

(2015) 03 AHC CK 0162

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1498 of 2015

Gulab Chandra Mishra

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-03-2015

Acts Referred:

Constitution of India, 1950 — Article 48-A, 51-A(g)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(1A)(d), 23(1)

Citation : (2015) 4 ALJ 322

Hon'ble Judges : Arun Tandon, J; S.B. Singh, J

Bench : Division Bench

Advocate : M.D. Singh "Shekhar", D.P. Singh, Senior Advocates, Deobrat Mukherjee, Deo Prakash Singh, Mukesh Prasad, S.K. Dwivedi, Rajesh Khare, Rajesh Letiari, Madan Lal Srivastava, Atul Shahi, Akhilesh Kalra, S.K. Pathak, Prasant Shukla, Anoop Trivedi and Ved Praka

Final Decision : Allowed

Judgement

Arun Tandon, J—Heard Sri M.D. Singh "Shekhar", Senior Advocate, Sri D.P. Singh, Senior Advocate along with Sri Deobrat Mukherjee, Sri Deo Prakash Singh, Sri Mukesh Prasad, Sri S.K. Dwivedi, Sri Rajesh Khare, Sri Rajesh Letiari, Sri Madan Lal Srivastava, Sri Atul Shahi, Sri Akhilesh Kalra, Sri S.K. Pathak, Sri Prasant Shukla, Sri Atul Shahi, Sri Anoop Trivedi and Sri Ved Prakash Singh, Advocates on behalf of the petitioners, Sri Vijay Bahadur Singh, learned Advocate General for the State of U.P. Assisted by Sri A.K. Singh and Sri Vishnu Pratap Singh, Advocate on behalf of State respondents in this bunch of writ petitions. These writ petitions have been filed with the prayer to quash the Notifications published by the District Magistrate of various districts of State of U.P. issued under Section 72 of the U.P. Minor Mineral (Concession) Rules, 1963 as amended up to date (hereinafter referred to as "Concession Rules, 1963") with reference to the Government Notification dated 22nd October, 2014 declaring certain areas as available for grant of minor mineral found in the

riverbed for the purposes of grant of mining leases. The petitioners challenge Rule 34 sub-rules (4) and (5) as amended under 36th amendment to the Concession Rules, 1963 as well as Rule 9-A, as introduced by 37th amendment to the Concession Rules, 1963. The petitioners have lastly prayed that the State Government may be directed not to proceed with reference to the Government Order dated 22nd October, 2014 without making suitable comprehensive amendments in the Concession Rules, 1963 in consonance with the Model Minor Minerals Conservation and Development Rules, 2010 (hereinafter referred to as "Model Rules, 2010") as directed by the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 .

2. Since these petitions raise common questions of facts and law, they have been clubbed together and are being decided by this common judgment.

3. Counsel for the parties agree that since affidavits have been exchanged in Writ Petition No. 1498 of 2015, the same may be treated to be the leading case.

4. With the consent of the counsels for the parties, these writ petitions have been taken up for final disposal.

5. The petitioners before this Court claim to be engaged in mining business and to have experience in excavation of sand and other minor mineral. It is also their case that most of them had been granted lease by the State of Uttar Pradesh under the Concession Rules, 1963 in previous years which they had operated without any violation of the provisions applicable.

6. According to the petitioners, they are in favour of excavation of minor minerals as it is a natural resource for the State Government but at the same time they are also conscious of the fact that such excavation must take place in conformity with Article 51-A(g) of the Constitution of India, namely that there must be due protection and improvement of the environment, bio-diversity etc. when such excavation is permitted. It is their case that it is the responsibility of the State Government to protect and improve the environment and to safeguard the forest, lakes, rivers and wildlife of the country under Article 48-A of the Constitution of India.

7. The Central legislature has framed Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "Act, 1957"). In exercise of powers under Section 15 of the said Act, 1957, the State of Uttar Pradesh has framed the Concession Rules, 1963 the operation whereof extends to the entire State of U.P.

8. The Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 had the occasion to examine the issue of environmental degradation/threat to biodiversity, damage

to riverine vegetation because of the mining activities undertaken in respect of minor mineral found in the riverbed. The Apex Court also had the occasion to examine the applicability of Environmental Impact Assessment Notification of 2006 in respect of mining of minor minerals and the grant of mining leases and licenses of the plots less than 5 hectares. The Apex Court recorded its deep concern in paragraph 8 of its judgment with regard to the quarrying mining and removal of sand from in-stream and upstream of several rivers which led to serious environmental impact on the rivers and the riverbeds as well as on biodiversity.

9. The Apex Court noticed that the Ministry of Environment and Forest, Union of India had constituted a core group to look into the environmental aspect in respect of the mining of minerals. The core group, as per the report dated 29th January, 2010, made various recommendations which have been enumerated in the judgment of the Apex Court as clauses 4.0 to 4.9. After noticing that the Ministry of Environment and Forest under D.O. Letter dated 01st June, 2010 called upon the Chief Ministers of all the States to examine the report and to issue necessary instructions for incorporating the recommendations made in the report in their respective Minor Mineral Concession Rules framed under Section 15 of the 1957 Act, the Apex Court issued a positive direction in paragraph 17 of its judgment, the relevant portion whereof reads as follows:--

"17. The State of Haryana and various other States have not so far implemented the above recommendations of the MoEF or the guidelines issued by the Ministry of Mines before issuing auction notices granting short term permits by way of auction of minor mineral boulders, gravel, sand etc., in the riverbeds and elsewhere of less than 5 hectares. We, therefore, direct to all the States. Union Territories MoEF and the Ministry of Mines to give effect to the recommendations made by MoEF in its report of March, 2010 and the model guidelines framed by the Ministry of Mines., within a period of six months from today and submit their compliance reports."

10. Subsequent to the said judgment of the Apex Court, the State of U.P. issued Government Order dated 31st May, 2012 declaring the availability of vacant areas throughout the State of U.P. for the purposes of grant of leases for minor minerals under Rule 23(1) of the Concession Rules, 1963 through the process of auction/tender. With the issuance of the notification under Section 23(1), the provisions contained in Chapters II, III and IV of the Concession Rules, 1963 ceased to be applicable.

11. The Government Order dated 31st May, 2012 was subjected to challenge before the High Court by means of various writ petitions, leading being *Narain Mishra v. State of U.P.* (Writ Petition No. 37725 of 2012). The bunch of writ petitions was finally decided under judgment and order dated 29.01.2013 by a Division Bench of this Court. The Division Bench in its operative portion held as follows:--

"In the result, all the writ petitions are disposed with the following directions:-

1) The prayers made by the petitioners/applicants for considering their applications for renewal of their mining leases which were pending on 31/5/2012, and the applications for grant of fresh leases which were pending on 31/5/2012 are refused.

2) The Government Order dated 26/7/2012 and all consequent steps taken thereunder are quashed.

3) Notices issued by the District Magistrate inviting applications by E-tendering consequent to the Government Order dated 31/5/2012, cannot be allowed to be finalized and are quashed with liberty to the respondents to issue fresh notice in accordance with law.

4) Parties shall bear their own costs."

12. Before the Division Bench in the case of Nar Narain Mishra (supra), a statement was made by the Advocate General on behalf of the State that the Government is taking steps for making necessary amendments in the Concession Rules as per the direction of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 .

13. During the period when the judgment was reserved in the case of Nar Narain Mishra (supra), the State Government vide 35th amendment amended Rule 12, providing for the term of the mining lease, Rule 34 relating to Mining operations as well as Rule 41 of the Concession Rules, 1963. The Division Bench noticed that these amendments have been introduced after the judgment was reserved and therefore did not express any opinion on the validity thereof.

14. The State Government issued Notification dated 26th February, 2013 to supplement 35th amendment and the Government order provided for environmental clearance being obtained by the project proponent.

15. This Government Order dated 26th February, 2013 was again subjected to challenge by means of Writ Petition No. 3199 of 2013 : Pravesh Kumar Vs. State of U.P. and Others, (2013) 6 ADJ 178 : (2013) 6 AWC 5769 : (2013) 3 EFLT 855 : (2013) 120 RD 621 . The writ petition was allowed with a direction upon the State Government to frame supplementary rules in light of the observation made by the Allahabad High Court in the case of Nar Narain Mishra (supra). The Division Bench was of the opinion that the State Government has not defined as to who answers the description of "project proponent" for the purposes of obtaining environmental clearance.

16. The State Government came out with two further notifications dated 09.02.2014 and dated 08.07.2014 providing for guidelines in the matter of mining leases to be granted through E-Tendering and the lessee to be the person

who shall obtain environmental clearance before excavation under the lease.

17. It may be noticed that the State Government vide 36th amendment, as per notification on 26th February, 2014, amended Rule 23 and Rule 34 of the Concession Rules, 1963. The amended Rule 23 and Rule 34 read as follows:

"23. Declaration of area for auction/e-tender/auction-cum-tender or e-auction lease.-(1) The State Government may, by general or special order, declare the area or areas which may be leased out by auction or by e-tender or by auction-cum-tender or e-auction.

(2) Subject to direction issued by the State Government from time to time in this behalf, no area or areas shall be leased out by auction or by e-tender or by auction-cum-tender or e-auction for more than five years at a time.

(3) On the declaration of the area or areas under sub-rule (1), the provisions of Chapters II, II and VI except Rules 10 and 12 shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this chapter.

(4) The District Officers shall get the area or areas declared under sub-rule(1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for auction or e-tender or auction-cum-tender or e-auction, as the case may be."

"34. Mining operations to commence within six months.-(1) Except where the State Government, for sufficient reasons, permits otherwise, the lease shall commence mining operations within six months from the date of execution of the lease deed and shall thereafter conduct such operations without deliberate intermission in a proper, skilful and workman like manner.

(2) Mining operations shall in respect of in situ rock deposits and sand or morrum or bajari or boulder or any of these in mixed state exclusively found in riverbed be undertaken in accordance with the mining plan, detailing yearly development schemes, aspect of reclamation and rehabilitation of mined out areas including progressive mine closure scheme duly approved by the Director.

(3) A mining plan referred to in sub-rule (2) shall be prepared by a qualified person recognised in this behalf by the Indian Bureau of Mines in accordance with the provisions of Mineral Concession Rules, 1960 made under the Mines and Minerals (Development and Regulation) Act, 1957.

(4) The lessee shall submit the mining plan for approval to the Director who may, within three months from the date of receipt of the mining plan, approve, modify or reject it, failing which the mining plan for the first year shall be deemed to be approved.

(5) The mining plan once approved shall be valid for the entire duration of the lease.

(6) Financial assurance has to be furnished by every lease holder. The amount of financial assurance shall be Rupees Twenty-five thousand for situ-rock deposit and Rupees Fifteen thousand for sand or morrum or bajari or boulder or any of these in mixed state exclusively found in the riverbed mines per acre of the mining lease area put to use for mining and allied activities. However, the minimum amount of financial assurance to be furnished in any of the forms referred to in sub-rule (7) shall be Rupees Two lakh for each category of mines irrespective of area:

Provided that a leaseholder shall be required to enhance the amount of financial assurance with the increase in the area of mining and allied activities:

Provided further that where a leaseholder undertakes reclamation and rehabilitation measures as part of the progressive closure of mine, the amount so spent shall be reckoned as sum of the financial assurance already spent by the leaseholder and the total amount of financial assurance, to be furnished by the lessee, shall be reduced to that extent.

(7) The financial assurance shall be submitted by the lessee before the execution of lease deed in one of the following forms to the District Officer or the Officer authorised by the State Government in this behalf, as the case may be, or any amendment to it:

(a) Letter of Credit from any Scheduled Bank;

(b) Performance or surety bond;

(c) Any other form of security or any other guarantees acceptable to the competent authority.

(8) Release of financial assurance shall be effective upon the notice given by the lessee for the satisfactory compliance of the provisions contained in the "mine closure scheme" and certified by the District Officer or the Officer authorised by the State Government in this behalf, as the case may be.

(9) If the District Officer or the Officer authorised by the State Government in this behalf, has reasonable grounds for believing that the protective, reclamation and rehabilitation measures as envisaged in the approved "mine closure scheme" as given in mining plan in respect of which financial assurance was given has not been or will not be carried out in accordance with the mine closure scheme, either fully or partially, the District Officer or the Officer authorised by the State Government in this behalf, shall give the lessee a written notice of his intention to issue the orders for forfeiting the sum assured at least thirty days prior to the date of the order to be issued.

(10) Within thirty days of the receipt of notice referred to in sub-rule (9), if no satisfactory reply has been received in writing from the lessee, the District Officer or the Officer authorised by the State Government in this behalf, as the case may be, shall pass an order for forfeiting the surety amount and a copy of

such order shall be endorsed to the State Government.

(11) Upon the issuance of order by the District Officer or the Officer authorised by the State Government in this behalf, the State Government may realise any letter of credit or bond or any other surety, guarantee provided or obtained as financial assurance for the purpose of performance of protective, reclamation, rehabilitation measures and shall carry out those measures, or appoint an agent to do so."

18. On 22nd October, 2014 the State Government notified 37th amendment to the Concession Rules, 1963. By means of this amendment, besides other, Rule 9-A was added to the Concession Rules, 1963. Rule 9-A, which is under challenge in the present writ petition, reads as follows:--

"9-A. Notwithstanding anything contained in Rule 9, the mining leases for sand or morrum or bajri or boulder or any of these in mixed state, exclusively found in the river-bed, shall be granted in the manner given hereafter.

(a) The area and its availability for grant of mining lease shall be declared, in accordance with the provisions of Rule 72 mentioning therein the location of the area, annual lease amount, as provided in Rule 14, and period of 7 working days, during which the application will be received by the officer nominated for this purpose by the District Officer along with the time and place of opening the applications.

(b) During the specified period for receiving the applications, as mentioned in the declaration, the desirous and eligible persons may submit their applications in a sealed envelope, mentioning the name of the area and name of the applicant on the cover of first sealed envelop. In the sealed envelopes, two other sealed envelopes shall be kept by the applicant, in which the name of area and name of the applicant shall be written, on the cover of envelopes and both the envelopes be captioned as "A" and "B".

(c) In the first sealed envelope captioned "A" the applicant shall put the following documents, namely:-

(i) application in form MM-1;

(ii) a fee of Rs. 5,000/- and deposit of Rs. 10,000/- for meeting the preliminary expenses other than those specified in Rule 17;

(iii) Character Certificate given by the District Officer of the district, where the applicant permanently resides;

(iv) Solvency Certificate of such amount which is not below the half of the annual lease amount of the applied area;

(v) "No Objection by the applicant to the effect that;

(vi) "Self-Declaration by the applicant to the effect:

A - the applicant has neither been involved in any illegal mining activity during past, nor he was punished for the offence of illegal mining by any competent Court of Law;

B - no proceeding has been initiated against the applicant by a Government department;

C - No criminal history of the applicant;

D - The applicant has not been black-listed;

(d) In the second sealed envelope captioned "B" the applicant will submit two documents, namely:-

(i) Declaration about the area applied for grant of mining lease to the effect that he is offering non-refundable and non-adjustable amount of Rs. (over and above Royalty/Dead Rent).

(ii) A Bank Draft payable in favour of the District Officer of the district to the tune of one fourth of the amount, as offered by the applicant and mentioned in sub-clause (i). Balance amount of the offer mentioned in sub-clause (i) has to be paid before the execution of the lease deed.

(e) For processing the applications and offers, received during the specified period, a Committee consisting of the following members shall be constituted, namely:-

(f) On the date and time fixed for the purpose, the Committee will firstly prepare a broad sheet in which the name of the area, extent of the area, specified period for receiving applications, received applications, and particulars of the applications will be mentioned. It will also be determined by the Committee that those applicants, who are not qualified, and not found eligible a special remark will be mentioned against their names in the broad-sheet, and then their offer will not be considered.

(g) The committee shall thereafter open the second sealed envelope captioned as "B" of only those applicants, who have been found qualified for obtaining the mining lease, their offer will also be mentioned against their names. The Committee will also mention the Bank Draft details-name of the bank, number and amount of the bank drafts, annexed by the applicants. Those applicants, who have not annexed the bank drafts of the requisite amount, they will be ousted from the field of consideration.

(h) After preparation of the broad-sheet, as described above, the Committee will submit its record note with recommendations to the District Officer for grant of the mining lease in favour of such applicants, who are eligible and have also offered highest and satisfactory amount for obtaining the mining lease;

(i) The District Officer, in the light of the record note, submitted by the Committee, will forward a proposal to the State Government for obtaining prior

consent; and will issue a formal grant order in favour of such applicant after obtaining the prior consent of the State Government.

(j) Those applicants, in whose favour the mining lease is not recommended by the District Officer their bank drafts will be returned to them immediately;

(k) The other provisions of these rules shall mutatis mutandis apply to the leases granted under this rule."

19. On the same date i.e. 22nd October, 2014 the State Government issued a Government Order whereby it decided to cancel the earlier notifications dated 31.05.2012, dated 26.01.2013 dated 09.06.2014 and dated 08.07.2014 issued under Section 23(1) of the Concession Rules. All applications received in response to the said notifications were rejected. It went on to declare that the vacant areas are available for grant of mining leases under Chapters-II, III and VI of the Concession Rules. Meaning thereby that the procedure for grant of mining lease through auction tender/tender-cum-auction/e-tender was withdrawn, and the procedure contemplated by Chapter-II and Chapter-VI of Concession Rules would apply in the matter of grant of leases of minor mineral throughout the State of U.P. in respect of vacant areas.

20. It is with reference to this Government Order dated 22nd October, 2014 that the District Magistrates of various districts throughout the State have published the impugned notifications inviting applications in accordance with Rule 9-A of Concession Rules, as amended by 37th amendment detailed above, for grant of mining lease for minor mineral in respect of plot specified for a period of three years. In the leading case the date of the District Magistrate's notification is 05th December, 2014.

21. Challenging the amendments and the notification referred to above petitioners before this Court submitted that amendment to Rule 34, which requires obtaining of environmental clearance by the project proponent, is illegal being contrary to the observations made by the Division Bench of the High Court in the case of Pravesh Kumar Vs. State of U.P. and Others, (2013) 6 ADJ 178 : (2013) 6 AWC 5769 : (2013) 3 EFLT 855 : (2013) 120 RD 621 , specifically the following observations:

"Thus, in the teeth of mandate of judgment of Hon"ble the Apex Court; the statement given before this Court in the case of Vedpal Singh (supra) and the detailed judgment of the Allahabad Bench in the matter of Nar Narayan Mishra (supra) (as to why the obligation to seek environmental clearance not be cast upon the applicants), the State Government has shifted the obligation on to the applicant on the basis of the notification of 2011 issued by the Ministry of Environment and Forest as referred to hereinabove where in the term "project proponent" who has been held liable to seek the environmental clearance has not been defined. Thus, such Government order neither appears to be logical nor is it in accordance with the observations made by the Allahabad Bench. Therefore, the tender notice dated 08th/11th March, 2013 making it obligatory for the

applicant to seek Environmental Clearance Certificate is hereby quashed with the direction that the State Government shall frame supplementary Rules in line with the observations made by the Allahabad Bench as referred to hereinabove, within a period of four weeks from the date of receiving a copy of this order."

22. It is submitted that the State Government or for that purpose the District Magistrate cannot be permitted to offer any plot for grant of leases for excavation of minor minerals without first obtaining the environmental clearance/ before getting a mining plan approved for the area in question in view of Rule 34 as per 36th amendment to the Concession Rules, which has to be read in conformity with the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 .

23. Counsels for the petitioners vehemently contended that the very idea of lease holder being treated as project proponent under Rule 34 is misconceived.

24. According to the counsels for the petitioners the project proponent is the State Government/District Magistrate in the matter of grant of leases for minor minerals and therefore before any notice, inviting applications for grant of lease for excavation of minor mineral, is published, the State must get a mining plan approved from a competent authority as a condition precedent. It is, therefore, submitted that since the State Government/District Magistrate has no approved mining plan from a competent authority, the notice published by the District Magistrate is bad.

25. Counsels for the petitioners further submitted that even otherwise the attempt made by the State Authorities/District Magistrate to settle the mining leases under Rule 9-A, as introduced under 37th amendment, is in direct conflict with Rule 23(3) of the Concession Rules, 1963. It is explained that under Rule 23 the State Government has the power to declare an area for the purposes of grant of lease of minor mineral through auction, tender-cum-auction, tender, E-tendering. In case such notification is made under Section 23(1) then as per Sections 23(3) and 23(4) the provisions of Chapter-II and Chapter-IV of Concession Rules, 1963 stand excluded. Meaning thereby that the provisions of preference etc. would not apply and the lease holder would not be required to pay dead rent and royalty as contemplated under Rules 20 and 21, which fall under Chapter-IV of the Concession Rules, 1963 over and above the bid money.

26. Counsels for the petitioners explain that under Rule 9-A application to be submitted by a prospective applicant has to be in two parts i.e. Envelope-A and Envelope-B. In envelope-A particulars of applicant, the area for which he proposes to apply have to be mentioned along with other requirements, while envelope-B has to contain the bid offered along with security money for the area by the prospective applicant. This is nothing else but the procedure for settling the lease of minor minerals through tender and is squarely covered by Rule

23(1).

27. Counsels for the petitioners submits that what cannot be done directly cannot be permitted to be done indirectly. It is pointed out that Rule 9-A and Rule 23, as they stand, cannot be harmonized. The State Government must make suitable amendments in the Concession Rules, 1963. It is pointed out that Rule 9-A has been given overriding effect over Rule 9 only. It has not been provided any overriding effect in respect of the other provisions of the Concession Rules, 1963.

28. Learned counsels for the petitioners also contended that deeming fiction created in respect of approval of mining plan after expiry of the period mentioned under Rule 34 is bad, as it defeats the very purpose for which mining plan is required to be approved. He submits that the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 , has specifically laid down that the Model Rules of 2010 have to be applied in toto by all States. These Model Rules mandate that there cannot be any lease for mining of minor minerals unless there is a duly approved mining plan by the competent authority. The Model Rules, 2010 provide that approval of the mining plan complete in all respect is a condition precedent for grant of lease of minor minerals. Therefore, unless there is an order in writing approving the mining plan by the competent authority, there cannot be any lease for excavation of minor minerals. The deeming fiction in the matter of such approval cannot be sustained.

29. Sri Vijay Bahadur Singh, learned Advocate General for the State-respondents disputes the contentions raised on behalf of the petitioners. He explains that Section 15 of the Act, 1957 confers a power upon the State Government to make rules for regulating grant of quarry leases, mining leases, mineral concession in respect of minor minerals and the matters connected there with. The State Government has ample power to lay down the conditions for grant of mining leases, raising of minerals, its removal and its transportation.

30. In respect of the competence of the State Government to frame the rules for the purposes of regulating the mining leases, the learned Advocate General referred to paragraph-40 of the judgment of the Apex Court in the case of D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, AIR 1986 SC 1323(1) : (1986) 1 SCALE 1133 : (1986) 1 SCC 20 Supp : (1986) SCC 20 Supp : (1986) 1 SCR 479 : (1986) 2 UJ 301 , as also to the Division Bench judgment of the High Court in the case of Sheo Varan Singh Vs. State of U.P., AIR 1980 All 92 .

31. The State Government has power to collect (i) rent, (ii) royalty, (iii) fees (iv) dead rent, (v) fines (vi) and other charges, as would be apparent from simple reading of Section 15(1A)(d) and (g) of Act, 1957. He explains that right of the State Government to collect the money for grant of mining rights is not confined

to dead rent and royalty only. The other charges, according to him, would include the money which prospective applicant, assures to pay to the State Government, while making an application under Rule 9A of Rules, 1963. The power of the State Government to collect such amount, as is offered by the applicant, in envelope-B is in addition to the dead rent and royalty which the State Government can collect under Rules 20 and 21 of Minor Mineral (Concession) Rules, 1963.

32. It is explained that the money offered in envelope-B is for determination of the best applicant. It is a source or measurement to judge as to who is the best candidate amongst competing claims for grant of mining lease. He states that the person offering the highest amount will be chosen for grant of lease provided all other conditions stand satisfied.

33. It is the case of the State that the money as offered in envelope-B as per Rule 9A of the Rules, 1963 is the basis for selecting the person in the matter of grant of lease of the plot in question. The money as offered has nothing to do with the royalty and dead rent payable under Rules 20 and 21 of Rules, 1963.

34. It is claimed that the offer which is made by the prospective applicant in envelope-B is not the bid money nor it is an effort of the State to invite tenders in guise of submission of amount in envelope-B. According to him, a transparent and fair method has been adopted in the matter of selection of candidate for grant of mining lease under the Government Order dated 22nd October, 2014 and is in the best interest of revenue. Therefore, this Court may not interfere with the advertisement published by the District Magistrate impugned in the present writ petition.

35. He points out that in view of the Model Rules, 2010 and in view of the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 , the State Government is obliged to create a fund for the trust to be established. The money which is collected by the State Government as offered by the prospective applicant in Envelope-B shall be utilized for the said purpose.

36. It is the case of the State that under Rule 72 of Concession Rules, 1963 availability of the area for the purposes of grant of mining leases has to be notified. A conscious decision has been taken by the State Government to grant such leases in accordance with the procedure prescribed under Chapter II which includes Rule 9A of Concession Rules, 1963, as is apparent from the Government Order dated 22nd October, 2014.

On the issue as to who can be the project proponent, the learned Advocate General submitted before us that an applicant for grant of mining lease would also answers the description of project proponent. For the purpose, he refers to Rule 34(I) proviso of Concession Rules, 1963 as amended, which provides that a lessee shall start mining operation only after environmental clearance if required

under the provisions of Environment Impact Assessment Notification dated 14th September, 2006, as amended from time to time has been obtained. Second proviso to Rule 34(1) explains that the application in that regard is to be made by the project proponent or end user Agency as the case may be.

37. On simple reading of the rule it is clear that the applicant for grant of mining lease will answer the description of the project proponent or at least that of an end user as provided under Rule 34 of Rules, 1963 for seeking environmental clearance.

38. According to him, the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 has mandated the adoption of Model Rules of 2010 which provides that no mining activity should be undertaken unless and until the environmental clearance/mining plan is approved. He submits that the object is to have an environmental clearance/a mining plan in respect of the area before start of the mining operations duly approved by a competent authority. Who obtains environmental clearance/approval of the mining plan is not of much substance, inasmuch as the purpose is to protect the environment and to maintain the ecology.

39. He explains that the observations made by the Division Bench of the High Court in the case of Pravesh Kumar Vs. State of U.P. and Others, (2013) 6 ADJ 178 : (2013) 6 AWC 5769 : (2013) 3 EFLT 855 : (2013) 120 RD 621 , heavily relied upon by the learned counsel for the petitioner, do not lay down any binding precedent specifically in the circumstance when necessary amendments in Rules, 1963 have been made subsequent to the judgment.

40. It has been repeatedly held by the Hon"ble Supreme Court that a little difference in the facts or additional facts may make a lot of difference in the presidential value of a judgment (Reference- Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, AIR 2003 SC 511 : (2002) 10 JT 55 : (2003) 2 SCC 111 : (2003) 1 UJ 80 , which has been followed in the case of Rajveer Singh v. Chaudhary Devi Lal, reported in (2008 AIR SCW 5817): (AIR 2009 SC (Supp) 768).

41. The State Government has powers to frame the rules and to lay down the terms and conditions for grant of mining lease. The State has decided that the selected applicant for grant of lease for minor minerals may make an application for grant of environmental clearance/approval of mining plan with the condition that no mining activity shall be started or carried on without such clearance. No wrong can be said to have been committed by the State.

42. So far as the deeming provision in the matter of approval of the mining plan as introduced in Rule 34(4) vide 35th Amendment is concerned, he submits that in view of the observations made by the Division Bench of the High Court in the cases of Nar Narain Mishra (supra) and Pravesh Kumar, (2013 (6) ALJ (NOC) 448

(All)) (supra), to the effect that an individual person applying for environmental clearance has no control over the authorities who are empowered to grant the clearance, the Rule 34(4) as earlier existing i.e. the lease would stand cancelled if environmental clearance is not obtained within six months, has been suitably amended to include the deeming provision.

43. He submits that Rule 34(4) now provides that if the mining plan is submitted before the competent authority i.e. the Director and no orders are made within the period satisfied then the plan shall be deemed to have been approved. Such deeming fictions can always be created by the rule framing authority.

44. The learned Advocate General, however, admitted before us that use of the word "lease" in Rule 34 as amended by 36 amendments in the first proviso appears to be incorrect, the word should have been the "applicant", inasmuch as the lease is to be executed only after the mining plan is approved in terms of the Model Rules, 2010, which provision had to be adopted in view of the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 . He submits that if directed, the State shall make necessary amendments in Rule 34 of Rules, 1963 for that purpose, but such change in Rule 34 will not in any way adversely affect the Government Order dated 22nd October, 2014 and the notification by the District Magistrate issued in pursuance thereof including that dated 5th December, 2014.

45. We have considered the submissions made by the learned counsel for the parties and have examined the records of this bunch of writ petitions.

46. We may first deal with the issue as to who is to apply for a mining plan to be approved/who is to obtain the environmental clearance certificate in light of the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 and the 36 and 37 amendments made by the State Government in Rules, 1963.

47. At the very outset we may record that the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 had specifically directed that all the States shall frame proper rules in terms of the recommendations of the Ministry of Environment and Forest, as per the model rules of 2010. Six months period was granted for the purpose with a further direction upon the State Governments to submit their compliance report. [Reference paragraph Nos. 14 to 17 of the Apex Court judgment in the case of Deepak Kumar (supra)].

48. The Model Rules, 2010 have been appended along with the present writ petition at page Nos. 151 to 104 (sic) of the paper book titled as "Minor Minerals Conservation and Development Rules, 2010". Under the heading of "Mining

Plan", Rules 12 to 17A provide as follows:

"Mining Plan:

While mining plan is being prepared for the minor minerals the following issues may also be taken into consideration:--

- (a) Level of production,
- (b) Level of mechanization ,
- (c) Type of machinery used in the mine of minor minerals,
- (d) Quantity of diesel consumption,
- (e) Number of trees uprooted due to mining operation and,
- (f) Export and import of the minor minerals etc.

12. Mining plan as pre-requisite to the grant of lease:-- No lease shall be granted for renewed by the State Government unless there is a mining plan duly approved by the State Government or any person authorized in this behalf by that Government for the development of the minor minerals deposit in the area concerned under the control of the State Government.

13. Mining plan to be prepared by a Recognized Qualified Person:-- (1) No mining plan shall be approved unless it is prepared by a qualified person recognized in this behalf by the State Government or any person authorized by that Government or by a recognized person under Rule-22(B) of the Mineral Concession Rules, 1960.

14. Grant of recognition by State Government:-- (1) any person possessing the qualifications and experience required under sub-rule (2) of Rule-13 may apply for recognition to the competent authority designated by the State Government for this purpose.

(2) The competent authority after making such enquiry as it deems fit, may grant or refuse to grant recognition and where recognition is refused the competent authority shall record the reasons in writing and communicate the same to the applicant.

(3) A recognition shall be granted for an initial period of ten years and may be renewed for further periods not exceeding ten years at the time.

Provided that the competent authority may refuse to renew recognition for reasons to be recorded in writing after giving an opportunity of hearing to the person concerned.

15. Approval and submission of Mining Plan:-- On receipt of the application for grant of mining lease for undertaking mining operations for minor minerals. The State Government shall take decision to the applicant and on receipt of the communication from the State Government of the precise area to be granted, the

applicant shall submit a mining plan within a period of three months from the date on which such communication is received or such other period as may be allowed by the State Government for the approval and the said mining plan shall incorporate:-

- (i) (a) the plan of the precise area showing the nature and extent of the minor minerals body;
- (b) spot or spots where the excavation to be done in the first five year plan period and its extent;
- (c) a detailed cross-section and detailed plan of spots of excavation based on prospecting data gathered by the applicant;
- (d) a tentative scheme of mining for the second five year plan period of the lease;
- (ii) details of the geology and lithology of the precise area including minor mineral reserves of the minor minerals;
- (iii) the extent of manual mining or mining by the use of machinery and mechanical devices on the precise area;
- (iv) the plan of the precise area showing natural water courses, limits of reserved and other forest areas and density of trees, if any, assessment of impact of mining activity on forest land surface and environment including air and water pollution; details of scheme for restoration of the area by afforestations, land reclamation, use of pollution control devices and of such other measures under Mine Closure Plan-Progressive & Final Mine Closure Plan (Guidelines given in Annexure-ITJ).
- (v) Annual programme and plan for excavation on the precise area from year to year for five years;
- (vi) Environmental clearance for cluster of minor mineral leases from the core area of mining for 5 km. radius having area less than 50 hectare may be required from the State Environmental Appraisal Committee.
- (vii) Any other matter which the State Government or any person so authorized may require the applicant to provide in the mining plan.

MINING OPERATIONS

16. Mining Plan as a pre-requisite to the commencement of mining operations:--

- (1) No person shall commence mining operations for minor minerals in any area except in accordance with a mining plan approved under these rules:
- (2) The State Government or any person authorized in this behalf by that Government may require the holder of a lease to make such modifications in the mining plan referred to in Sub-rule (1) or impose such conditions as it considers necessary by an order in writing if such modifications or imposition of conditions

are considered necessary in the light of the experience of operation of mining plan or in view of the change in the technological development.

(3) A holder of a lease desirous of seeking modifications in the approved mining plan as are considered expedient, in the interest of safe and scientific mining conservation of minor minerals and for the protection of environment shall apply to the State Government or any person authorized in this behalf by that Government setting forth the intended modifications and explaining the reasons for the same.

(4) The State Government or any person authorized in this behalf by that Government may approve the modifications under sub-rule (3) or approve with such alterations as it may consider expedient.

17. Mine Closure Plan--Even mine shall have Mine Closure Plan which shall be of two types--

I) Progressive Mine Closure Plan; and

II) Final Mine Closure Plan.

17A. Submission of Progressive Mine Closure Plan:-- (1) The owner, agent, manager of mining engineer shall, in case of fresh grant of renewal of mining lease, submit a Progressive Mine Closure Plan as a component of mining plan to the officer authorized by the State Government in this behalf as the case may be.

(2) The owner, agent, manager or mining engineer shall, in case of existing mining lease submit a progressive mine closure plan to the officer authorized by the State Government on this behalf, as the case may be for approval within a period of one year from the date of commencement of this rule.

(3) The owner, agent, manager or mining engineer shall review the progressive mine closure plan every five years from the date of opening of the mine in case of fresh grant or from the date of renewal of mining lease, as the case may be, and shall submit to the officer authorized by the State Government in this behalf, as the case may be, for its approval.

(4) The officer authorized by the State Government in this behalf, as the case may be, shall convey his approval or refusal of the progressive mine closure plan within ninety days of the date of its receipt.

(5) If approval or refusal of the progressive mine closure plan is not conveyed to the owner, agent, manager or mining engineer of the mining lease within the period as specified in sub-rule (4), the progressive mine closure plan shall be deemed to have been provisionally approved, and such approval shall be subject to final decision whenever communicated.

17B. Submission of Final Mine Closure Plan:-

(1) The owner, agent, manager or mining engineer shall submit a final mine closure plan to the officer authorized by the State Government in this behalf, as

the case may be, for approval one year prior to the proposed closure of the mine.

(2) The officer authorized by the State Government in this behalf, as the case may be, shall convey his approval or refusal of the final mine closure plan within ninety days of the date of its receipt to the owner, agent, manager or mining engineer."

49. From a simple reading of the aforesaid model rules, it is apparent that approved mining plan is a pre-requisite to the grant of lease (reference Rule-12) as also to the commencement of the mining operations (reference Rule-16). It may be noticed that the no mining plan is to be approved unless it is prepared by a qualified person recognized in this behalf by the State Government or any person authorized by that Government or by a recognized person under Rule-22(B) of the Minor Concession Rules, 1960.

50. From reading of Model Rule 14 it is further apparent that any person possessing the qualifications and experience as required under sub-rule (2) of Rule-13 may apply for recognition to the competent authority designated by the State Government for this purpose. The recognition is to be granted for an initial period of ten years and may be renewed for further periods not exceeding ten years at a time.

51. From reading of Rule-15 of the Model Rules, 2010, it is apparent that on receipt of an application for mining lease for undertaking mining operations of minor minerals, the State Government has to take a decision to grant precise area for the said purpose and communicate such decision to the applicant. On receipt of the communication from the State Government of the precise area to be granted, the applicant is required to submit the mining plan within a period of three months from the date of communication as aforesaid or within such period as may be provided for by the State Government. The rule provides for the factors to be incorporated in the mining plan. The plan has to disclose the annual programme for excavation on the precise area on year to year basis for five years. Every plan has also to have Mine Closure Plan, which has to be of two types, (a) Progressive Mine Closure Plan and (b) Final Mine Closure Plan. The mining plan has to be prepared by recognized qualified person and submitted for approval to the competent authority designated by the State Government on this behalf.

52. It is admitted to the State that in-conformity with the Model Rules, 2010, the State Government has made amendments in Rule 34 of Concession Rules, 1963 by providing for submission of the mining plan prepared by qualified person recognized in this behalf by the Indian Bureau of Mines in accordance with Minor Mineral (Concession) Rules, 1963. The competent-authority for approval of the mining plan is the Director subject to the condition that in case the mining plan is not approved within six months of its submission, it shall be deemed to have been approved.

53. What follows from Rule 34 of Minor Mineral (Concession) Rules, 1963, as

amended by 36th amendments, is that (a) under Rule 34(1) first proviso, the lease holder has to obtain Environmental Clearance under the provisions of Environmental Impact Assessment Notification dated 14th September, 2006, if required before start of mining operation, and (b) under Rule 34(2) for mining operation in respect of (I) situ rock deposit or (ii) sand or (iii) morrum or (iv) boulder or any of these found in the mixed state exclusively in the riverbed, approved mining plan is a must before start of mining operation.

54. The Rules 34, insofar it says that the lease holder is to submit the application for environmental clearance/submit mining plan for its approval, in our opinion is contrary to the Model Rules, 2010. In fact the word "lessee" in sub-rule (1) and sub-rule (4) of Rule 34 has been wrongly used. The correct word would have been the "selected applicant". The Model Rules, 2010 makes environmental clearance/approved mining plan a condition precedent for grant of lease itself. Therefore, there can be no lessee, as no lease can be executed in absence of an approved mining plan.

55. Faced with the said interpretation, Sri V.B. Singh, learned Advocate General had submitted before this Court that word "applicant" be read in place of word "lessee" wherever required under Rule 34. He made a statement at bar that no lease shall be executed by the State Government in favour of any selected candidate, unless his mining plan is approved by the Director and if required necessary environmental clearance certificate under notification dated 4th September, 2006 has been obtained. The learned Advocate General also stated that if directed, the State shall make necessary amendments in Rule 34 of Minor Mineral (Concession) Rules, 1963.

56. In view of the stand so taken and in view of the provisions of Model Rules referred to above, we are of the considered opinion that the word "lease" in Rule 34(1) proviso, which requires obtaining of Environmental Clearance Certificate and also in Rule 34(2) which requires submission of the mining plan, must be read to mean the "selected applicant" and the State Government may carry out necessary amendments in Rule 34 accordingly.

57. Having arrived at the conclusion that no lease can be executed unless there is an approved mining plan for the area in question, the next issue, which needs determination by us is as to whether it is mandatory for the State Government to obtain approval of the mining plan as is suggested by the learned counsel for the petitioner or the selected candidate can also submit such mining plan for approval before the competent authority.

58. In our opinion from Model Rules, 2010 as well as from the reading of the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 , it cannot be said that it is the State in every case which must get the mining plan approved before inviting application in the matter of grant of mining lease.

59. In our opinion, the selected applicant for a particular plot in the matter of excavation of minor minerals can also make such application for approval of his mining plan. It is only when the mining plan prepared by the qualified recognized person is approved by the competent authority that a lease for excavation of minor minerals can be executed in favour of the applicant. It is on the execution of such lease that he can start mining operations. Any other method, if followed by the State in the matter, would be per se illegal and in teeth of the Model Rules, 2010, which have been directed to be duly incorporated by the State Governments in the respective Concession Rules as per the judgment of the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 .

60. We may record that the learned Advocate General appears to be correct in submitting that the Apex Court vide judgment dated 28th October, 2013 passed in Civil Appeal Nos. 10378-10380 of 2013 arising out of SLP (C) Nos. 729-731 of 2011 has clarified the position in regard to the person who can seek environmental clearance while observing as under:--

"We, therefore, allow these appeals, set aside the decision of the High Court in the impugned order that the State of Haryana will file application for environmental clearance and hold that the project proponent and not the State of Haryana which has to apply for environmental clearance for mining leases. We, however, make it clear that rest of the findings and directions in the impugned order of the High Court have not been disturbed by us."

61. This takes the Court to the other contention raised on behalf of the petitioner, namely, that Rule 9A is in direct in-conflict with Rule 23(3) of the Concession Rules, 1963.

62. Rule 9A of Concession Rules, as quoted above, contemplates submission of the application in two parts, first part in envelope-A and the second part in envelope-B. Envelope-A has to contain the details of the applicant and the area/plot qua which the applicant is ready and willing to make an offer along with other details. Envelope-B contains the amount/money offered for the said area and has to contain the security money in the shape of bank draft.

63. It is admitted on record that the person, who offers the highest amount in envelope-B, is to be selected for the area in question, provided he satisfies the other eligibility conditions. It is also not in dispute that envelope-A only contains information of the applicant and the area for which he is willing to offer. There is nothing in envelope-A, which may be termed as an information on which any preference is to be determined qua the respective applicant or for judging his suitability in any manner, vis-a-vis other similarly situate applicant for the same plot/area.

64. From simple reading of Rule 9A and as is admitted by the learned Advocate General for the State of Uttar Pradesh, it is clear that the amount/money offered

as per envelope-B becomes the sole factor for deciding as to who is to be preferred in the matter of grant of lease of the particular area. The person offering the highest amount/money is to be preferred to a person offering lesser amount.

65. This procedure, in the opinion of the Court, is nothing, but the well known procedure of selecting the applicant by way of tendering i.e. where the offer made in terms of money is the sole criteria for selection of the best candidate amongst the competing claims.

66. Chapter III, Rule 23 of Concession Rules, 1963 takes care of such method of grant of lease in respect of minor minerals. Rule 23 specifically provides for grant of lease through the process of auction, tender, tender-cum-auction and E-tendering. In our opinion, Rule 9A is nothing but a method of selecting a candidate through tendering, squarely covered by Rule 23.

67. From the notification of the State Government dated 22nd October, 2014 it is clear that it has declared the vacant area for grant of lease under Chapters II and IV, the consequential advertisement published by the District Magistrate dated 5th December, 2014 in the leading case provides for submission of application under Rule 9-A of the Concession Rules i.e. to grant lease on the basis of tendering.

68. Now comes the offending part. Rule 23(3) provides that if the State Government decides to notify a particular area for the purposes of grant of minor minerals through auction, tender, tender-cum-auction or E-tendering, then Chapter II, Chapter IV and Chapter VI of Concession Rules, 1963 shall not apply and the areas have to be leased out in accordance with the procedure prescribed in the Chapter. For ready reference Rule 23 is quoted herein below:

"23. Declaration of area for auction/tender/auction-cum-tender lease.--(1) The State Government may by general or special order declare the area or areas which may be leased out by auction or by tender or by auction-cum-tender.

(2) Subject to direction issued by the State Government from time to time in this behalf no area or areas shall be leased out by auction or by tender or by auction-cum-tender for more than five years at a time;

Provided that the period in respect of in-situ rock type mineral deposit shall be five years and in respect of river bed mineral deposit shall be one year at a time.

(3) On the declaration of the area or areas under sub-rule (1) the provisions of chapters II, III and VI of these rules shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter.

(4) The District Officer shall get the area or areas declared under sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by

him before the date fixed for auction or tender or auction-cum tender, as the case may be."

69. Rule 9A has been introduced in Chapter II of Rules, 1963 by 37th Amendments.

70. We may record that Rule 9A of Concession Rules, 1963 begins with the words "Notwithstanding anything contained in Rule 9. Rule 9 talks of preference in the matter of grant of lease of minor minerals. Rule 9-A has not been provided any overriding effect over Rule 23. As already noticed above, Rule 23(3) contemplates that if lease is to be granted by tender/auction system, then Chapter II, Chapter IV and Chapter VI would not apply and in that case lease has to be granted as per procedure laid down in that Chapter i.e. Chapter III. As already noticed above, Rule 9A has been added in Chapter II, which also provides for grant of such lease by means of the tendering.

71. This Court is of the opinion that the two rules i.e. Rule 9-A and Rule 23(3) cannot be harmonized. There is a direct conflict between the two. The State Government, while adding Rule 9A to Chapter II of the Minor Mineral Concessions Rules has failed to take note of Rule 23(3) of the Minor Mineral Concession Rules, 1963.

72. The fundamental principle of interpretation is that if words are simple and carry only one meaning then no more can be necessary than to expound those words in their natural sense. The words themselves do alone in such case best declare the intent of the law giver. Ref: *Sussex Peerage Case* 1844 11Cl. And F 85 page 143 which has been followed by the Apex Court repeatedly.

73. The Apex Court has held that: "when a language is plain and unambiguous and advent of only one meaning no question of construction of a statue arises, for the Act speaks for itself. The results of the construction are then not a matter for the Court even though they may be strange, surprisingly unreasonable or unjust or oppressive. Ref: *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, AIR 1963 SC 946 : (1962) 45 ITR 414 : (1963) 1 SCR 1 , *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal*, AIR 1950 SC 265 : (1950) 18 ITR 569 : (1950) 1 SCR 435 , *Nasiruddin and Others Vs. Sita Ram Agarwal*, AIR 2003 SC 1543 : (2003) 4 CTC 284 : (2003) 2 JT 56 : (2003) 1 SCALE 658 : (2003) 2 SCC 577 : (2003) 1 SCR 634 : (2003) 2 UJ 781 : (2003) AIRSCW 1474 : (2003) AIRSCW 908 : (2003) 2 Supreme 472 : (2003) 2 Supreme 50 .

74. It is appropriate to reproduce the law as stated in the words of Gajendragadker (J) in the case of *Kanai Lal Sur Vs. Paramnidhi Sadhukhan*, AIR 1957 SC 907 : (1958) 1 SCR 360 : If the words used are capable of one construction only then it would not be open to the Court to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.

75. For the reasons recorded above, we are of the considered opinion that the introduction of Rule 9A by 35th amendments is illegal being in direct conflict with Rule 23 of the Minor Mineral Concession Rules, 1963.

76. The notification of the State Government dated 22nd October, 2014 may not be interfered with by this Court as it declares the vacant areas as available for grant of mining lease without any reference to Rule 9A of Concession Rules, but the advertisement published by the District Magistrate requiring the prospective applicants to submit application under Rule 9A in the manner prescribed i.e. in envelope-A and envelope-B and further declaring that the person offering the highest amount would be selected for grant of mining lease cannot be legally sustained and has to be quashed.

77. We may record that there is no issue with regard to the competence of the State to frame the rules in the matter of grant and regulation of mining lease and the legal position in that regard is well settled under the judgment of the Apex Court in the case of D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others, AIR 1986 SC 1323(1) : (1986) 1 SCALE 1133 : (1986) 1 SCC 20 Supp : (1986) SCC 20 Supp : (1986) 1 SCR 479 : (1986) 2 UJ 301 and Division Bench of the High Court in the case Sheo Varan Singh Vs. State of U.P., AIR 1980 All 92 .

78. The provision creating a deeming fiction in respect of approval of the mining plan under Rule 34(4) of the Concession Rules, 1963 by 36th amendment in our opinion is an effort to overreach mandatory provisions of the Model Rules, 2010, which contemplate that an approved mining plan is a condition precedent for execution of a lease and before any mining operation is undertaken. (Ref. Model Rules 12 and Rule 16 respectively).

79. Rule 12 of the Model Rules declares that approved mining plan is a prerequisite to the grant of lease. While Rules 13, 14 and 15 talk about submission and approval of the mining plan. Rule 16 again emphasises that approved mining plan is a prerequisite for commencement of the mining operations. It is these Model Rules, which the Apex Court has directed the State Government to adopt by making necessary amendments in the Concession Rules.

80. The Model Rules do not contemplate any deemed approval of mining plan, therefore the State Government is not justified in introducing a deeming fiction qua approval of mining plan under Rule 34(4) as per 36th amendment.

81. Even otherwise we are of the opinion that matters, which reflect upon protection of environment, have to be dealt with strictly so as to safeguard the environment. There should be no scope for creation of a situation which may permit scrupulous persons to pollute/degrade the environment. It is the responsibility of the State under Article 48-A of the Constitution of India as noticed by the Apex Court in the case of Deepak Kumar etc. Vs. State of Haryana and Others etc., AIR 2012 SC 1386 : (2012) 114 CLT 7 : (2012) 3 SCALE 96 : (2012) 4 SCC 629 : (2012) AIRSCW 1954 : (2012) 2 Supreme 385 to maintain

the ecology and pollution free environment even where it is to tap its natural resources.

82. In our opinion no deeming provision could have been introduced by the State Government in the matter of approval of mining plans as it runs contrary to the basic concept of the Model Rules qua an approved mining plan being a condition precedent for grant of mining leases as well as for mining operations.

83. The State may consider framing of a time period, both in the matter of submission of the mining plan by the selected applicant prepared by recognized qualified person and for submission thereto before the competent authority, as also for an order being passed in writing by the competent authority on submission of such a mining plan within the time specified. In view of what has been recorded above, all the writ petitions are allowed. It is directed as follows:

(I) The word "lease" as used in Rule 34 of the Concession Rules in the matter of making of the application for environmental clearance/approval of the mining plan may be read to mean "selected applicant" only and if required the State Government may make necessary amendments therein.

(II) No mining lease under the Notification dated 22.10.2014 shall be executed by the State Government, unless there is an approved mining plan complete in all respect, as contemplated by Model Rules, 2010, prepared by a recognized qualified person and duly approved by the competent authority. Approval of the mining plan in writing is a condition precedent for execution of the mining lease. The deeming provision as contained in Rule 34(4) is held to be bad and is quashed.

(III) No mining operations can be done in the absence/contrary to the mining plan prepared by a recognized qualified person and approved by the competent authority, as contemplated by Model Rules, 2010 read with Rule 34 of the Minor Mineral Concession Rules as amended upto date.

(IV) Rule 9A, as introduced by 37th Amendments, is held to be bad being in conflict with Rule 23(3) of the Minor Mineral Concession Rules, 1963.

(V) All the notifications issued by the District Magistrate, included that dated 5th December, 2014, inviting applications from the prospective applicants in envelope-A and en-velope-B cannot be legally sustained and are quashed.

(VI) The State Government may lay down the time period for the selected candidate to make the application for approval of mining plan and for such approval being examined and decided in a time bound manner by the competent authority.