
(2001) 07 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 762 of 1998

Lal Chand and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 04-07-2001

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2001) 07 P&H CK 0024

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : M.L. Sarin, with Ms. Sweena Pannu, Mr. Arun Jain with Mr. Sudhir Makkar, Mr. Rajeev Atma Ram with Mr. Puneet Gupta and Mr. R.S. Rai, for the Appellant; N.S. Bhinder, DA Haryana for the State, Mr. S.K. Sharma, for the Union of India, Mr. Viney Bhasin, with Mr. J.R. Midha and Mr. Sanjay Vij, for the Respondent

Judgement

V.K. Jhanji, J.—This order of mine shall dispose of Civil Writ Petitions No. 762, 1068, 2791, 3560 of 1998, 8309, 14725, 18112 and

18113 of 1999. All these writ petitions are being disposed of together as they pertain to the grant of mining leases and also contain same question

of law and facts.

2. In brief, the facts are that the State Government, as required by Clause (e) of Sub-rule (1) of Rule 59 of Mineral Concession Rules, 1960

(hereinafter referred to as 1960 Rules) issued 6 notifications dated 14.8.1992 and invited applications for the grant of mining leases for extraction

of Silica Sand and Associated Ordinary sand at Village Jalalpur Sohna (1798 Kanals 11 Marias), Gangani (1824 Kanals 19 Marias), Mohmadpur

Ahir) 1857 Kanals 0 Maria), Kharak Sohna (2866 Kanals 07 Marias), Lohinga Kalan (1183 Kanals 02 Maria) and Nurpur (223 Kanals 04

Maria) District Gurgaon. According to the notifications, applications were to be submitted after the expiry of 30 days from the date of publication

of notification in the official gazette. 14th of September, 1992 was the first date for receipt of applications . In all , 144 applications were received.

The break-up is given as under-

Sr. No. Name of the mine Number of applications
received.

1. JalalpurSohana 32

2. Gangani 33

3. KharakSohana 28

4. LohingaKalan 18

5. MohmadpurAhir 28

6. Nurpur 12

3. The State Government constituted a Committee consisting of Director, Mines and Geology as its Chairman, Under Secretary (Industries),

Haryana, State Mining Engineer and Mining Officer, Gurgaon to adjudge the suitability of applications. It interviewed the applications on

7.10.1992 and 8.10.1992. The Committee recommended to the State Government that the following candidates be granted mining lease for

extraction of Silica Sand and associated ordinary Sand:

Sr. Name of the Address of the recommended candidate.

No. mines

1. JalalpurSohana Shri Lai Chand S/o ShriLekh Ram. Vill.

TehsilDabwali District Sirsa.

2. Gangani M/s. S.A. Minerals, 2008 Bank Street, Karol

Bagh, New Delhi.

3. MohmadpurAhir ShriMani Ram S/o ShriRanjit Ram, Shop No.

32, AnajMandi, Ratia District Sirsa.

4. Kharak Sohna Shri Ravinder Kumar S/o Sh. Amir Chand

Hansi District Hissar.

5. Lohingakalan Shri Shiv Kumar S/o Shri Chabil Dass, 26,

NaiAnajMandi, Adampur, Hissar.

6. Nurpur M/s. Juneja & Company through Lakhpat Ram

Juneja, G.T. Road Palwal.

4. The State Government accepted the recommendation of the Committee and directed issuance of letter of intent to the successful applicants for

the grant of mining lease for a period of 10 years. Thereafter, the State Government granted lease to the successful applicants by way of 2 separate

lease deeds in each case i.e. one for silica sand and the other for associated ordinary sand. Some of the applicants whose applications for grant of

mining lease were rejected, filed revision petitions u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short the Act)

read with Rule 55 of the Rules before the Revisional Authority comprising of Joint Secretary (Law) and Joint Secretary (Mines), Government of

India. The Revisional Authority vide order dated 28.11.1997 set aside the orders rejecting the applications of revision Petitioners for grant of

mining lease relating to Jalalpur Sohana, Mohmadpur Ahir and Gangani and further directed the State Government to consider and grant mining

lease to the revision Petitioner, namely, Respondent No. 5 in CWP No. 762 of 1998, Respondent No. 3 in CWP No. 3560 of 1998 and

Respondent No. 3 in CWP No. 1068 of 1998. Likewise, the Revisional Authority vide orders dated 23.8.1999 and 24.8.1999, set aside the

lease relating to area situated in village Kharak Sohana and Nurpur granted to Ravinder Kumar who was none else but son of Amir Chand

Makkar, the then sitting M.L.A. and M/s. Juneja & Company (Petitioners in CW Ps No. 14725 and 18112 of 1999 respectively) and remanded

the case to the State Government for considering the applications of all the applicants afresh and then grant lease.

5. Similarly, vide notification dated 1.5.1992 published in Haryana Government Gazette dated 5.5.1992, State Government invited applications for

grant of mining lease in village Rozika Gujjar in District Gurgaon for silica sand and associated ordinary sand. The Committee constituted for the

purpose of adjudging the suitability of applicants interviewed 14 applicants who had applied in response to the notification. Out of 14, 12

applicants appeared and after interviewing them, the Committee recommended that the mining lease be granted to M/s Shivjit Singh Ugarsain. One

of the applicants whose application had been rejected, filed revision petition u/s 30 of the Act before the Revisional Authority. The Revisional

Authority vide order dated 28.11.1997 set aside the lease in favour of M/s. Shivjit Singh Ugarsain and directed the State Government to consider

and grant the mining lease to the revision Petitioner, namely, Respondent No. 3 in Civil Writ petition No. 2791 of 1999.

6. In all the writ petitions, challenge is to order of the Revisional Authority whereby it has set aside the order rejecting the applications of the

revision Petitioners and consequent order granting lease to the writ Petitioners.

7. Learned Counsel appearing on behalf of the Petitioners contended that the Revisional Authority has acted illegally in allowing the revision

petitions by arriving at a conclusion that there has been violation of the provisions of Sub-sections (2) and (3) of Section 11 of the Act and Rule 26

of the 1960 Rules. Learned Counsel contended that the State Government had constituted an expert committee for the purpose of granting lease in

question and the said Committee was headed by Director, Mines and Geology. It had examined the matter in extenso and made recommendations

for the purpose of granting lease. Learned Counsel further contended that the Revisional Authority was not competent to re-appraise the entire

evidence and recommendation of the Committee and take afresh evidence but was only to ascertain that there was no gross violation of any

statutory provision of law. The contention was that the Revisional Authority had exceeded its jurisdiction in concluding that the order of the State

Government was non speaking order and without application of mind.

8. In answer to this submission, Learned Counsel appearing on behalf of the private Respondents, contended that the State Government had not

taken into consideration the matters specified in Sub-section (3) of Section 11 of the Act and had also not prepared a chart of comparison

between the applicants. The contention was that the grant of lease to the writ Petitioners by the State Government was in contravention of the

provisions of the Act and the Rules and, therefore, the order in this regard was void and has rightly been set aside by the Revisional Authority.

9. I have heard the Learned Counsel for the parties and carefully gone through the record of this case.

10. As the arguments raised by the Learned Counsel for the parties are based on

the scope and interpretation of the provisions of Section 11 of

the Act and Rule 26 of 1960 Rules, it would be expedient to take notice of the said provisions. For facility of reference, they are reproduced as

under:

11. Preferential right of certain persons-

(1) where a prospecting licence has been granted in respect of any land, the licensee shall have preferential right for obtaining a mining lease in

respect of that land over any other person;

Provided that the State Government is satisfied with the licensee-

(a) has undertaken prospecting operations to establish mineral resources in such land,

(b) has not committed any breach of the terms and conditions of the prospecting licence;

(c) is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of Sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of

the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case

may be, over an applicant whose application was received later.

Provided that where such applications are received on the same day, the State Government, after taking into consideration the matters specified in

sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in Sub-section (2) are the following-

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

(b) the financial resources of the applicant;

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

(d) notwithstanding any thing contained in Sub-section (2) but subject to the provisions of Sub-section (1), the State Government may for any

special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence for a mining lease to an

applicant whose application was received later in preference to an applicant

whose application was received earlier.

Rule 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;

(2) an application for the grant or renewal of a mining lease made under Rule 22 or Rule 22-A, as the case may be, shall not be refused by the

State Government only on the ground that Form-I or Form-J, as the case may be, is not complete in all material particulars, or is not accompanied

by the documents referred to in Sub-clause (d), (e), (f), (g) and (h) of Cl. (i) of Sub-rule (3) of Rule 22.

(3) where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State

Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any

case not later than 10th day from the date of receipt of said notice by the applicant.

11. Section 11 prescribes procedure and the matters to be taken into consideration for granting lease or licence and also preferential rights of

certain persons to obtain a mining lease or prospecting licence. Under Sub-section (1), where a prospecting licensee applies for grant of lease

even if his application is later in point of time, has to be preferred and given lease provided he has not committed any breach of the terms and

conditions of the prospecting licence and is otherwise a fit person to be granted a mining lease. Under Sub-section (2) where there are 2 or more

applicants for grant of lease or licence, one who has applied first in point of time, will have to be given preference. Under proviso to Sub-section

(2) where 2 or more applications for licence or lease are received on the same date, they will have to be considered with reference to the matters

specified in Sub-section (3) and the authority concerned may, in its discretion, grant lease to one of the applicants.

12. Rule 26 prescribes that the State Government, after giving an opportunity of being heard, and for reasons to be recorded in writing and

communicated to the applicant, may refuse to grant or renew a mining lease for

the whole or part of the area applied for.

13. A bare reading of the aforementioned provisions shows that the discretion of the State Government in granting a mining lease is not unfettered

or unrestricted but is limited by the purpose of the statute and must be exercised only on consideration of the matters specified therein. While

rejecting the application for grant of lease, it is mandatory on the part of the State Government to record reasons and communicate the same to the

applicant concerned.

14. The question as to whether an administrative authority should record reasons for its decision has come up for consideration before the

Supreme Court in a number of cases. Underlying the need for recording of reasons by an authority performing administrative functions, the

Supreme Court in *Travancore Rayon Ltd. Vs. Union of India (UOI)*, observed that the necessity to give sufficient reasons which disclose proper

appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non judicial authority

exercises judicial functions is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions,

the Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by

extraneous considerations of policy or expediency. The court insists upon disclosure of reasons in support of the order on two grounds: one, that

the party aggrieved in a proceeding before the High Court or the Supreme Court has the opportunity to demonstrate that the reasons which

persuaded the authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible

arbitrary action by the executive authority invested with the judicial power.

15. In *Black's Law Dictionary*, reason has been defined as a "faculty of the mind by which it distinguishes truth from falsehood, good from evil,

and which enables the possessor to deduce inferences from facts or from propositions.

16. In *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, , their Lordships of the Supreme Court opined that "Reasons are the links

between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject

matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions

reached." Likewise, in Uma Charan Vs. State of Madhya Pradesh and Another, the Supreme Court stated "Reasons being harbinger between the

mind of the maker of the order to the controversy in question and the decision or conclusion arrived at, it excludes the chances to reach arbitrary,

whimsical or capricious decision or conclusion. The reasons assure in built support to the conclusion and decision reached.

17. In The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another, Supreme Court held that rule

requiring reasons to be given in support of an order is, like principle of audi alter am partem, a basic principle of natural justice which must inform

every quasi judicial process and thus rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the

requirement of law.

18. In Bombay Oil Industries Pvt. Ltd. Vs. Union of India (UOI) and Others, the Supreme Court observed "faith of the people in Administrative

Tribunals can be sustained only if the Tribunals act fairly and dispose of the matters before them by well considered orders. The relevant materials

must be made available to the objectors because, without it, they cannot possibly meet the claims or contentions of the applicants.

19. In S.N. Mukherjee Vs. Union of India, , the Supreme Court while considering the question as to whether Administrative Authority should

record reasons for a decision observed as under:

The recording of reasons by an administrative authority serves a salutary purpose, namely, it excludes chances of arbitrariness and assures a

degree of fairness in the process of decision-making. The said purpose would apply equally to all decisions and its application cannot be confined

to decisions which are subject to appeal revision or judicial review. Therefore, the requirement that reasons be recorded should govern the

decision of an administrative authority exercising quasi-judicial functions irrespective of the fact whether the decision is subject to appeal, revision

or judicial review. It is however not required that the reasons should be as elaborate as in the decision of a Court of law. The extent and nature of

the reasons would depend on particular acts and circumstances. What is

necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy. The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge.

20. In *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, the Supreme Court held as under:

In recent times, judicial review of administrative action has become expansive and is becoming wider day by day. The traditional limitations have

been vanishing and the sphere of judicial scrutiny is being expanded. State activity too is becoming fast pervasive. As the State has descended into

the commercial field and giant public sector undertakings have grown up, the stake of the public exchequer is also large justifying larger social

audit, judicial control and review by opening of the public gaze; these necessitate recording of reasons for executive actions including cases of

rejection of highest offers. That very often involves long stakes and availability of reasons for action on the record assures credibility of reasons for

action, disciplines public conduct and improves the culture of accountability. Looking for reasons in support of such action provides an opportunity

for an objective review in appropriate cases both by the administrative superior and by the judicial process.

21. In *M.J. Sivani and Others Vs. State of Karnataka and Others*, the Supreme Court reiterated that when rules direct to record reasons, it is a

sine qua-non and condition precedent for valid order.

22. The law thus has been settled by the Supreme Court that, (sic) (i) where a statute requires an authority though acting administratively, to record

reasons, it is mandatory for the authority to pass a speaking order and in absence of reasons, the order would be rendered illegal; (ii) where a

vested right is adversely affected by an administrative order, or where civil consequences ensue, principles of natural justice apply even if the

statutory provisions do not make any express provision for the same.

23. In this case, the Revisional Authority has set aside the order rejecting the

application of the revision Petitioner for grant of a mining lease and the order of the State Government granting lease to the writ Petitioners on the ground that the Committee had only commented about the financial and technical strength of the writ Petitioners alone and adjudged them suitable for granting a mining lease. The committee had not commented upon the relative merits/demerits of other applicants vis-a-vis the successful applicants. The Revisional Authority opined that as per the provision of Sub-section (2) read with Sub-section (3) of Section 11, the State Government/Committee was required to prepare a comparative chart in regard to the matters specified therein and then come to the conclusion as to which applicant was most suitable but the State Government/Committee neither prepared any comparative chart nor examined the relative claim of other applicants vis-a-vis writ Petitioners. The Committee and the State Government also did not record reasons while rejecting applications for mining leases though a large number of applicants had applied for grant of the same.

24. In order to find whether the Revisional Authority had taken a correct view of the matter, the State counsel was asked to produce the record of the minutes of the proceedings of the Committee which interviewed the applicants on 7th and 8th of October, 1992 for grant of leases of mines of Village Jalalpur Sohna, Mohmadpur Ahir, Gangani, Kharak Sohna and Nurpur as also the minutes of the proceedings of the Committee which interviewed the applicants on 6.7.1992 for granting a mining lease in village Rozika Gujjar District Gurgaon. The relevant portion of the minutes of the proceedings recorded on 7th and 8th of October, 1992 for grant of mining lease of Village Jalalpur Sohna, Mohamadpur Ahir, Gangani, Kharak Sohna and Nurpur read as under:

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1. JALALPUR SOHNA

Out of the 32 applicants, 31 appeared before the Committee. One Shri Vijay Kumar S/o Shri Dev Kumar did not turn up inspite of intimation sent

by registered post. His candidature was also considered on the basis of the information supplied by him in the mining lease application. The

applicants also included M/s. Krishna Khanij Udyog who held the contract of ordinary sand of this quarry upto 31.3.1992 and had applied for

extension of the contract which was refused by the State Government on the ground that the company did not operate the mine in accordance with the provisions of Mines Act, 1952 and also did not abide by the terms and conditions of the contract agreement. This company staked their claim for the grant of mining lease on the basis that one of the partners Shri A.K. Pathak is a Geologist with substantial mining experience. Keeping in view their past performance, it was not considered appropriate to consider their case. Shri Lal Chand S/o Shri Lekh Ram informed the Committee that he had been taking mining contracts in Rajasthan for the last number of years and had gained substantial experience in open cast mining. He further informed the Committee that he had employed a Geologist for preparing a project at glance enclosed with his application. According to this brief report the geological reserves were assessed to the order of two million tonnes upto the depth of 25 metres. He intends to extract sand in semi-mechanised manner by making benches. Sample of silica sand got tested by him chemically and silica content is 92%. The applicant also informed that he has landed property in Rajasthan and in Haryana and can invest Rs. 10 lacs on his own resources and raise further funds from the financial institutions. The Committee recommends Shri Lal Chand for Jalalpur Sohna mine.

2. GANGANI

Out of 33 applicants, 32 appeared for the interview. Shri Vijay Kumar S/o Shri Dev Kumar was absent inspite of the notice sent to him by registered post which was not received back undelivered. However, his candidature was also considered on the basis of the information supplied by him in his mining lease application. In the opinion of the Committee M/s. S.A. Minerals is the most suitable for grant of mining lease for this mine. S.A. Minerals is a partnership concern comprising of Sarvshri Kailash Ahuja and Sanjeev Ahuja. Shri Kailash Ahuja who appeared before the Committee stated that mining and quarrying is their ancestral business. Their three generations are engaged in mining of stone and its crushing. The firm has eight stone crushers and 50 Dumpers for transportation of crushed materials. They own an industrial unit which manufacture stone crushing machinery. They are in a position to fully mechanise the mining with the help of poclains, dumpers and other heavy earth moving

machinery. The firm is financially very sound.

3. MOHMADPUR AHIR

Out of 28 applicants, 27 appeared for the interview. Smt. Bimla Devi did not attend the interview on the ground of her illness. However, her

candidature was also considered on the basis of the facts stated in her mining lease application. The candidature of M/s. Krishna Khanij Udoyg

who held the contract of this mine upto 31.3.1992 did not find favour of the Committee because of reason explained in the cases of Jalalpur

Sohna. The Committee is of the opinion that Shri Mani Ram S/o Shri Ranjit Ram deserve to be granted mining lease of this mine. He intends to

upgrade the silica sand by setting up a beneficiation plant and has sufficient financial resources to undertake the job.

4. KHARAK SOHNA

23 persons applied for Kharak Sohna. Except Smt. Shanti Devi all other applicants were present for the interview. Her candidature was also

considered on the basis of facts stated in her application. The choice of the Committee is in favour of Shri Ravinder Kumar S/o Shri Amir Chand.

Shri Ravinder Kumar informed the Committee that as he belong to Hansi so has been engaged in the quarrying of saltpeter for last number of years

and now wants to enter into the mining of silica/ordinary sand. He could convince the Committee about his financial resources and stated that he

can invest more than Rs. 20 lacs for undertaking the mining operations in a systematic manner and on scientific lines.

5. xxx xxx xxx

6. NURPUR

All the 12 applicants were present at the time of interview. Committee recommends M/s Juneja for this mine. Shri Juneja is an industrialist hailing

from Palwal and has an industrial units manufacturing Threshers. He intimated the Committee that now with the help of vast financial resources he

intends to diversify to the mining side. He has already employed a diploma holder in mining engineering to do the prospecting of the Nurpur area.

25. Proceedings of minutes recorded by the Committee on 6.7.1992 for grant of mining lease for silica sand in Village Rozka Gujjar:

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Shri Shivjeet Singh who appeared on behalf of applicant at Sr. No. 1 M/s. Shivjeet Ugarsain informed that he had been taking raising contracts in

past from the Government contractors of quarries like Chakarpur, Baliawas, Haiderpur Viran in District Gurgaon. His partner Shri Ugarsain has

been working as pit contractor in the mines of silica sand in village Manager, District Faridabad for the last ten years. Now they intend to take up a

venture independently. He further stated that they are basically agriculturists and own large tract of agriculture lands in Gurgaon and Hisar Districts.

They have sufficient financial resources to take up the mining operations in Rozka-Gujjar.

The Committee was impressed y(sic) the action plan as envisaged by M/s. Shivjeet Singh Ugarsain and explained by Shri Shivjeet Singh for

undertaking the mining operations. Shir Shivjeet Singh seemed to have ample knowledge of the area and its difficult terrain. Geology and difficulties

likely to be faced by an entrepreneur in undertaking the mining operations in the area in question.

The Committee is of the considered opinion that it would be worthwhile in responding confidence in such an entrepreneur and recommends that a

Letter of Intent for grant of mining lease over an area of 389 bighas and 16 biswas i.e. 97.43 hectares of land in favour of M/s. Shivjeet Singh

Ugarsain. They be advised to submit a mining plan of the area duly approved by Central Govt. at the earliest but not later than six months as

required under proviso of Rule 22(3) of Mineral Concession Rules, 1960 failing which their Letter of Intent be revoked.

26. Reading of the aforementioned minutes of the proceedings of the Committee has clearly revealed that the Committee neither made any

comparison nor prepared any chart for comparison with respect to the criterion laid down in Sub-section (3) of Section 11 of the Act. The record

has further revealed that neither the Committee nor the State Government had recorded the reasons for rejecting the applications of the applicants

who had applied in response to the notifications. The order of the State Government rejecting the applications was cryptic. The State Government

nowhere recorded that unsuccessful applicants were not persons fit for being granted a mining lease. Under Sub-section (2) and (3) of Section 11

of the Act and Rule 26 of 1960 Rules, it was mandatory for the State Government to consider the relative merits of the claims to the lease put

forward by all the applicants. The State Government or the Committee constituted for this purpose did nothing of the sort - It nowhere considered which of the applicants was to be preferred on account of its special knowledge or experience in mining operations, the relative financial resources and nature and quality of the technical staff employed by them - In these circumstances, I am of the considered view that the action of the State Government in granting lease to the writ Petitioners and order rejecting the applications of applicants was in contravention of the provisions of Sub-sections (2) and (3) of Section 11 of the Act and Rule 26 of 1960 Rules and, therefore, was void.

27. Section 19 of the Act provides that any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of the Act or rules or orders made thereunder shall be void and of no effect. Accordingly, order of the Revisional Authority in so far as it has set aside the action of the State Government in granting lease to the writ Petitioners and the order rejecting the applications of other applicants is correct. However, second part of order dated 28.11.1997 of the Revisional Authority impugned in CW Ps No. 762 of 1998, 1068 of 1998 and 3560 of 1998 whereby it has directed the State Government to consider and grant lease to the applicants who had preferred revision petition before it, cannot be sustained.

28. Learned Counsel appearing on behalf of the revision Petitioners, of course, has contended that under Rule 55 of 1960 Rules, it was within the jurisdiction of the Revisional Authority to confirm, modify or set aside an order of the State Government and pass such orders in relation thereto as it may deem just and proper and if the Revisional Authority, on the basis of material produced before it, after considering the respective merits of the revision Petitioners and the writ Petitioners, found revision Petitioners to be more meritorious and directed the State Government to consider and grant lease to them, the order of the Revisional Authority in this regard cannot be termed as illegal.

29. I however, do not find any merit in this contention of the Learned Counsel.

30. The material on the basis of which relative merits of the revision Petitioners and the writ Petitioners were considered by the Revisional Authority did not form part of the record of the State Government and was

produced only for the first time before it. The writ Petitioners who had applied for grant of lease had no opportunity to produce material/documents in rebuttal to the additional documents produced by the revision Petitioners before the Revisional Authority. The Revisional Authority also did not have the record of all the applicants who had applied for lease nor they were impleaded as party. The Revisional Authority thus was not in a position to adjudge the relative merits/demerits of the applicants and to conclude that the revision Petitioner was the most suitable candidate in terms of Section 11 of the Act. It also deserves to be mentioned that under Sub-section (3) of Section 10 of the Act, it is only the State Government who on receipt of the applications for grant of lease, is competent to grant or refuse to grant the licence or lease. Therefore, it was not appropriate on the part of the Revisional Authority to direct the State Government to consider and grant lease to the revision Petitioners, as in its opinion, they were the most suitable applicants. The order of the Revisional Authority to this extent being erroneous, is not sustainable.

31. Mr. M.L. Sarin, Senior Advocate and Mr. Arun Jain, Advocate, appearing on behalf of some of the writ Petitioners then contended that out of a large number of applicants, only very few made a grievance with regard to grant of lease to the writ Petitioners. Counsel contended that the persons who had filed revision petitions were all connected with or related to Som Parkash Sethi who had approximately 63 leases for minor and major minerals in District Gurgaon itself and 15 leases in District Faridabad in one name or the other in which he is directly or indirectly involved. Their contention was that Mr. Sethi was attempting to monopolise the entire extraction of minor minerals in the State of Haryana which attempt was curbed by the State Government in rejecting the applications which had been filed by Som Parkash Sethi or by other persons at his instance.

32. In answer to this submission, Learned Counsel appearing on behalf of the revision Petitioners contended that the allegations made in this behalf are totally unfounded. Counsel contended that neither any material in this regard was produced by the writ Petitioners before the State Government nor the order rejecting the applications indicated that the revision Petitioners were holding area in excess to the maximum area permissible under the Act.

33. Section 6 of the Act prescribes the maximum area for which a prospecting licence or mining lease may be granted by the State Government. It

provides that no person shall acquire in respect of any mineral or prescribed group of associated minerals (a) one or more prospecting licences

covering a total area of more than twenty-five square kilometers; or (b) one or more mining leases covering a total area of more than ten square

kilometres. It further provides that for the purpose of determining the total area, referred to in Sub-section (1) the area held under a prospecting

licence or mining lease by a person as a member of a Hindu undivided family or a partner of a firm, shall be deducted from the area referred to in

Sub-section (1) so that the sum total of the area held by such person, under a prospecting licence or mining lease whether as such member or

partner, or individually may not, in any case, exceed the total area specified in Sub-section (1), Explanation added to Section 19 of the Act

provides that where a person has acquired more than one prospecting licence or mining lease and the aggregate area covered by such licences or

lease, as the case may be, exceeds the maximum area permissible u/s 6, only that prospecting licence or mining lease the acquisition of which has

resulted in such maximum area being exceeded shall be deemed to be void.

34. There would have been some merit in the contention of Mr. M.L. Sarin, Senior Advocate if the application of the revision Petitioners for grant

of mining lease had been rejected on the ground that they were holding mining lease in excess of the area permissible under the Act. However, on

perusal of the record, I find that neither the application was dismissed on this ground nor the Committee or the State Government had recorded

any finding that the revision Petitioners were already having lease of area in excess to the maximum area prescribed under the Act. In absence of

any finding in this regard, the contention of Mr. Sarin is not acceptable.

35. Mr. Sarin next contended that the lease relating to village Rozika Gujjar District Gurgaon was granted to M/s. Shivjit Singh Ugarsain and in

pursuance thereof, lease deeds were executed in favour of M/s. Shivjit Singh Ugarsain. Subsequently, with the permission of the State

Government, lease was got transferred in favour of M/s. Arya Rose Minerals, Petitioner No. 2 in CWP No. 2791 of 1998 but the revision

Petitioners did not challenge the order transferring the lease by M/s. Shivjit

Singh Ugarsain in favour of M/s. Arya Roze Minerals and, therefore, the order of the Revisional Authority cancelling the lease in favour of M/s. Arya Rose Minerals, cannot be sustained.

36. This contention too is devoid of any merit.

37. Before the Revisional Authority, not only M/s. Shivjit Singh Ugarsain but also M/s. Arya Rose Minerals were parties and, therefore, both are

bound by the order passed by the Revisional Authority. More so, perusal of the record produced by the State Government in regard to transfer of

lease by M/s. Shivjit Singh Ugarsain in favour of M/s. Arya Rose Minerals gives an interesting reading. On 25.10.1995, Mr. Deepak Malik, P.A.

to the Industries Minister, Haryana rang up the State Mining Engineer to see the Minister regarding the case of transfer of lease in question. The

record has revealed that on 27.10.1995, while the Industries Minister was attending general grievances, one Mr. Mohinder Singh, General

Attorney of M/s. Shivjit Singh Ugarsain came out with the request that because of lack of time and expertise, he had twice approached the

department for transfer of lease to M/s. Arya Rose Minerals. On hearing Mr. Mohinder Singh, the Minister recorded the following note:

As the approach and appeal by the applicant is very pathetic and I am convinced that mining has specialised nature of job and this very issue was

referred to me twice, I feel convinced of the contents of the department and allow this transfer as a special case but department should ensure that

such provisions should be used bare minimum and in genuine cases only.

38. Rule 37 of 1960 Rules deals with the transfer of lease. It provides that if a lessee after he had been granted lease by the State Government,

desires to transfer his lease, then he can do so, subject to the conditions specified thereunder with the previous sanction of the State Government.

The order passed by the Industries Minister nowhere indicates that the Minister had any material before him in regard to the conditions specified in

Rule 37 of 1960 Rules, before transfer of lease could be allowed. Be that as it may, the lease itself being void, transferee is not clothed with better

rights than what the transferor had.

39. Learned Counsel appearing on behalf of the Petitioners next contended that in case this Court finds that the order of the Revisional Authority in

so far as it has set aside the action of the State Government granting lease to

the Petitioners is to be maintained, then the matter may be remanded to the Revisional Authority instead of State Government to consider the case of the revision Petitioners vis-a-vis writ Petitioners regarding grant of lease.

40. This contention too cannot be accepted for the reason that under Sub-section (3) of Section 10 of the Act, State Government alone is

competent to grant or refuse to grant licence or lease having regard to the provisions of the Act and the Rules made thereunder. Rule 22 of 1960

Rules also provides that in case of land in which mineral belongs to the Government, application for mining lease of such land has to be made to the

State Government concerned and then the State Government may grant lease in case the applicant fulfills the conditions laid down therein.

Secondly, leases in favour of the Petitioners which are in contravention of the provisions of the Act and the Rules being void, the matter can be

decided afresh only by the State Government. Thirdly, the other applicants who had applied for grant of mining lease in response to the

notifications, were not party before the Revisional Authority and are also not party in this Court. In these circumstances, the matter has to be

remitted to the State Government for deciding it afresh.

41. Mr. Sarin lastly contended that till such time the matter is decided by the State Government, the writ Petitioners may be allowed to continue to

operate the mines.

42. This contention too cannot be accepted.

43. The orders of the State Government granting leases being illegal and void, possession given to the Petitioners pursuant to the said orders was

also illegal and ineffectual. It is not in dispute that leases were granted to the writ Petitioners for 10 years in 1992 which period is going to expire in

another years's time. After the order of Revisional Authority setting aside their leases, the writ Petitioners are continuing in possession on the basis

of interim order granted by this Court. It is only in one case i.e. in CWP No. 1068 of 1998 that Stay was declined and it was ordered that none of

the parties shall work the mines in question. Petitioners have already reaped the benefits of void leases for 8/9 years and once the order granting

leases has been held void, Petitioners cease to have any right in the mines and thus cannot be permitted to retain the same.

44. In view of the facts and circumstances stated above, I am of the considered view that the State Government in this case had not acted fairly

and denied equal opportunity to all the applicants by passing non speaking orders and illegally granting lease to the writ Petitioners which were in

contravention of the provisions of the Act and the Rules made thereunder. Thus, Civil Writ Petitions No. 762, 1068, 2791, 3560 of 1998, 14725,

18112 of 1999 are disposed of with the following directions to the State Government to

(1) invite fresh applications for grant of mining lease by public notice and consider applications of all the applicants together;

(2) after receipt of applications, the State Government shall inform the applicants whose applications are not complete in all material particulars or

not accompanied by documents by notice under Rule 26 of 1960 Rules;

(3) afford opportunity of being heard to all the applicants before granting mining lease;

(4) grant lease to any of them on merits by determining their suitability, public interest and interest of the development of minerals or on the basis of

other relevant considerations.

(5) consider applications received in response to the public notice and decide by common order i.e. order of grant or rejection shall be made

simultaneously and record reasons in writing for granting lease or otherwise and communicate the order to all the applicants simultaneously.

(6) decide objections if any, filed by the applicants to the effect that any applicant is not eligible because he is holding lease for an area in excess to

the maximum area prescribed under the Act.

45. The State Government is further directed to complete the exercise of inviting fresh applications, considering and passing appropriate order of

granting lease in favour of appropriate person within a period of three months from today. Till the State Government decides to grant lease to an

appropriate person, no mining operation in regard to lease shall be permitted.

46. In CWP No. 8309 of 1999, Petitioners who are also writ Petitioners in CWP No. 14725 of 1999, challenge is to order dated 13.5.1999

whereby State Government had terminated the lease in respect of Kharak Sohna mine. Since the action of the State Government in granting leases

to the Petitioners has been declared void and the matter remitted to the State

Government for afresh decision, Civil Writ Petition No. 8309 of 1998 has been rendered infructuous and the same shall stand disposed of as such.

47. In CWP No. 18113 of 1999, Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner shall have no objection if its

case is also considered afresh for grant of lease at par with other applicants who had applied for grant of lease in response to the notifications in

question. Since the entire matter is being remitted to the State Government for deciding it afresh in accordance with law, Civil Writ Petition No.

18113 of 1999 has been rendered infructuous and is disposed of as such. Petitioners shall, however, be at liberty to apply afresh in pursuance of

the notice to be published by the State Government.

48. With the aforesaid directions, all the writ petitions stand disposed of. No costs.