

(2000) 11 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 15071 of 2000

Jayaram

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 19A
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (2000) 8 KarLJ 610

Hon'ble Judges : R. Gururajan, J;Ashok Bhan, J

Judgement

R. Gururajan, J.-This petition is filed by way of public interest by one Sri Jayaram, Member, Agricultural Produce Marketing Committee and resident of Hukkund Village, Kanakapura Taluk, seeking for the following reliefs:

(a) Call for records which ultimately resulted in executing an agreement dated 30-7-1999, entered into between the fourth respondent and the fifth respondents in respect of Quarrying Lease No. 5396, of Nidagul Village, Kanakapura Taluk, Bangalore Rural District;

(b) Issue an order, direction or writ in the nature of mandamus, directing the fourth respondent to cancel the agreement dated 30-7-1999, Annexure-D entered into between the fourth respondent and fifth respondent in respect of Quarrying Lease No. 5396, Nidagul Village, Kanakapura Taluk, Bangalore Rural District;

(c) Issue an order, direction or writ in the nature of mandamus, directing the respondents 1 to 3 to cancel the Quarrying Lease No. 5396 granted in favour of the fourth respondent for violating fundamental conditions of lease deed and provisions of the Karnataka Minor Mineral Concession Rules, 1994;

(d) Issue an order, direction or writ in the nature of mandamus, directing the respondents 1 and 2 to take steps to protect the public property from the hands of the private entrepreneurs in respect of other quarry lease held by the fourth

respondent;

(e) Issue an order, direction or writ in the nature of mandamus, directing the respondents 1 and 2 to have an investigation conducted by the CBI in respect of the illegalities committed by the fourth and the sixth respondents in handing over the possession of Quarrying Lease No. 5396 in favour of the fifth respondent and also in respect of other quarries and to institute appropriate criminal proceedings against the officials of the fourth respondent, more particularly the sixth respondent;

(f) Issue such other reliefs which the Hon'ble Court may deem fit in the facts and circumstances of the case, including the cost of the writ petition.

2. The facts as narrated in the petition are as under: The fourth respondent-Mysore Minerals Limited (hereinafter referred to as "MML"), is constituted and registered as a Government Company in the year 1976. It took over the assets of erstwhile Mineral Development Board, Bangalore for broader object of scientific exploitation of minerals and for generation of employment. The minerals, mined from the mines allotted to the fourth respondent was the source of revenue to this Company. Fourth respondent (MML) had a set back in financial matters and the State Government has lent its hand to tie over the financial difficulties faced by the fourth respondent. The fourth respondent has commenced quarrying activities for excavation of various colours of granites in Kanakapura, Hassan, Chamarajanagar and Ilakal and other areas in the State of Karnataka. Recently private entrepreneurs have entered the field causing difficulties to the fourth respondent in the matter of carrying on its activities in a viable manner. It is alleged in the petition that the fourth respondent being an instrumentality of the State has to obey all statutory rules enacted for the betterment of mineral activities in this State.

Rule 19-A of the Karnataka Minor Mineral Concession Rules, 1994 provides a prohibition of transfer of leases by way of assignment, subletting, mortgaging or in any other manner transferring the quarrying lease or any right title or interest therein. It further prohibits entering into any agreement or understanding with any person whereby lessee is directly or indirectly financed to a substantial extent by such person and quarrying operation and other activities connected therewith are substantially controlled by such persons. The fourth respondent in violation of Rule 19-A issued a paper publication calling for tenders with regard to raising and marketing of the granite blocks in respect of various quarry leases including Quarrying Lease No. 5396 of Nidagul Village. Pursuant to the paper publication three persons quoted their rates for obtaining subletting. M/s. Shantha Exports Private Limited and the fifth respondent were the competitors and Shantha Exports quoted a premium of Rs. 5,100/- per cbm and offered to give 82 lakhs as trade advance and agreed to enhance annual production from 3000 cbm to 3600 cbm. They also agreed to pay royalty charges to the department of mines and geology in addition to the premium of Rs. 5,100/- per cbm. The fifth respondent quoted sum of Rs. 5,000 per cbm of granite blocks of

which Rs. 1,000/- per cbm goes to the department of mines and geology. It is alleged in the petition that without considering a better offer of Shantha Exports, the sixth respondent, the then Managing Director accepted the offer of the fifth respondent to the detriment of the fourth respondent.

3. Petitioner alleges that a clandestine agreement was arrived at between fourth and fifth respondents to reduce the premium payable by inventing the concept of small blocks causing loss to the fourth respondent. It is also alleged that as against the higher offer of Shantha Exports, the fifth respondent was preferred with ulterior motives and on account of this the loss to be caused to the fourth respondent was estimated to be more than 10 crores. In this set of facts, petitioner has sought for various reliefs by raising several grounds in this petition.

The sum and substance of the argument of the petitioner is that the agreement between fourth and fifth respondents runs counter to a statutory provision of law and the agreement cannot be enforced in view of Rule 19-A of the Rules.

4. Notice was issued pursuant to which the respondents have entered appearance through their respective Counsel and have filed their respective objection statements. The fourth respondent has filed a very detailed objection statement objecting to the grant of the prayers of the petitioner and justifying its action. According to the fourth respondent the present arrangement if viewed in the right perspective would not be in violation of Rule 19-A. Insofar as preference to the offer made by the fifth respondent is concerned the fourth respondent justifies its action by referring to the various clauses of the agreement including, trade advance, premium, quantity and production etc. Regarding deviation between the terms of the tender and the agreement they again justify their action with reference to certain details mentioned in the objection statement. They have denied the allegation of mala fides made against them.

5. The fifth respondent has filed its statement of objections denying every one of the allegations made against them.

6. The sixth respondent against whom allegations were made has filed a short counter denying the allegations.

7. In the counter filed by the State Government it is stated that the fourth respondent was in financial crisis. The Government could no longer support the fourth respondent and they wanted the fourth respondent to go in for joint ventures and privatisation of its activities to reduce losses and mobilise their own expenses for their day-to-day expenses.

8. Though mala fides were attributed to respondent 6 petitioner's Counsel did not press this plea at the time of arguments and he also did not want to go into the economics of the present agreement though raised in the petition at the time of arguments.

9. After hearing the learned Counsels for the parties we are of the view that the

following three issues arise for our consideration:

1. Whether this petition can be considered/entertained by way of public interest litigation?
2. Whether the facts of the case prove that the impugned agreement dated 30-7-1999 suffer from violation of Rule 19-A?
3. To what relief?

10. Reg. Public Interest Litigation.-The petitioner in the case on hand is a resident of Hukkund Village of Kanakapura Taluk. He has no doubt given various details with regard to respondent 4 and details with regard to the agreement between respondents 4 and 5. In the petition details are given as to how the said agreement is not beneficial to respondent 4. Details pertaining to the offer made by the Shantha Exports is also given by the petitioner. According to the respondents this petition is nothing but a shadow battle initiated at the instance of an unsuccessful tenderer namely Shantha Exports. According to them without the aid and collusion of Shantha Exports petitioner could not have provided these facts and figures in this petition. In the light of these pleas made by either side, first we have to find out the law on the subject with regard to Public Interest Litigation before considering the merits of the case. The Supreme Court on more than one occasion has considered the scope of public interest litigation.

11. The Division Bench of this Court in the case of Rudraiah Raju K. v State of Karnataka, 1986(1) Kar. L.J. 164 (DB), has ruled that a citizen and a voter has sufficient interest to claim that the elected representatives and officers entrusted with the Governmental Power under the Constitution have violated and the law should carry on the administration fairly and according to law and bona fide. In other words, the rule of law being one of the basic structure of the Constitution, if breached, a citizen can seek redress in the Courts. The violation of Rule of law is per se injurious to public interest. It may be if the decision of the type concerned in these cases of the Government of Karnataka were to be challenged before this Court by a citizen and resident of any other State in India, he may be described as just a person among 660 million who has no sufficient interest. Similarly, if a licence for construction of a high rise building in the city of Bangalore is given by the Corporation of the City of Bangalore in violation of the Karnataka Town and Country Planning Act, 1961, a resident and voter of any other city or town could not be regarded as a person having sufficient interest to maintain a petition. A resident of the City of Bangalore is a person having sufficient interest.

12. In the case of Sachidanand Pande v State of West Bengal, AIR 1987 SC 1109, the Supreme Court has ruled as under:

"Public interest litigants rush to Court under the attractive name of public interest litigation. It is necessary to lay down clear guidelines and to outline the correct parameters for entertainment of public interest petitions. It is only when

Courts are appraised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when Courts, especially the Supreme Court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. The public interest litigants must inspire confidence in Courts and among the public. They must be above suspicion".

13. In the case of Raunaq International Limited v I.V.R. Construction Limited, AIR 1999 SC 393, the Supreme Court again ruled that a public interest litigation should be bona fide for public good and not merely a cloak for attaining private ends. Courts can examine previous record of public service of the litigant.

14. In the case of Malik Brothers v Narendra Dadhich, AIR 1999 SC 3211, the Supreme Court has categorically held that a public interest litigation is usually entertained by a Court for the purpose of redressing public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effective access to justice to the economically weaker class and meaningful realisation of a fundamental rights. The directions and commands issued by the Courts of law in a public interest litigation are for the betterment of the Society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden duty of the Court not to entertain such petition as otherwise the very purpose of innovation of public interest litigation will be frustrated.

15. Counsel for the petitioner-Mr. R.N. Narasimha Murthy, learned Senior Counsel relying on the decisions of this Court and the Supreme Court argued that a reading of the petition averments coupled with the prayer would show that it is not a petition filed at the instance of Shantha Exports. He argued that if the very prayer is granted it would come in the way of the Shantha Exports carrying on its business. Just because some facts and figures concerning Shantha Exports are mentioned in the petition, it does not mean that the same is filed at the instance of the Shantha Exports.

16. Per contra, Mr. Vijaya Shankar, learned Senior Counsel, Mr. D.L.N. Rao, learned Counsel argued that relying on the case of Malik Brothers, this petition has to be thrown out for the simple reason that this petition is filed at the instance of Shantha Exports.

17. After careful consideration of the contentions raised by the parties, we are of the view that the present petition cannot said to have been not filed by way of public interest. The petitioner has not only sought for quashing of the agreement between the fourth and the fifth respondents but has also sought for a mandamus directing the respondents 1 and 2 to take steps to protect the public properties from the private entrepreneurs. Petitioner has also sought for a

direction to respondents 1 to 3 to cancel the quarrying lease. If the petition averments are read in the light of the prayer it is clear to us that this petition cannot be said to have been filed only to benefit Shantha Exports. If that were to be so, the petitioner would have sought for a prayer of grant in favour of Shantha Exports, on account of its better offer. On the other hand the petitioner's emphasis is to maintain Rule 19-A and not violate the same by respondent 4.

18. In the case on hand the thrust of the petitioner is violation of Rule 19-A by an instrumentality of the State. It is their specific case that Rule 19-A is disobeyed, disfigured and destroyed in all respects by respondent 4 while entering into an agreement with respondent 5. In these circumstances, we are unable to appreciate the argument of the Counsel for the respondent that this petition is not to be treated as public interest litigation.

19. Mr. D.L.N. Rao, learned Counsel emphatically has argued relying on Malik Brothers case, that the present case is not to be treated as PIL. The said case even on facts is clearly distinguishable. That was a case where public interest litigation was filed with regard to certain arbitration proceedings initiated by the parties concerned. The Supreme Court noticed in para 3 that the question that arises for consideration therefore is whether in the facts and circumstances of the case, the High Court was justified in entertaining a writ petition in the garb of a public interest litigation and was justified even in setting aside the award of a competent Arbitrator which was not assailed under the provisions of the Arbitration Act, 1940 but by filing a petition under Article 226 on the ground that the very decision of the Improvement Trust, referring the matter to the Arbitrator was illegal and has caused public injury. It is in the light of this background the Supreme Court has ruled that public interest litigation is not maintainable in the said case.

20. In this view of the matter, we reject this argument of this petition being not by way of public interest litigation on the facts of this case.

21. Re: Violation of Rule 19-A.-Both the Counsels appearing on either side took us to the material facts and the terms of the agreement in support of their respective pleas. Petitioner says that the agreement read as a whole would show that the said agreement runs counter to Rule 19-A. On the other hand the contention of the respondents is that the agreement is not counter to Rule 19-A.

22. Before examining the rival contentions, we are required to see the scheme of the Act. The Mines and Minerals (Regulation and Development) Act, 1957 is a Central Act with the laudable object of regulating and developing mines and minerals under the control of the union. Section 3 defines various terms including minerals, mineral oils, mining lease, mining operation, minor minerals, prospecting licence, prospection operations, etc. General restrictions are placed on undertaking prospecting and mining operations in Sections 4, 4-A, 5 and 6. Sections 7 and 8 provide for grant/renewal of a licence by the Government.

Section 9 provides of royalty in respect of mining lease. Section 10 provides for procedure for obtaining prospecting licence or mining leases in respect of land in which the minerals vest in the Government. Section 11 provides for preferential right of certain persons. Section 13 provides for framing of Rule by Central Government.

23. As mentioned earlier this is an Act not only to regulate but also for development of minerals in terms of the preamble to the Act.

24. Under Section 11, respondent 4 was preferred for grant of a licence since it is a Government Company. It is an admitted fact that the mining leases were granted in favour of the respondent herein. Under Section 15, the State Government has framed rules in exercises of its rule making power. Rule 19-A provides for a prohibition of transfer of leases in favour of any other person. The said Rule reads as under:

"Rule 19-A. Prohibition of transfer of leases.-The lease shall not.- (a) assign, sub-let, mortgage or in any other manner transfer the quarrying lease or any right title or interest therein;

(b) enter into any agreement or understanding with any person whereby lessee is directly or indirectly financed to a substantial extent by such person and quarrying operation and other activities connected therewith are substantially controlled by such persons:

Provided that, nothing in this rule shall apply to mortgage made by lessee in favour of the institutions specified in Schedule VI".

25. A careful reading of the said rule in the light of the scheme of the Act makes it clear to us that this regulation by way of prohibition is introduced in the larger interest of protecting the mines and minerals by the Government. The said rule is not challenged by anybody including the respondents herein.

26. Having noticed Rule 19-A, we shall advert to the facts of this case. It is an admitted fact that the fourth respondent is a Government Company. It is an equally admitted fact that a tender notification was issued as per Annexure by respondent 6 inviting tenders for raising and marketing of mines by respondent 4. The facts further reveal that fifth respondent pursuant to respondent 6 applied for and was granted the rights in terms of Annexure-B, the agreement dated 30-7-1999.

27. The parties are at variance with regard to the applicability of Rule 19-A to this agreement. To consider the rival pleas we deem it necessary to quote only a few clauses for proper understanding of the case on hand:

"This agreement is made on 30-7-1999 between Mysore Minerals Limited, one part and M/s. K. Mark, hereinafter referred to as raising-cum-sales agents:

1. Whereas, the Company is a lessee of quarry located which is morefully described in the Schedule below:

Nidagal Granite Quarry, Kanakapura Taluk Extent 25.20 acres KNNG QL No. 5396. Borest Pit which forms part of Nidagal Quarry will be handed over after forest department clearance.

2. Whereas, the Company is desirous of entrusting raising-cum-sales agent the work for carrying out quarrying and producing granite blocks of various sizes and specifications and also to sell them or to use them for self-consumption on payment of premium as per M3 to the Company.

3. Whereas, the raising-cum-sales agent has offered to carry out the said work of quarrying and production of granite blocks, sell them or to use them for self-consumption on payment of premium per cubic metre to the Company.

Trade advance:

The raising-cum-sales agent shall deposit a trade advance of Rs. 60 lakhs with the Company, Rs. 25 lakhs has been received on 30-7-1999 vide Cheque No. 298952, dated 30-7-1999 (Corporation Bank, MG Road Branch, Bangalore-1), Balance of Rs. 35 lakhs will be paid as Rs. 10 lakhs in August, Rs. 10 lakhs in September and Rs. 15 lakhs in October 1999. This trade advance will carry a simple interest at the rate of 10% per annum, on the reducing balance method and the balance outstanding at the end of each financial year annually. The trade advance will be adjusted 50% for every invoice raised during the period of agreement.

1.Entrustment.-The Company hereby entrusts to the raising-cum-sales agent the work of quarrying and producing granite blocks and sell them or use them for self-consumption on payment of premium of per M3 to the Company from the quarries described in Schedule above for a period of 3 years initially from the date of signing this agreement. Which may be extended for two or more years with mutual consent based on the performance of the Contractor, unless the period of contract automatically ceases on the expiry of the agreement and the contractor shall vacate the quarry premises within 15 days. The Contractor shall have no rights whatsoever on the lease area or on the property contained therein.

2.Licence.-The Company hereby grants to the raising-cum-sales agent licence to enter upon the schedule properties with his men and material for the purpose of carrying out quarrying operations. The parties herein confirm that what is granted to the raising-cum-sales agent is nothing but simple licence to enter upon quarries and carry out quarrying operations. No interest of whatsoever nature in the properties is created. The licence granted under this agreement can be terminated in the manner provided hereunder.

3.Production.-3(1) The raising-cum-sales agent shall produce a minimum of 300 to 500 cbm per month or 900 to 1500 cbm per quarter of saleable blocks.

4.Development work:.....

5.Machineries:.....

6.Maintenance of quarry area:.....

7.Production of blocks:.....

8.Payments:.....

8.2 Payment on premium.-The raising-cum-sale agent shall pay a premium of Rs. 5,000/- per M3 as quoted/agreed by him. The allowance should be 30% of the royalty measurement and the same will be paid to MML and above 30% will be considered on mutual discussion from case to case.

The raising-cum-sales agent shall pay the full amount of premium of blocks before despatch of the blocks, the delivery order will be issued only against the full payment of the blocks sold and the DMG permit will be arranged by the Company for transportation of blocks at the earliest.

9.Penalty.....

10.Statutory payments.....

11.Independent raising-cum-sales agent.....

12.Compliance with statutory requirements.....

13.Indemnity.....

14.Period of this agreement.....

15.Termination.....

16.....

17.....

18.....

19.....

20.....

21.Security Deposit.-The raising-cum-sales agent has paid to the Company a sum of Rs. 5 lakhs vide cheque No. 312016, dated 20-7-1999 for Rs. 4.50 lakhs and DD No. 316258, dated 25-6-1999 for Rs. 50,000 as security deposit for due performance of the terms and conditions of this agreement and the security deposit will only be refunded on successful completion of contract period against a no due certificate issued by the Company.

22. If the raising-cum-sales agent breaches of any of the terms and conditions of this agreement, the Company shall be entitled to forfeit whole or pary of security deposit furnished at its discretion.

23.Bank Guarantee.-(1) The raising-cum-sale agent should give a Bank guarantee for the premium value of 900 to 1500 M3 for each quarter. The Bank guarantee of Rs. 25.00 lakhs should be arranged before the beginning of every

quarter (3 months) during the period of contract as guarantee towards premium payable to the Company by the raising-cum-sale agent.

(b) If the raising-cum-sale agent fails to produce the minimum assured quantity and fails to pay the premium, the above Bank guarantee is permitted to be enforced. The Bank guarantee in the prescribed format for Rs. 25.00 lakhs should be arranged by the raising-cum-sales agent when the trade advance of Rs. 60.00 lakhs is adjusted.

24.

25.".

28. This agreement was approved by the Board of Directors of respondent 4. The State Government has filed a counter and along with it they have filed four annexures. Annexure-R1 is an order dated 19-2-1999 is the matter of Government guarantee to the consortium of bankers. Annexure-R1 is an addendum dated 24-3-1999. Annexure-R2 is a letter dated 14-7-1999 addressed to the Managing Director of respondent 4 regarding tender notification. Annexure-R3 is the approval of the State Government dated 12-11-1999. They say that the agreement has been entered on 30-7-1999 and the Government has approved it on 12-11-1999.

29. From a reading of the tender notification and the clauses in the agreement it is clear to us that this is an agreement providing for entrustment of work for carrying out quarrying and producing granite blocks and to sell them or to use them for self-consumption on payment of premium as per M3 to the Company.

30. A reading of all these clauses would show that a right granted to respondent 4 by the State has been virtually transferred to respondent 5. This is not the end of the matter. The agreement provides for production of blocks of minimum quantity of 225 cubic metre per month or 675 cubic metres per quarter of saleable blocks of sizes that are acceptable in the international market. Clause 7.2 states that the ownership of all the blocks produced by the raising-cum-sales agent shall absolutely vest with the Company and the raising-cum-sales agent shall not have any manner of ownership rights of lien over the blocks produced, till such time the premium is paid by the raising-cum-sale agent. Clause 7.3 provides for marketing of the blocks produced in the scheduled properties shall absolutely vest with the raising-cum-sale agent and shall be at this discretion.

31. A reading of the payment and marketing clause makes it clear that this is nothing but an arrangement of finance to a substantial extent for quarrying operations by way of trade advance to respondent 4. Admittedly respondent 4 is incurring heavy losses and they are unable to carry on their operation and they are unable to compete with private entrepreneurs. The Government has mentioned in their letter that for survival purpose the fourth respondent has to go for privatisation.

32. We must notice at this stage, the argument of the contesting respondents.

The contesting respondent invites our attention to the right of supervision under Clause 3(2) and the right of ownership as mentioned in several places. Mere mentioning of the word supervision or owning does not carry the respondent any further. The right of ownership gets extinguished the moment the premium is paid by virtue of Clause 7.2. The sum and substance of the agreement is that the fifth respondent is to produce and the fourth respondent is to be paid the premium towards the mined granite towards the transfer of its rights to respondent 5. Even right of marketing of the block vests with the Contractor. The vehement arguments of Mr. D.L.N. Rao, learned Counsel for the contesting respondents, gets diluted once we go through the clauses of the agreement in detail. Rule 19-A prohibits assigning, sub-letting, mortgage or in manner transferring the quarrying lease or any right, title or interest therein. Clauses of the agreement provide for transfer of the right of the fourth respondent in favour of the fifth respondent. Therefore, on facts we have no hesitation in holding that the agreement Annexure-B is nothing but an agreement in violation of Rule 19-A of the Rules.

33. The contesting respondents however maintain that the State Government has granted its approval in terms of Annexure-R3. We cannot but notice that this approval is subsequent to the entering of the agreement. Moreover, if it is an "approval agreement" the same has to be in Form "T" in terms of Rule 19-A proviso. Therefore, the mere approval of the Government does not in any way take away the rigour of Rule 19-A on the facts of this case.

34. Learned Counsel for the contesting respondent further invites our attention to the dictionary meaning of the word "transfer". The word "transfer" as defined in the Law Lexicon reads as under:

"Transfer: To convey; to make over from one to another; to remove. Document whereby one person transfers property, securities or rights to another. A transfer is an act or transaction by which property of one person is by him vested in another".

The definition of transfer also do not in any way support the case of the respondent either. On the other hand, the meaning given to the word "transfer" in the light of the agreement supports our view.

35. Learned Counsel for the respondents further contends that Rule 19-A cannot said to come in the way of the present agreement. According to them, Section 13 provides for a power of the Central Government to make Rules in respect of minerals. Section 15 provides for power of State Governments to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith.

36. Learned Counsel elaborates his argument by saying that Rule 19-A may not stand the test of law in the light of statutory provisions of the Act. We do not accept this argument. At the outset, Rule 19-A is not challenged by the respondents. The rule making power of the Government is also not challenged by

the respondents. That being the position, it is not open to respondent 4 to question the rule in a collateral proceedings after violating Rule 19-A in this proceedings.

37. Learned Counsel for the fifth respondent took us through the judgment of the Supreme Court in the case of *Delta International Limited v Shyam Sundar Ganeriwalla*, AIR 1999 SC 2607, to contend that the intention of the parties has to be taken note of while interpreting the document. It is contended that clauses read as a whole would show that the agreement is not in violation of Rule 19-A and there is no transfer of any right in favour of respondent 5.

38. We do not agree. In the case on hand from a reading of the tender notification, Government orders and the agreement the intention seems to be to tie over the present financial difficulties by entering into an agreement wherein, production, sales, marketing coupled with finances is fully taken care of by the offering party i.e., respondent 5.

39. In this connection we may usefully refer to the judgment in the case of *Associated Hotels of India Limited v R.N. Kapoor*, AIR 1959 SC 1262, wherein the Supreme Court has laid down the following propositions:

"1. To ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form;

2. The real test is the intention of the parties-whether they intend to create a lease or a licence;

3. If the document creates an interest in the property, it is a lease; but if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence; and

4. If under the document a party gets exclusive possession of the property, *prima facie*, he is considered to be a tenant; but circumstances may be established which negative the intention to create a lease".

40. In the light of the dictum of the Supreme Court, we have gone through the substance of the document, intention of the parties, and the clauses to arrive at our conclusion that the present document is nothing but a transfer of interest i.e., the transfer of its rights in favour of fifth respondent. Therefore, this judgment is not helpful to the respondents.

41. We may also refer to another judgment of a Supreme Court in the case of *State of Tamil Nadu v M/s. Hind Stone and Others*, AIR 1981 SC 711. In the said case it was noticed at para 10 that the regulation to Section 15 contemplate prohibition as well:

"10. One of the arguments pressed before us was that Section 15 of the Mines and Minerals (Regulation and Development) Act, authorised the making of rules for regulating the grant of mining leases and not for prohibiting them as Rule 8-C sought to do, and, therefore, Rule 8-C was *ultra vires* Section 15. Well-known

cases on the subject right from *Municipal Corporation of the City of Toronto v Virgo*, 1896 AC 88 and *Attorney General for Ontario v Attorney General for Dominions*, 1896 AC 348 upto *State of Uttar Pradesh v Hindustan Aluminium Corporation*, AIR 1979 SC 1459: (1979)3 SCC 229: (1979)3 SCR 709, were brought to our attention. We do not think that "Regulation" has that rigidity of meaning as never to take in "Prohibition". Much depends on the context in which the expression is used in the statute and the object sought to be achieved by the contemplated regulation. It was observed by Mathew, J., in *G.K. Krishnan v State of Tamil Nadu*, AIR 1975 SC 583: (1975)2 SCR 715, "The word "Regulation" has no fixed connotation. Its meaning differs according to the nature of the thing to which it is applied". In modern statutes concerned as they are with economic and social activities, "Regulation" must, of necessity, receive so wide an interpretation that in certain situations, it must exclude competition to the public sector from- the private sector. More so in a welfare State. It was pointed out by the Privy Council in *Commonwealth of Australia v Bank of New South Wales*, 1950 AC 235: (1949)2 All ER 755 (PC), and we agree with what was stated therein, that the problem whether an enactment was regulatory or something more or whether a restriction was direct or only remote or only incidental involved, not so much legal as political, social or economic consideration and that it could not be laid down that in no circumstances could the exclusion of competition so as to create a monopoly, either in a State or Commonwealth agency, be justified. Each case, it was said, must be judged on its own facts and in its own setting of time and circumstances and it might be that in regard to some economic activities and at some stage of social development, prohibition with a view to State monopoly was the only practical and reasonable manner of regulation. The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed, as we have already said more than once, at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present. We have no doubt that the prohibiting of leases in certain cases is part of the regulation contemplated by Section 15 of the Act".

42. Therefore, we have no hesitation in holding that Rule 19-A in the light of the judgment of the Supreme Court, is a Rule in the form of prohibition for regulation of the mining interest of the State as otherwise a shrewd business magnet may find an easy way of getting the mining leases through the backdoor entry from Government Companies. Rule 19-A is introduced only to prevent such backdoor entry.

43. Mr. R.N. Narasimhamurthy, learned Senior Counsel referred to us the judgment of the Supreme Court *Shri Tarkeshwar Sio Thakur Jiu v Bar Dass Dey and Company*, AIR 1979 SC 1669. In the said case the Supreme Court was dealing with an agreement of a similar type with regard to quarrying of sand. In

para 31, the Supreme Court has observed as under:

"31. It is important to bear in mind that the term "lease" occurring in the definition of "mining lease" given in Section 3(c) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act. But, as rightly pointed out by a Bench of the Calcutta High Court in *Fala Krista Pal v Jagannath Marwari*, AIR 1932 Cal. 775: ILR 59 Cal. 1314, a settlement of the character of a mining lease is everywhere in India regarded as lease". A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a "lease" as defined in the Transfer of Property Act. Nevertheless, in the legal accepted sense, it has always been regarded as a lease in this country".

44. Again in para 40 the Supreme Court has referred to the judgment of the Patna High Court. In the case of *Commissioner of Income-tax, Bihar and Orissa v Kumar Kamaksha Narain Singh*, AIR 1940 Pat. 633, rendered by a special Bench of the Patna High Court which has considered the various clauses of similar nature. We may usefully refer to a para of the Patna judgment in *Kamaksha Narain's* case, *supra*:

"These royalties are payable under covenants contained in the various leases granted by the assessee. As I have stated earlier, these leases give to the lessees very wide powers. They have the right to enter on the land, sink pits, win and remove the coal, erect buildings on the surface, make railways, erect coke ovens and manufacture coke. For the sum total of these rights the lessee pays a sum by way of salami or premium and an annual sum computed on the amount of coal raised and the amount of coke manufactured subject always to minimum annual sum fixed in the respective leases. In one sense a part of this annual sum may be regarded as the price of the coal actually removed; but what is paid to the lessor is paid not only for the coal and the right to remove it but also for the other rights granted to him by the lease. No attempt is made in the lease as regards annual payments to differentiate between what is paid for the other rights such as the rights to erect buildings, make railways, erect coke ovens and manufacture coke. What is paid is paid for the whole of the rights granted and what is salami and an annual sum payable year after year until the lease comes to an end by effluxion of time or by any other means. It would be very difficult to argue that the minimum royalty payable under these leases is the price of coal, because such would be payable even if no coal was gotten and would be payable even if the royalty calculated on the amount of coal gotten did not amount to the sum fixed as the minimum royalty".

45. After noticing these facts the Patna High Court has ruled that it is nothing but a rent or income payable under the lease. Justice Fazalali as he then was concurring with the two other learned Judges of the High Court after noticing various English cases on the subject he has noticed at page 650 as under:

"The Courts have not hesitated to tear down deeds if they are cloaked to shield a

wholly different arrangement but only where the deeds are not genuine and are attempted to hide different transactions. The quotations from the judgment of the Master of the Rolls in *Inland Revenue Commissioners v Duke of Westminster*, (1935)10 Tax Cas. 490 given by Singleton J., at page 466 are instructive:

"Certain definite considerations arise and must be stated upon these deeds. It is not suggested that they are all part of a device or stratagem improperly entered into for the purpose of defeating a proper charge under the Income-tax Act. Their genuine nature is not impugned".

And a little later he observed:

"It appears to me that the only way in which you can reach the conclusion adopted by the Commissioners is by throwing aside the deeds, and I see great difficulty in throwing them aside temporarily during the time when services are rendered to the appellant, and recognizing them as valid and subsisting during all other times, whether present or future. It seems to me that, unless you are able to tear down these deeds as a cloak to shield a wholly different arrangement, you must accept them and, when you are accepted them, you have got a case in which the covenantor has bound himself to make these annual payments to the covenantee, and the covenantee, being the recipient is bound etc."

In the same case Slesser L.J. stated:

But yet, as Mr. Greene has pointed out, when you have looked at the whole of the substance, you are still to look at it from the point of view of the law and see what the effect is as a legal relation:

and Romer L.J. said:

"The legal effect of the contract as it stands must be ascertained and not what would or might be the legal effect if the words of the contract be disregarded and the substance of the matter be considered".

It is unnecessary to multiply references to other English decisions. It may be noticed that I have not hesitated to refer to English decisions on this topic because the principle that the form and not the substance of the matter should or should not be disregarded is not a principle which is to be found in the English Income-tax Act alone but is a principle which is common to all system of jurisprudence. If then the substance of the matter as laid down by the cases which I have been just considering is looked at it is clear that the lessee has covenanted with the assessee to pay him an annual sum by way of rent for the lease of his materials, a minimum is fixed and the mode of calculation of the annual sum is provided in circumstances in which the minimum is to be exceeded. The assessee in the present case like the assessee in *Shiva Prasad Singh v Emperor*, AIR 1924 Pat. 679: 4 Pat. 73, holds an unfettered right of disposal and in granting these leases so far as rent and royalty are served, he is founding an annual increment to the income of the Raj for himself and his

successors for a period of 999 years".

46. We may also notice, the observations made in the judgment of the English Court in the case of *Gowan v Christie*, (1873)2 SC and Div 273 (H.L.), which are to the following effect:

"Although we speak of a mineral lease, or a lease of mines, the contract is not, in reality, a lease at all in the sense in which we speak of an agricultural lease. There is no fruit; that is to say, there is no increase, there is no sowing or reaping in the ordinary sense of the term and there are no periodical harvests. What we call a mineral lease is really, when properly considered, a sale out and out of a portion of land, it is the liberty given to a particular individual, for a specific length of time, to go into and under the land, and to get certain things there if he can find them and to take them away, just as if he had bought so much of the soil".

47. After going through the judgment and the clauses of the agreement read as a whole, certainly it reflects the intention of transferring of a right/interest therein i.e., the lease in favour of respondents 4 and 5. Therefore, we have no hesitation in holding that the present agreement has to be set aside for having violated Rule 19-A of the Rules.

48. Mr. D.L.N. Rao, farther argued that a few offending clauses may be deleted and the contract may be retained. This is not a matter where a rule or a regulation is challenged by a litigant in a petition under Article 226 of the Constitution of India. The present contract cannot be severed on the principle of severability. Therefore, we do not accept this argument as well. A feeble argument was made by the Counsel to contend that there is a delay in filing this petition. The agreement has been entered into in the month of July 1999, Government has granted its approval in the month of November 1999, the writ petition is filed in the month of April 2000. If we look at these dates it cannot be said that there is an enormous delay requiring our non-interference in a matter like this. Therefore, the plea of delay requires to be rejected without any further consideration.

49. We may at this stage also point out that rule of law is a fundamental basic structure of our constitution. Our governance is based on rule of law. No Court can condone the violation of Rule of law committed by anybody howsoever big or small. Rule of law is required to be implemented in public interest. Public interest is safeguarded, protected and maintained by Rule of law. If rule of law is allowed to be violated in any manner, public interest definitely suffers. It cannot be out of place to mention here, the public trust is placed in the safe hands of public Corporation, which is meant to serve public services by way of public interest. When a State undertaking holds a valuable resource by way of preference it is expected of that public trust to make use of the public property for itself and not to create any interest in favour of private parties in contravention of a public interest rule like Rule 19-A. Once rule of law is violated consequence has to

follow as a matter of course.

50. The argument of administrative convenience on account of quashing of the impugned judgment also does not appeal to us for the simple reason that the rule framed in terms of the statute cannot be said to inconvenience the administration or viability of that unit. In this connection we may also refer to a classic passage from the book by an eminent author De. Smith who states as under:

"Administrative inconvenience is an accepted criterion in relation to remedies provided by the Courts in judicial review. For example, where a series of commercial transactions have been undertaken in reliance upon the impugned decision the Court may, in its discretion, fail to quash that decision in view of the administrative chaos that would result from such a remedy. Judicial discretion is employed here to balance fairness to the individual against the general public interest. The task, however, of deciding the force of a statutory provision does not involve judicial discretion. It involves the faithful construction of the objects and purposes of an act of Parliament in the context of the particular decision. Although aspects of public policy may play a part in this exercise, it would be wrong of the Courts to impute any general implication that Parliament may intend administrative inconvenience to excuse in advance the violation of its statutes. Such an implication invites careless administration and assumes that the Legislature would too easily excuse a breach of its statutes. It is suggested, therefore, that administrative inconvenience is not normally a proper criterion to guide the question of whether a statutory provision is "mandatory"."

51. In the case of *Dr. H.S. Rikhy and Others v The New Delhi Municipal Committee*, AIR 1962 SC 554, the Supreme Court ruled as under:

"The answer to the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, has to be strictly followed".

52. In *Prathiba Co-operative Housing Society Limited v State of Maharashtra*, AIR 1991 SC 1453, the Supreme Court came down heavily on the housing society which made construction in violation of floor space. While dismissing the appeal the Supreme Court observed as under:

"Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the Society at large. The Rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the Society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits".

53. We do not like to multiply the case-laws. All that we would emphasise in the case on hand is that the public authorities entrusted with the public largesse are to act within the four corners of law. They are bound by Rules and Regulations

framed and incorporated in the statute which are meant to be followed. No violation, deviation or dilution is permissible. Any violation/dilution/disobedience would certainly require a writ Court to interfere and set right the violation in the larger interest of the public. In the case on hand what cannot be achieved directly is achieved by the fifth respondent by the impugned agreement which runs contrary to public interest in terms of Rule 19-A.

54. Re: Relief.-The last question that remains for consideration is what relief can be granted to the petitioners on hand. Petitioner has sought for four prayers; prayers (b) and (c) in the light of our findings are to be granted. Insofar as prayer (d) is concerned it is a general prayer. Unless we have the facts of other leases it is not safe for us to issue a direction as sought for in prayer (d). Insofar as prayer (e) is concerned the same cannot be granted, for the simple reason that the petitioner having made certain mala fide allegations against respondent 6, no arguments were advanced before us. In view of this the question of any investigation by CBI does not arise. We would like to make it clear in this judgment that litigants are to be careful in making allegations against public officials. Having made such allegations they must have to justify such allegation. Such allegations cast aspersions on the integrity and character of a public official.

55. Mr. D.L.N. Rao, finally pleaded that they must be permitted to take what they have already quarried and kept with the fourth respondent. According to him a bona fide agreement has been entered into and acted upon. Large sums of money is invested and the fifth respondent would be the loser if he is not permitted to even take away the material already mined. For this purpose he relies on the judgment of the Supreme Court in the case of *Samatha v State of Andhra Pradesh*, AIR 1997 SC 3297, in a somewhat identical situation in support of his case. The Supreme Court at page 3349 has observed as under:

"132. The State Government, therefore, is directed to ensure that all concerned industrialists, be they natural or juristic person stop forthwith minimum operations within the scheduled area, except where the lease has been granted to the State undertaking i.e., APSMD Corporation: they should report compliance of this order to the Registry of this Court within six months of the receipt of this judgment. The lessees of mining leases are directed not to break fresh mines; however, in the meanwhile, they are entitled to remove the minerals already extracted and stocked in the reserved forest area within four months from today. All concerned authorities are directed to ensure compliance thereof. Even the State undertaking carrying the mining, operations, would be subject to the regulations under the FC Act and EP Act. It would be open to the State Government to organise Co-operative Societies solely of the Scheduled Tribes to exploit mining operations within the Scheduled Tribes to exploit mining operations within the Scheduled area subject to the compliance of the FC Act and EP Act".

56. We have carefully gone through the judgment of the Supreme Court. In view of the decision of the Supreme Court in the case of *Samatha*, we do permit the fifth

respondent to remove the material already mined after paying the rate in terms of the agreement dated 30-7-1999.

In conclusion, we allow this writ petition in part:

(1) We declare that Annexure-B agreement dated 30-7-1999 entered into between the fourth and the fifth respondents is violative of Rule 19-A and hence unenforceable. Fourth respondent is directed not to act on the agreement dated 30-7-1999 and to seek possession forthwith from the fifth respondent.

(2) The general prayer in terms of prayer (d) for a direction to respondents 1 and 2 for taking steps to protect the public property is declined in the absence of relevant details. Similarly, the prayer for CBI enquiry is not granted on the facts of this case.

(3) The fourth respondent is directed to permit the fifth respondent to remove the minerals already extracted and stocked by them within one month from today subject to paying the rate in terms of agreement dated 30-7-1999.

Parties to bear their respective costs.