and the Gram Panchayat is entitled in law to grant quarry permit and renew the same after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated. The ? Explanation? to Rule 7 postulates the manner for assessing the annual value of any quarry as specified in Schedule II. Submission of Mr. R.N. Singh, learned senior counsel, is that concerned sand quarry stood transferred as its annual value was within Rs. 2, 50,000/- and there was no prohibition for such transfer. Submission of Mr. Tiwari, learned senior counsel appearing for Respondent No. 6, is that once the quarry was put to auction and had fetched more than Rs. 2, 50,000/- and in any case where the price goes beyond Rs. 2,50,000/, the quarry permit automatically gets transferred to Janpad Panchayat and if the price goes beyond Rs. 5,00,000/- it goes to Zila Panchayat. The aforesaid submission of Mr. Tiwari, on a first flush, looks quite attractive but it pales into insignificance on a close scrutiny. If Rule 7 is read in proper perspective, the language used is ? stands transferred?. The ?Explanation? fixes the assessment of the annual value and the same is done for the purpose of transfer/sanction of power of quarries to the respective Panchayats at the commencement of the Rules. If the words ? stands transferred?, ?assessment of value? and ?sanctioning power? are read conjointly, then the only meaning that warrants acceptance is that the quarries stand transferred and this is a one time transfer. For the purpose of such transfer, as has been stipulated in the ?Explanation?, the manner of assessment has been prescribed. There is no mode to show that the quarry would get automatically transferred to Janpad Panchayat or Zila Panchayat. In the absence of such a mode being provided, it is to be deemed that the quarry stands transferred in favour of the Gram Panchayat. It vests in the concerned Panchayat by virtue of transfer and the concept of re-transfer is alien to the scheme and framework of the present Rules. If submission of Mr. Tiwari is accepted that once there is collection of more revenue, there would be automatic transfer in favour

of Janpad Panchayat or Zila Panchayat, it would amount to reading something into the Rules which do not exist and when the Rules are clear and unambiguous there is no justification to read such a concept into the Rules. If a property has been vested with the Gram Panchayat as per the Rules, the same can be divested only by operation of law. To elaborate, if the rule-making authority thinks it apposite to get a quarry to be re-transferred from a Gram Panchayat on certain criteria, it may do so by providing the same in the Rules by way of amending Rules but as the Rules exist today and the language employed therein, it is impermissible to construe that the Panchayat would be divested of the authority because of the rise in the price of the quarry in question. In my considered opinion, for doing the same, an amendment in the Rules is required.

It is not disputed at the Bar that the quarry in question stood transferred at the commencement of the Rules in favour of Gram Panchayat, Parei and it has been dealing with the same as per the Rules. That fact being not in dispute, I proceed to dilate to the issue whether the State Government could have issued instructions as have been issued vide various documents. The earliest letter/circular is dated 14.1.2000. By this, the State Government directed that the minerals which have been mentioned in Schedule II to the Rules, shall be dealt with by the Chief Executive Officer, Janpad Panchayat who would dispose of the same by putting it to auction in presence of the Sarpanch of the Gram Panchayat. Certain other conditions have been stipulated therein. It was mentioned in the said circular that there was contemplation for amendment of 1996 Rules. A further circular was issued on 19.7.2000 by the competent authority of the State Government to the effect that certain clarification was sought for from certain quarters and keeping the same in view, it was directed that till the Rules were amended, the erstwhile lease holder would be allowed to operate by giving advance royalty as an interim measure but there should be no grant in that regard. It is also stipulated therein that the permission would be for a period of three months with a further rider that it can be cancelled with a notice of ten days before expiry of three months. A further clarification came by letter dated 16.1.2000 indicating that till the Rules are amended, the concerned Gram Panchayat, Janpad Panchayat, Zila Panchayat shall collect the royalty in advance from the previous lease holder and grant them permit at three months intervals each. It was further clarified that by mistake, the rural areas were not included in the circular dated 19.7.2000.

The moot question that falls for consideration is whether the State Government could have issued these kind of instructions when the Rules are in vogue. It is the admitted position that the Rules have not been amended. Instructions were given on 14.1.2000 that the quarries in question shall be put to auction by Janpad Panchayat. Possibly realising the mistake, the same was modified and power was given to the Collector and later on to the concerned Gram Panchayat. It is graphically clear that once the power vests with the Gram Panchayat to deal with the quarry, the same could not have been dealt with by the Janpad Panchayat by an executive instruction. Rightly the said circular was withdrawn.

In this context, I may profitably refer to certain Rules which find place in Chapter VI which deals with grant of quarry permit. Rule 36 provides that quarry permit shall be issued by Zila Panchayat/Janpad Panchayat/Gram Panchayat as specified in Rules 37 and 38. Rule 37 provides for application for quarry permit. Rule 38 deals with disposal of application for quarry permit. Rule 39 provides that the period of a quarry permit shall be specified as in Rule 22. Rule 40 deals with conditions of quarry permit and Rule 41 deals with register of quarry permit.

To appreciate the manner of disposal, it is apposite to refer to Rule 38. It reads as under :

38. Disposal of application for quarry permit. ? (1) On receipt of an application for the grant or renewal of quarry permit its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Panchayat concerned of the district and collectorate of the district concerned. It shall be disposed of by the sanctioning authority within thirty days from the date of its receipt. However, a Gram Panchayat shall obtain prior approval of its Gram Sabha before final disposal of the application.

(2) The sanctioning authority shall grant quarry permit in Form XVI for extraction and removal from any specified quarry, any mineral under any one permit. The agreement shall be executed and registered in Form XVII within 30 days of sanction and if no such agreement is executed within the aforesaid period, the order of sanction shall be deemed to be revoked. The transit pass in Form IX shall be issued after deposition of royalty for the quantity of mineral intended to be transported every time. The royalty shall be calculated at the rates specified in Schedule III. The applicant shall deposit the amount of security which he may be directed to deposit by the authority before such execution of agreement.

(3) If any application is rejected, the sanctioning authority shall inform the applicant, stating the reasons of such rejection.

(4) Preferential Rights. ? A quarry permit shall be granted only to the residents of the panchayat where the quarry is located in the following order of preference :

(a) Cooperative society/association of Scheduled tribe/Scheduled caste/backward classes/educated unemployed youths or individuals where more than 50 per cent of the members belong to the concerned category and the chairman of the society belongs to the concerned category and also where the executive committee have representation in the ratio of the members of the concerned category and hail from below poverty line families listed in the District Rural Development Agency or educated unemployed youth belonging to Schedule tribe/Schedule caste/backward classes in that order;

(b) An educated unemployed youth belonging to below poverty line families listed in the District Rural Development Agency:

(c) Any other person belonging to below poverty line families listed in the District Development Agency;

(d) Any other applicant.

On a bare reading of the Rules, it becomes crystal clear that the royalty is calculated at the rate specified in Schedule III. Sub-rule (4) deals with preferential right. Preferential right is conferred on a cooperative society/association of Scheduled tribe/Scheduled caste/backward classes/educated unemployed youths or individuals with certain qualifiers. Rule 22 deals with period of quarry lease/quarry permit. Under item No. 9, ordinary sand is covered and it is mentioned that permit can be granted for two years without renewal clause. In view of these rules in vogue, the three questions that emerge for consideration are: (a) whether the Respondent No. 4, the Chief Executive Officer, Janpad Panchayat, Gaurihar, could have put the quarry to auction and could have settled in favour of Respondent No. 6 Premsingh; (b) whether the Respondent No. 6 can claim equity because of grant in his favour; and (c) whether the Respondent No. 7 can be conferred the benefit by the Gram Panchayat on the basis of the latest direction given by the State Government vide Annexure P/3 dated 16.1.2001.

I shall first advert to deal with the first aspect. I have already come to the conclusion that the quarry in question stands transferred to the Gram Panchayat and the right or control of the Panchayat cannot be taken away without amendment of the Rules. An attempt was made by the State Government vide Annexure P/I dated 14.1.2000, whereby a direction was issued to the Chief Executive Officer that the Janpad Panchayat would put the quarry to auction. In absence of amendment in the Rules, such a letter/circular is wholly indefensible and unwarranted. It is well settled in law that executive instructions can supplement the Rules but cannot supplant the Rules. As by letter/circular contained in Annexure P/I there was divesting of rights/interest of Gram Panchayat was concerned that could not have been done by any executive instructions; in anticipation of amendment of the Rules. Such a course could not have been taken recourse to. However, as has been stated earlier, there was a modification in the same. The Chief Executive Officer put it to auction on 11.10.2000. It is noteworthy to state here that Annexure P/2 came into existence on 19.7.2000 by which the letter/ circular dated 14.1.2000 was completely modified. In any case, the right of the Gram Panchayat could not have been taken away by issuance of Annexure P/I, and, therefore, the Janpad Panchayat could not have put it to auction. A property lawfully belonging to ?A? cannot be disposed of by ?B?. It is submitted by Mr. Tiwari, learned Counsel for the Respondent No. 6, that the Chief Executive Officer of the Janpad Panchayat put the property to auction on 11.10.2000 and the circular dated 19.7.2000 was made applicable only to the urban areas and, therefore, the action taken by the said authority cannot be found fault with. True it is, the said circular modified on 16.01.2001 vide Annexure P/3 wherein it was indicated that by mistake, rural areas were left out and accordingly instructions were given. The aforesaid submission would have had substance if the initial letter/circular was issued by the State Government would have been valid in the eye of law. As has been held

earlier, the said circular runs counter to the Rules in vogue and by such executive instructions, the rights of the Gram Panchayat could not have extinguished and, therefore, the Chief Executive Officer of the Janpad Panchayat could have no authority to deal with the property. It needs to be stated here that even if he acted bona fide on the basis of the circular dated 14.01.2000, that would not confer any right on the Respondent No. 6 and justify the action taken by the Respondent No. 4.

The next question that arises for consideration is whether the Respondent No. 6 can claim equity. Submission of Mr. Tiwari is that he believed in the advertisement issued by the Respondent No. 4 and participated in the auction and deposited a considerable sum and also spent a substantial amount and, therefore, the lease period should be allowed to expire. He has emphatically contended that a responsible officer of the Janpad Panchayat took steps for auction and the Petitioner being a lay man, believed in the act undertaken by the State authority and acted in pursuance of that and, therefore, conferment of the privilege should not be disturbed by this Court. The learned senior counsel has placed reliance on the decision rendered in the case of Ramana Dayaram Shetty (supra). He has specifically referred to paragraph 35 of the aforesaid decision. It reads as under :

35. Now, on this view we should have ordinarily set aside the decision of the Ist Respondent accepting the tender of the 4th Respondent and the contract resulting from such acceptance, but in view of the peculiar facts and circumstances of the present case, we do not think it would be a sound exercise of discretion on our part to upset that decision and void the contract. It does appear from the affidavits filed by the parties that the Appellant has no real interest in the result of the litigation, but has been put up by A.S. Irani for depriving the 4th Respondent of the benefit of the contract secured by them. We find that a number of proceedings have been instituted for this purpose from time to time by A.S. Irani either personally or by instigating Ors. to take such proceedings. The first salvo in the battle against the 4th Respondents was fired by K.S. Irani, proprietor of Cafe Excelsior, who filed a suit challenging the decision of the Ist Respondent to accept the tender of the 4th Respondents, but in this suit he failed to obtain an interim injunction and his appeal was dismissed by the High Court on 19th Oct. 1977. It is significant that when the tenders were opened in the office of the Airport Director, Cafe Excelsior was represented by A.S. Irani, which shows that either Cafe Excelsior was a nominee of proprietor of Cafe Excelsior, was closely connected with A.S. Irani. Moreover it is interesting to note that though the tender of the 4th Respondents was accepted as far back as 19th April. 1977, K.S. Irani did not adopt any proceedings immediately but filed the suit only after A.S. Irani was informed by the Airport Director on 22nd August 1977, that a final order has been received from the Ministry requiring A.S. Irani to immediately close down his restaurant and snack bars. It is also a circumstance not without significance that A.S. Irani did not immediately take any proceeding for challenging the acceptance of the tender of the 4th

Respondents, but filed a suit in his own name only after the appeal of K.S. Irani was dismissed by the High Court on 19th October, 1977. These circumstances clearly indicate that the suit was filed by K.S. Irani at the instance of A.S. Irani or in any event in concert with him and when the suit of K.S. Irani failed to achieve the desired result, A.S. Irani stepped into the arena and filed his own suit. This suit was for a mandatory injunction seeking removal of the two snack bars which had in the meantime been put up by the 4th Respondents pursuant to the acceptance of their tender by the 1st Respondent. But in these proceedings also A.S. Irani failed to obtain an ad interim injunction. It was only after the failure to obtain interim relief in these two proceedings, one by K.S. Irani and the other by A.S. Irani that the Appellant filed the present writ petition in the High Court of Bombay challenging the decision of the 1st Respondent to accept the tender of the 4th Respondents. Now, it appears from the record that the Appellant was at the material time conducting a restaurant called Royal Restaurant and Store which was owned in partnership by three persons, namely, J.K. Irani, K.M. Irani and G.S. Irani is the brother of A.S. Irani and he was managing and looking after the restaurant of A.S. Irani at the airport. It would, therefore, be a fair inference to make that the Appellant was well connected with A.S. Irani and from the manner in which proceedings with a view to thwarting the attempt of the 4th Respondents to obtain the benefit of their contract, have been adopted one after the other in different names, it does appear that the Appellant has filed the writ petition at the instance of A.S. Irani with a view to helping him to obtain the contract for the restaurant and the snack bars. It is difficult to understand why the Appellant should have waited until 8th November, 1977. The explanation given by the Appellant is that he was not aware of the acceptance of the tender of the 4th Respondents but that is a rather naive explanation which cannot be easily accepted. It is not possible to believe that the Appellant who was so well connected with A.S. Irani and G.S. Irani did not know that A.S. Irani had failed to obtain the contract for running the restaurant and the snack bars and that this contract had been awarded to the 4th Respondents as a result of which A.S. Irani was being pressed to close down his restaurant and snack bars. We have grave doubts whether this writ petition was commenced by the Appellant bona fide with a view to protecting his own interest. Moreover, the writ petition was filed by the Appellant more than five months after the acceptance of the tender of the 4th Respondents and during this period, the 4th Respondents incurred considerable expenditure aggregating to about Rs. 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitable to set aside the contract of the 4th Respondents at the instance of the Appellant. The position would have been different if the Appellant had filed the writ petition immediately after the acceptance of the tender of the 4th Respondents but the Appellant allowed a period of over five months to elapse during which the 4th Respondents altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the Appellant in the exercise of our discretion under Article 226 of the Constitution.

Submission of learned senior counsel is that as a substantial amount has been spent and some period has lapsed, the quarry permit should be allowed to continue. In the aforesaid case, the Apex Court was concerned with the acceptance of tender. In that case, taking into consideration the passage of time and the conduct of the Appellant, the Apex Court did not grant relief. But in the present case, the factual matrix is quite different. This Court cannot be oblivious of the fact that the quarry in question belongs to Gram Panchayat and by an executive fiat, the Gram Panchayat could not have been divested of its right, title and interest and the same could not have been put to auction by the authority of the Janpad Panchayat. A property belonging to one cannot be handled by a total stranger. The beneficiary of a grant from a stranger, in my considered opinion, cannot claim equity. In fact, that would be contrary to the basic principles of equity because for no apparent reason the title holder is denied and deprived to deal with his/its property. It also cannot be lost sight that a Gram Panchayat has its own autonomy as per constitutional mandate and the State Legislature has conferred certain autonomy on it by bringing appropriate Legislation and framing necessary rule after the 73rd amendment of the Constitution which came into force by the (73rd Amendment) Act, 1992. The State has no business to issue such circulars to create a dent in the functioning of the Gram Panchayat without proper amendment in the Rules. The State had legal advisors but it chose to issue letter/circulars one after the other having scant regard for the Rules in vogue but by such action of the State, a Gram Panchayat cannot be affected. There was a purpose when the 1996 Rules were brought into existence and Gram Panchayat was given the quarry. It is not a question of financial benefit but a question of handling the property keeping the mandate of the Rules in view. The question has to be adjudicated keeping in view the autonomy of the Gram Panchayat and collective interest on one hand and the financial interest of the Respondent No. 6 on the other. The Respondent No. 6 claims on the basis of the instructions given by the State Government and the Gram Panchayat claims by operation of law. In a democratic set up, the rule of law must prevail as that is the basic norm of a civilised democratic society. Hence, the question of equity in favour of the Respondent No. 6 does not arise.

It is further canvassed by Mr. Tiwari that the Sarpanch was present at the time of the auction and hence, he cannot be allowed to challenge the settlement. Submission of Mr. Singh is that the Sarpanch was present because of the executive instructions contained in Annexure P/1. Be that as it may, a Sarpanch is not entitled to handle the property of the Gram Panchayat as it pleases him. His mere presence at the time of auction will not bind the Gram Panchayat to forgo its rights or waive the same. The question of estoppel or waiver does not arise. It is to be borne in mind that Rule 7 clearly stipulates that quarry permit shall be granted and renewed by the respective Panchayat after obtaining prior approval of the Gram Sabha of the Panchayat in which the quarry area is situated. Rule 38(1) also stipulates that Gram Panchayat shall obtain prior approval of its Gram Sabha before final disposal of the application. Thus the

Gram Sabha has a positive and indispensable role in disposal of the quarry permit. Gram Sabha has been given the same meaning as has been given to it under M.P. Panchayat Raj Adhiniyam, 1993. Gram Sabha has been defined in Section 2(viii). It reads as under:

2. Definitions .- (viii) "Gram Sabha" means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level;

In view of the aforesaid definition and language employed in the Rules, I am of the considered opinion that the presence of Sarpanch at the time of auction could not validate the auction or estop the Gram Panchayat to challenge the action taken by the Chief Executive Officer, Janpad Panchayat. An act of his would not allow the Respondent No. 6 to claim equity in his favour. It may be that the Respondent No. 6 might have spent some amount to operate the quarry and might have deposited certain sum but as I am of the opinion that the grant in his favour is not sustainable, I am inclined to direct the Respondents Nos. 3 and 4 would take into consideration the offer made by the Petitioner, the amount deposited by him and the period operated by him and thereafter compute the amount which would proportionately become refundable to the Petitioner and accordingly refund the same to him within a period of six weeks from the date of receipt of this order.

Now I shall proceed to deal with the third aspect of the matter; whether the grant by the Petitioner in respect of Respondent No. 7 is justified. It is not disputed at the Bar, the Respondent No. 7 has been granted the permit by the Petitioner as he was the previous permit holder. It is submitted by Mr. R.N. Singh, learned senior counsel for the Petitioner, as well as by Mr. S.L. Saxena, learned senior counsel appearing for Respondent No. 7, that the said continuance was directed on the basis of Annexure P/3. On a perusal of Annexure P/3, it transpires that in anticipation of amendment of Rules, this arrangement had to take place. Submission of Mr. Ravish Agarwal, learned senior counsel, as well as of Mr. Sanjay Agarwal, is that applications are to be considered in accordance with Rule 38. The period of quarry permit is governed by Rule 22. True it is, there should be no renewal clause and it can only be granted for a period of two years but there is no impediment or bar to grant for a lesser period. That would be within the discretion of the Gram Panchayat. The Gram Panchayat can grant for a lesser period as long as it does not incorporate renewal clause. The State Government cannot command the Gram Panchayat to renew it or to continue the grant in favour of the previous permit holder for a period of three months and to continue thereafter on the same terms. It is to be settled in accordance with the rules in vogue. The State Government cannot give a direction which runs counter to the rules. In my considered view, after the period of quarry permit is over, applications are to be invited for and should be disposed of in accordance with Rule 38. As far as preferential rights are concerned, there might be similar co-operative society/association. That apart, the society which was granted must

also satisfy the conditions precedent enumerated in Rule 38(4)(a) of the rules. There may be a case where a society does not meet the said qualification after certain passage of time. In that event, the State Government cannot issue a direction to the Gram Panchayat to continue the permit.

Mr. Sanjay Agarwal, learned Counsel, has drawn the attention of this Court to the decision rendered in the case of Sher Singh (*supra*). In the aforesaid case, their lordships were considering Section 47(1-H) of Motor Vehicles Act, 1939, which provided that an application made by M.P. State Road Transport Corporation shall be given preference over all other applications. Keeping the aforesaid provision in view, their lordships proceeded to hold as under :

The expression 'preference' amongst Ors. means prior right, advantage, procedure etc. It signifies that other things being equal, one will have preference over the Ors. . If, after ensuring competition in matter of rendering more efficient transport service, a public sector undertaking is assured statutory preference without any monopoly, there is no violation of Article 14. In an application under Chapter IV, Corporation has to enter the arena like any other applicant, face the competition and come up to the level of other private operators intending to obtain stage carriage permits and then in respect of the route in question, claim preference. Their merits and demerits must be ascertained keeping in view the requirements of (a) to (f) of Section 47(1). Qualitative and quantitative comparison on broad features of passenger transport facility such as fleet, facilities to travelling public and other relevant consideration may be undertaken and after balancing these factors, other things being equal, the application of the undertaking shall be given preference over other applicants. Thus, while considering the application for stage carriage permit u/s 47, the private operator has an equal chance to get a permit even on inter-State route if it shows that the undertaking is either unable to provide efficient and economical service or that the private operator is better equipped to render the same. Preference in this context would mean that other things generally appearing to be qualitatively and quantitatively equal, though not with mathematical accuracy, statutory provision will tilt the balance in favour of the undertaking. Therefore, Section 47(1-H) would not offend Article 14.

True it is, in the aforesaid case the Apex Court has dealt with the concept of preferential right and has held that an ordinary applicant would be considered alongwith the Corporation and everything being similar, the Corporation would be given preference. In that case, the vires of provision was called in question. In the present case, the vires of the rule is not under test. What the rule provides is the order of preference. Various classes have been narrated under various clauses. Whether such categorisation is right or wrong, I am not inclined to address myself to the same for the simple reason, the vires of the said rule is not under challenge in this writ petition. Only possible logical interpretation that is commended is that the words 'order of Preference' had to be given, due and purposive meaning and the provision being clear and ambiguous one category

excludes the other category. In the case of Sher Singh (supra), there were applications from two classes and, therefore, the Apex Court held that everything being similar, preferential right would be given to the Corporation. But in the case at hand, the language of the rule is totally different. Each category constitutes a different clause. What logically follows from the Rule 38(4) is that if a cooperative/association of Scheduled Tribes/Scheduled castes meets the requirement of said provision and is found suitable for all purposes, it has to be given the preference over the other categories and in the event no cooperative society is found suitable, the category enumerated in clause (b) would be considered. Similar pattern has to be followed in case of other two categories. In view of this, I am of the considered opinion, the decision cited by Mr. Sanjay Agarwal does not render much assistance.

I will be failing in my duty if I do not deal with Anr. facet of the case. It was vehemently urged by Mr. R.N. Singh, learned senior counsel, that in view of the order passed by this Court in W.P. No. 6582/2000, no authority could have passed any further order. To appreciate the aforesaid submission of Mr. Singh, it is apposite to refer to the order passed by this Court in the said writ petition. It reads as under:

By this writ petition, the Petitioner has prayed for issue of writ of certiorari for quashing of the grant of quarry lease in favour of Respondent No. 6. Mr. Raizada, learned G.A., after obtaining instructions from the Assistant Mining Officer, Chhatarpur, submits that the lease granted in favour of Respondent No. 6 has been cancelled on 6.12.2000. In view of this, the writ petition has been rendered infructuous. Mr. M.A. Khan, Assistant Mining Officer who is present in Court, fairly states that Respondent No. 6 shall not be allowed to operate the lease in view of the cancellation.

On a perusal of the aforesaid order, it becomes luminously clear that nothing was decided by this Court. Statement of the learned Government Advocate was recorded and the statement of the Assistant Mining Officer was also noted down and the aforesaid statement was contextually correct and no fault can be found with the Assistant Mining Officer. Quite apart from the above, the order of cancellation affected the Respondent No. 6 while nothing remained to be decided in the earlier writ petition, it was open to the Respondent No. 6 to assail the order of cancellation. It cannot be construed by any stretch of imagination that the right of Respondent No. 6 was sealed by the order of this Court. Whether the appeal preferred by him was maintainable before the Additional Commissioner or not, I need not dilate on the same. The correctness of the orders passed by various authorities at the instance of various parties and also by the concerned Minister need not be delved into as I have already decided the controversy.

In view of my preceding analysis, the writ petitions are disposed of on the following directions:

(a) The grant of quarry permit in favour of Respondent No. 6 by the Respondent

No. 4 stands quashed and the said Respondent would be entitled to refund of the amount as per the directions contained in Paragraph 28;

(b) the renewal in favour of Respondent No. 7 is quashed and the Gram Panchayat is directed to follow the procedure as contemplated in Rule 38 of the rules and grant the lease for a period of three months or such period as may be deemed fit in the facts and circumstances of the case, keeping in view the guidelines given by the State Government. It is hereby made clear that the direction of the State Government to renew the lease in favour of the previous grantee is quashed as such a direction runs counter to the mandate of Rule 38 but the guideline for giving the quarry permit for three months does not contravene the spirit of the rules in vogue and, therefore, the Gram Panchayat would be well guided by it;

(c) the writ Petitioners in other writ petitions would be entitled to apply in terms of Rule 38 of the Rules and their cases shall be considered keeping in view the parameters of Rule 38 as has been interpreted hereinabove:

(d) all the proceedings relating to the rights of the parties pending before any other authority would be deemed to have been withdrawn in view of the concession given by the learned Counsel for the parties; and

(e) The State Government shall keep in view the observations made by this Court in paragraph 26 and act accordingly in future. The authorities of the State should never forget that directions are issued to clarify a situation and not to create an embroilment.

The writ petitions are accordingly disposed of without any order as to costs.