
(2004) 03 DEL CK 0036
In the Delhi High Court
Case No : CW 2840 of 1987

Ishwar Industries Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 05-03-2004

Acts Referred:

Citation : AIR 2004 Delhi 294 : (2004) 110 DLT 408 : (2004) 73 DRJ 516 :
(2004) 3 RCR(Civil) 74

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Kirti Mishra, for the Appellant; R.C. Verma and Mukesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Badar Durrez Ahmed, J.

1.The petitioner is aggrieved by the rejection of the renewal application moved by the petitioner for renewal of the mining lease in respect of the minerals Pyrophyllite and Diaspore. The rejection of the renewal application was communicated to the petitioner vide letter dated 4.2.1986 issued by the Joint Secretary, State of Uttar Pradesh. The petitioner is also aggrieved by the Notification dated 9.4.1986 issued under the provisions of Rule 58 of The Mineral Concession Rules, 1960 (hereinafter referred to as the said Rules) whereby an area of 47.42 Acres in village Dhankua, District Lalitpur, Uttar Pradesh was reserved for the use of a Corporation established by the State Government or a Government company within the meaning of Section 617 of the Companies Act, 1956. The petitioner company aggrieved by the rejection of its renewal application as well as by the said notification which reserved the very area of the mining lease earlier granted to the petitioner to be used only by a State Government Corporation or a Government company filed two separate revision applications under Rule 54 of the said Rules.

2. The grounds on which the renewal application came to be rejected were:-

""(a) that the petitioner had not worked the mine in a scientific manner;

(b) that the mineral production records were neither properly maintained nor submitted to the State Department of Geology and Mining;

(c) that the petitioner firm had changed the composition of its partners without prior permission of the State Government.""

In respect of these three grounds it was contended by the petitioner as follows:

Re: Ground (a)

That no notice with regard to this was issued to the petitioner. The petitioner submitted that they had worked the mine in a proper and scientific manner. The petitioner submitted that some faults had been committed during 1964-70 regarding payment of Royalty but the same had been made good subsequently and, thereafter, there was no complaint with regard to the working of the mine in a scientific manner.

Re: Ground (b)

The petitioner contended that in respect of this ground there was no specific allegation. In fact, no particulars at all had been supplied as to which records had not been properly maintained and which records had not been submitted to the said Department of Geology and Mining. The entire allegation, according to the petitioner, was vague and un-substantiated. They also submitted that they maintained all the production records and submitted periodical reports to the State Governments as prescribed under the Rules. It is the petitioner's case that State Government never pointed out any default to the petitioner either in the manner of working of the mine or maintenance/submission of the production records etc.

Re: Ground (c)

The petitioner submitted that this ground was ex facie untenable. The allegation was that there was a change in the partners of the firm without prior permission of the State Government. The petitioner was not a firm but a company regulated under the Companies Act, 1956 and there was no question of any change of partners. This allegation, according to the petitioner is, ex facie, untenable and could not form a ground for the rejection of the renewal application moved by the petitioner.

3.As regards the issuance of the Notification dated 9.4.1986 issued by the State Government, reserving the area in question for use by a State Government Corporation or a Government Company, the petitioner contended that the same was discriminatory and in violation of Article 19 of the Constitution of India. According to the petitioner, it had a right to renewal of the lease in terms of paragraph 3 of Part VIII of the Lease Deed. Had the Government really been

serious about the exploitation of Pyrophyllite and Diaspore in the Public Sector, the State Government ought to have reserved all the areas in the vicinity of the petitioner's lease also. This was not done. On the contrary the State Government reserved only the petitioner's lease area leaving out other areas for exploitation by private parties. This, according to the petitioner, was discriminatory and arbitrary and, Therefore, was liable to be set aside as such.

4. In response to this the Respondent State Government had reiterated the grounds of rejection. They also submitted that the right to renewal of a lease was not absolute and that reservation made by Notification dated 9.4.1986 was only done after the expiry of the lease period and after the rejection of the renewal application on 4.2.1986. It was also contended that the reservation was done because Pyrophyllite and Diaspore were important minerals and they were specifically reserved for exploitation in the public sector in exercise of the powers conferred on the State Government under Rule 58 of the said Rules. It was contended that it would not be in the interest of mineral development if the same was allowed to be worked in the private sector.

5. The aforesaid two revisional applications which were filed u/s 30 of the Mines and Minerals (Regulation) Act, 1957 (hereinafter referred to as the said Act), being related and dealing with the same lease area were taken up for hearing by the Central Government and were disposed of together by the common revisional order dated 6.9.1987. It is in respect of this order that the petitioner has approached this Court by way of a writ petition under Article 226 seeking a writ, order or direction is the nature of certiorari for setting it aside. The petitioner has also prayed for similar writs for quashing the Notification dated 9.4.1986 and the State Government's order dated 4.2.1986 whereby the petitioner's renewal application was rejected. However, it is essentially the order dated 06.09.1987 which is the subject matter of challenge in this writ petition.

6. The Central Government came to the conclusion that there was nothing to show that the State Government discriminated against the petitioner or acted with the motive to punish the petitioner. It also concluded that the question of reservation of area for exploitation by a public sector organisation was a matter in respect of which the State Government had the power to exercise its authority in terms of Rule 58 of the said Rules.

7. Apart from the challenge to the grounds of rejection already mentioned above and which were the subject matter before the Central Government the petitioner before this Court has also submitted that no reasons for rejection of its renewal application were given. It merely mentioned three grounds of rejection without there being any basis therefore. Learned counsel for the petitioner further submitted that the State Government's stand before the Revisional Authority was an improvement on the grounds of rejection contained in the Communication dated 4.2.1986 and that cannot be permitted in view of the clear dicta of the Supreme Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it has been held as

under:-

""8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji* 2:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of Explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

Furthermore, the learned counsel for the petitioner submitted that although the State Government before the Revisional Authority contended that it would not be in the interest of mineral development if the area was allowed to be worked in the Private Sector, this is not what is stated in the Notification dated 9.4.1986 itself. Moreover, in the notification neither the minerals are named nor is it indicated that the reservation would be in the interest of mineral development. This being the case, it is contended that the State Government cannot justify the reservation by supplying or supplementing further reasons before the Revisional Authority. Thus, according to the learned counsel for the petitioner the order of rejection dated 4.2.1986 and the Notification dated 9.4.1986 have to stand or fall on the basis of the grounds and/or reasons contained therein. The learned counsel for the Respondent argued that the reasons had been given in the order of rejection and it was for the State Government to refuse or grant the renewal. The petitioner could not claim it as an absolute right. According to the learned counsel for the respondent the refusal of the application for the grant and renewal of a mining lease was permissible after following the procedure prescribed in Rule 26 of the said Rules. Rule 26 (1) would be relevant for the purposes of this case and the same is reproduced hereinbelow:-

""26. Refusal of application for grant and renewal of mining lease:- (1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.""

It may be pertinent to note that the words ""after giving an opportunity of being heard"" were inserted in the said provision with effect from 10.2.1987 i.e. after the order of rejection dated 4.2.1986 had already been passed. The learned counsel contended that be that as it may, as the provisions stand today, three

things are required to be done before an application for renewal of a mining lease can be refused and they are:-

- (1) the applicant must be given an opportunity of being heard;
- (2) the reasons for refusal to grant renewal must be recorded in writing; and
- (3) the same must be communicated to the applicant.

According to the learned counsel for the respondent although the requirement of opportunity of being heard was not there in the provisions at the time the order of rejection dated 4.2.1986 was passed yet the petitioner had been given an opportunity of hearing. Thus, according to the learned counsel for the respondent all the requirements of Rule 26(1) of the said Rules had been complied with and, Therefore, no fault could be found with the order of rejection dated 4.2.1986. The respondent submitted that the petitioner had not taken any ground in its revisional applications with regard to violation of principles of natural justice and that the entire materials were before the Central Government which was the Revisional Authority and the Central Government thought it fit not to interfere with the order of rejection for renewing the mineral lease of the petitioner. In this context the learned counsel for the respondent relied upon the following decisions of the Supreme Court in support of his argument that in a situation as prevailing in the present case a writ of certiorari could not be granted at all:-

- (1) Syed Yakoob Vs. K.S. Radhakrishnan and Others, .
- (2) T.C. Basappa Vs. T. Nagappa and Another, ,
- (3) The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, .

The learned counsel for the Respondent also relied upon the Supreme Court decision in Tata Iron and Steel Co. Ltd v. Union of India and Another, and Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., for the proposition that in policy issues and technical matters the Courts should not normally interfere. According to the learned counsel for the respondent the question of grant, renewal or non-grant of mining leases should be best left to the experts and whether a particular area should be reserved for the public sector or be opened for the private sector was a matter of policy. Thus, in policy matters this Court ought not to interfere in exercise of its jurisdiction under Article 226 and 227 of the Constitution. The learned counsel for the respondent also relied upon the decision of the Supreme Court in Om Prakash and Others v State of Haryana: to submit that reservation of a mining area for the public sector has been upheld by the Supreme Court.

8. In rejoinder the learned counsel for the petitioner submitted that the renewal application was rejected on 4.2.1986 and its revisional application had been filed on 28.4.1986. The Notification reserving the area took effect on 5.6.1986. Thus, the Notification had been brought into effect while the petitioner's revision

application in respect of the order dated 4.2.1986 was pending before the Central Government. Hence, according to the learned counsel for the petitioner, this amounted to malice in law. Learned counsel for the petitioner further submitted that Rule 58 under which the Notification for reservation had been made had been repealed in 1988 and presently reservation of areas for the purposes of conservation is dealt with u/s 17-A of the said Act.

9. The learned counsel for the petitioner contended that it is not correct to say, as was submitted by the learned counsel for the respondent that the ground of violation of natural justice had not been raised by the petitioner. It was pointed out that in the revisional application and in particular ground (c) thereof this point was specifically urged as would be clear from the ground itself which is set out hereinbelow:-

""The Revisionist submits that such kind of notice was not given at any time nor during the consideration of the application for renewal of mining lease of the Revisionist and the finding of the State Government in this behalf is visited as being arrived at without following the procedure prescribed in that behalf and without any opportunity to the Revisionist to show-cause and satisfy the State Government that in point of fact no such defect exist.""

The reply given by the State Government to the aforesaid ground is as under:-

""Petitioner has itself accepted that his renewal application was decided after a delay. During the course of the pendency of the renewal application the lease expired and there is no provision to give any notice after the expiry of the lease. On the work done by the petitioner during the lease period the petitioner's renewal application was rejected in public welfare.""

The petitioner also pointed out that in paragraph 9 of the writ petition it was mentioned as under:-

""Rule 26 of the Mineral Concession Rules, 1960, empowers the State Govt. to refuse the grant of renewal of a mining lease. But after giving an opportunity of being heard to the applicant and this opportunity was never given in the instant case.""

It was also contended that before a renewal is granted the State is required to give a no dues certificate in relation to royalty. The petitioner pointed to ""Annexure Q"" to the writ petition which is an English translation of one such certificate dated 16.3.1983 whereby it has been certified that the petitioner had no dues of royalty/Dead-rent, Surface-rent as on 15.3.1983 and this had been issued by the Senior Mining Officer, Lalitpur, U.P. Yet, the mining lease has not been renewed. The learned counsel for the petitioner finally contended that by an interim order the petitioner was permitted to work the mine and that order continues till today. However, for the period 4.2.1986 to 18.7.1989 the petitioner was not allowed to work the mine and, the before, if the contention of the petitioner with regard to the rejection of its renewal application was upheld, the

petitioner must be compensated by the respondent State.

10. These are the submissions and counter submissions of the parties.

11. In the context of what has been stated hereinabove, it must first be examined as to whether a writ of certiorari quashing the impugned revisional order dated 6.9.1987 can at all be issued. For this purpose, it would be necessary to examine the three decisions of the Supreme Court referred to by the Respondent.

12. In the case of Syed Yakoob (*supra*), the Constitution Bench of the Supreme Court held that a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdiction. The Court further held that a writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order or where the procedure adopted in dealing with the dispute is opposed to the principles of natural justice.

At the same time, the Court cautioned that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of the fact, howsoever grave it may appear to be. With regard to a finding of fact recorded by an inferior court or tribunal, a writ of certiorari can only be issued if it is shown that in recording the said finding, the said tribunal or court had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. The Supreme Court further cautioned that in dealing with this category of cases, however, it must always be borne in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inferences of a fact to be drawn on the said finding are within the exclusive jurisdiction of the Tribunal, and the said point cannot be adjudicated before a writ court. It is within these limits that the jurisdiction conferred on the High Court under Article 226 of the Constitution of India to issue a writ of certiorari can be legitimately exercised.

13. In the case of T.C. Basappa (*supra*), the Constitution Bench of the Supreme Court analysed the nature of writ of certiorari. At page 256 of the report, it is

stated that one of the fundamental principles in regard to the issuing of a writ of certiorari is, that the writ can be availed of only to remove or adjudicate on the validity of judicial acts. The expression "'judicial acts'" includes the exercise of the quasi-judicial functions by administrative bodies or other authorities or persons obliged to exercise such functions and is used in contrast with what are purely ministerial acts. The Supreme Court further held that the second essential feature of a writ of certiorari is that the control which is exercised through it over judicial or quasi-judicial Tribunals or bodies is not in an appellate but supervisory capacity. In granting a writ of certiorari, the Supreme Court does not exercise the power of an appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior Tribunal purports to be based. It demolishes the orders which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior Tribunal. The offending order or proceeding so to say is put out of the way as one which should not be used to the detriment of any person.

14. The supreme Court further observed as under:-

""The supervision of the superior Court exercised through writs of certiorari goes on two points, as has been expressed by Lord Sumner in *King v. Nat Bell Liquors Limited* (3). One is the area of inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of law in the course of its exercise. These two heads normally cover all the grounds on which a writ of certiorari could be demanded. In fact there is little difficulty in the enunciation of the principles;

The difficulty really arises in applying the principles to the facts of a particular case.""

Thereafter, the Court further held that certiorari may lie and is generally granted when a Court has acted without or in excess of its jurisdiction. The want of jurisdiction may arise from the nature of the subject-matter or proceeding or from the absence of some preliminary proceeding or the Court itself may not be legally constituted or suffer from certain disability by reason of extraneous circumstances. When the jurisdiction of the Court depends upon the existence of some collateral fact, it is well settled that the Court cannot by a wrong decision of the fact give it jurisdiction which it would not otherwise possess. The Court further clarified that it is a patent error which can be corrected by certiorari but not a mere wrong decision. The Supreme Court further observed as under:-

""The essential features of the remedy by way of certiorari have been stated with remarkable brevity and clearness by Morris L. J. in the recent case of *Rex v. Northumberland Compensation Appellate Tribunal* (6). The Lord Justice says:

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for re-hearing of the issue raised in the proceedings. It exists to correct error of law when revealed on the face of an order or decision or irregularity or absence of or excess of jurisdiction

when shown."""

15. In the case of Chairman, Board of Mining Examination (supra), in para 13 thereof, the Supreme Court observed as under:-

""Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt -- that is the conscience of the matter.""

These are the principles with regard to the issuance of a writ of certiorari and the question of natural justice.

16. Now, I examine the other two decisions cited by the learned counsel for the respondent being the case of Tata Iron and Steel Co. Ltd (Tisco) (supra) and the case of Bhupatrai Maganlal Joshi (supra). In the case of Tisco, the Supreme Court dealt with the issue of interference by courts in cases where legal issues are mingled with those involving determination of policy and other technical matters. In this context, the Supreme Court in para 68 of the said decision observed as under:-

""68. At this juncture, we think it fit to make a few observations about our general approach to the entire case. This is a case of the type where legal issues are intertwined with those involving determination of policy and a plethora of technical issues. In such a situation, courts of law have to be very wary and must exercise their jurisdiction with circumspection for they must not transgress into the realm of policy-making, unless the policy is inconsistent with the Constitution and the laws. In the present matter, in its impugned judgment, the High Court had directed the Central Government to set up a Committee to analyze the entire gamut of issues thrown up by the present controversy. The Central Government had consequently constituted a Committee comprising high-level functionaries drawn from various governmental/institutional agencies who were equipped to deal with the entire range of technical and long-term considerations involved. This Committee, in reaching its decision, consulted a number of policy documents and approached the issue from a holistic perspective. We have sought to give our opinion on the legal issues that arise for our consideration. From the scheme of the Act it is clear that the Central Government is vested with discretion to determine the policy regarding the grant or renewal of leases. On matters affecting policy and those that require technical expertise, we have shown deference to, and followed the recommendations of, the Committee which is more qualified to address these issues.""

In the case of Bhupatrai Magan Lal Joshi (supra), the Supreme Court by a short

order confirmed the decision of the High Court holding that reservation of land for exploitation of mineral resources in the public sector was permissible under the said Act read with the said Rules. This decision merely goes to establish that the State Government can reserve land for exploitation of mineral resources in the public sector as a general issue. It does not, however, indicate that in all cases, any reservation for mining by the public sector would have to be upheld. That would depend on the facts of each case.

17. In the context of the aforesaid decisions of the Supreme Court, it is to be seen as to whether the original order dated 04.02.1986 and its subsequent confirmation by the impugned revisional order dated 06.09.1987 can be held to be valid. In this context, it is necessary to reiterate what has been indicated in Mohinder Singh Gill's case (supra) that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Because if that were to be permitted, then an order bad in the beginning may, by the time it comes to Court on account of a challenge, gets validated by additional grounds later brought out. Thus, the validity of the order of rejection dated 04.02.1986 has to be tested on the grounds mentioned therein and not on the basis of the replies or arguments advanced before the revisional authority. The first challenge to the order dated 04.02.1986 is that the petitioner was not granted any opportunity of being heard and/or of meeting the allegations against him before the order dated 04.02.1986 came to be passed. While it is true that the express requirement of opportunity of being heard was introduced in Rule 26 of the said Rules only in 1988, it is equally true that the principles of natural justice required that before an adverse order was passed against the petitioner, it was afforded an opportunity of meeting the allegations against it. In this context, it would be pertinent to note that out of the three grounds of rejection mentioned in the order dated 04.02.1986, the third ground is ex-facie untenable. It was alleged that there was a change in the composition of the partners without prior permission. The petitioner is not a partnership concern and, Therefore, this finding is clearly one which is based on no evidence and is perverse. It also displays a complete non-application of mind inasmuch as the authority issuing such an order did not even bother to check as to whether the petitioner was a firm or a company. Without so checking, this ground was taken as one of the grounds on which the renewal application was rejected. Clearly, this would be a situation where a writ of certiorari could be issued.

18. Insofar as the ground that the petitioner had not worked the mine in a scientific manner is concerned, it is not necessary for me to go into the question of whether this is a correct or incorrect conclusion. What is important is to note that no specific details or instances have been pointed out to substantiate this allegation. What is worse is that the petitioner was not even made aware of as to what the allegations or the contents of the allegations were. No notice was issued to the petitioner with regard to this. No documents were supplied and no Explanation was called for from the petitioner. Similar is the situation with the

ground that mineral production records were not properly maintained and were not submitted to the State Department of Geology and Mining. The petitioner has stated on affidavit that not only did the petitioner work the mine in a scientific manner, but that it maintained all the mineral production records as per rules and submitted the same to the State Department of Geology and Mining. This is, of course, controverted by the State Government. However, that is a question of affidavit against affidavit and fortunately I need not go into that question. What is important is that no specific allegations have been made nor any particulars supplied and at least the petitioner was not made aware of the same before the order of rejection dated 04.02.1986 had been passed. In this view of the matter, it does appear that a writ of certiorari could definitely issue to quash the order dated 04.02.1986. Obviously, the revisional order dated 06.09.1987 which confirmed this order would also have to go.

19. Insofar as the notification dated 09.04.1986 is concerned, one of the grounds taken by the respondents to sustain the same was that the notification reserving the area of the mining lease which had been held by the petitioner had been issued only after the petitioner's renewal application had been rejected. In other words, what is contended is that at the time when the notification was issued and brought into effect, the petitioner held no mining lease. Thus, the petitioner could not be aggrieved by this. This argument, in view of what I have concluded above, is no longer available to the respondents inasmuch as the rejection has been held to be invalid. In this view of the matter, it would be clear that when the notification was issued, the petitioner's application for renewal cannot be deemed to have been rejected. This takes care of one aspect of the matter.

20. The other aspect of the matter is with regard to the contention of the respondents that reservation of a particular area for mining activities by the public sector is firstly permissible under the said Act and the said Rules and, secondly, it is a matter of policy and in matters of policy, Courts ought not to interfere in exercise of the jurisdiction under Article 226 of the Constitution. In deciding this issue, it would be necessary to take into consideration the contrary views expressed by the counsel for the petitioner to the effect that when the reservation was made, the petitioner's revision application against the rejection order dated 04.02.1986 was pending. The notification which was issued under purported exercise of the powers under Rule 8 of the said Rules does not disclose the reasons for reservation of the area specified therein for use of a State Government Corporation or Government Company. The reasons which have been indicated subsequently before the revisional authority were that the reservation was done because Pyrophyllite and Diaspore were important minerals and their exploitation was reserved specifically for the public sector as it would not be in the interest of mineral development if the same was allowed to be worked in the public sector. Taken at face value, this may appear to be a formidable answer to the challenge to the notification reserving the said area. However, when one considers logic, it immediately becomes clear that such a reason for supporting the notification is clearly not available to the respondents. First of all, neither

Pyrophyllite nor Diaspore have been mentioned at all in the notification dated 09.04.1986. Secondly, the petitioner has contended that other areas where such minerals were being extracted have been left out of the notification thereby permitting such areas for exploitation by private parties. This fact is not controverted. The petitioner's exact area of the mining lease being 47.42 acres at village Dhankuan has been reserved under the said notification. Other areas in the vicinity have not been so reserved. This in itself makes it clear that it is not a policy matter that exploitation of Pyrophyllite and Diaspore was to be reserved exclusively for the public sector. Thus, quite clearly, the issuance of the notification reserving the petitioner's mining lease area for the public sector is clearly discriminatory.

21. In these circumstances, a writ of certiorari is issued quashing the revisional order dated 06.09.1987 and the rejection order dated 04.02.1986. The notification dated 09.04.1986 to the extent that it reserves 47.42 acres at village Dhankuan in District-Lalitpur for exploitation by the public sector is also quashed. The respondent State Government is directed to deal with the application for renewal afresh after giving the petitioner an opportunity of hearing as is the requirement under Rule 26 of the Mineral Concession Rules, 1960. It is to be noted that till such disposal, the interim order already granted in this matter shall continue. The respondent State Government shall take a decision in the matter within a period of two months. The writ petition is accordingly allowed. The parties are left to bear their own costs.