(1994) 12 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No''s. 3616, 8067, 11427, 11551, 11911, 11912, 12302, 12653 to 12925, 13106, 13107, 13133 to 13137, 13161, 13402, 13514, 13551, 13574, 13764 to 13784, 13795, 14040, 14053, 14105, 14150, 14706, 15123 to 15129, 15362 to 15364, 16646, 16707, 16

P.P. Kalyanasundaram APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Banking Companies Act, 1949 — Section 34A
Constitution of India, 1950 — Article 13, 14, 19, 19(1), 19(1)(6)
Madras Prohibition Act, 1937 — Section 17C, 17D, 21, 54
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12, 13, 13(1)
Tamil Nadu Forest Act, 1882 — Section 16, 26
Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 19A, 37, 39, 8, 8(1)
Tamil Nadu Minor Minerals Concession (Amendment) Rules, 1994 — Rule 37, 8C

Citation : (1994) 12 MAD CK 0011

Hon'ble Judges : K.A. Swami, C.J;Somasundaram, J

Bench : Division Bench

Advocate : N.R. Chandran for M. Sekar and Shanmugavalli Sekar, for the Appellant; R. Krishnamoorthy, General assisted by P. Sathasivam, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Somasundaram, J.—These writ petitions are filed for the issue of a writ of certiorarified mandamus to quash G.O.Ms. No. 166 Industries

Dept. (MMC I) dated 16.6.1994 amending Rule 8 and deleting Rule 9 of the Tamil Nadu Minor Minerals Concession Rules, 1959 (hereinafter

referred to as the Rules) and to direct the Respondents to consider and dispose of the applications of the Petitioners for renewal of the leases in respect of their stone quarries or sand quarries in certain Government lands, applying the old Rule 9 which was in force on the date of submission

of the applications for the renewal of quarry leases.

2. Some of the Petitioners in this batch of Writ Petitions who held leases for quarrying minor minerals like rough stone, sand etc, in the land

belonging to the State Government and whose leases were about to expire, applied before the concerned District Collector for renewal of their

leases. In some cases, applications for renewal of the leases were made long prior to the date when G.O.Ms. No. 166 came into force, in and by

which Rule 9 providing for the renewal of the leases was deleted. Rule 9 was deleted by G.O.Ms. No. 166, all the pending applications for

renewal of quarry leases were rejected by the concerned District Collectors in view of the deletion of Rule 9. In the above circumstances, the

present batch of Writ Petitions are filed challenging G.O.Ms. No. 166, Industries Dept. (MMC I) dated 16.6.1994 on various grounds.

3. Entry 54 of List I of the Seventh Schedule to the Constitution of India reads as follows:

Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union declared by

Parliament by law to be expedient in the public interest.

Entry 23 of List II of the same schedule to the Constitution of India reads as follows:

Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the

Union.

The Parliament with reference to Entry 54 List I referred to above, enacted the Mines and Minerals (Regulation and Development) Act, 1957

(Central Act 67 of 1957), hereinafter referred to as the Act. Section 2 of the Act reads thus:

Declaration at to expediency of Union Control: It is hereby declared that it is expedient in the public interest that the Union should take under its

control the regulation of mines and the development of minerals the extent hereinafter provided.

Section 3 of the Act defines certain expression which include the expression ""minor minerals"" and Section 3(e) defines minor minerals as follows:

minor minerals"" means building stones, gravel ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral

which the Central Government may, by notification in the official gazette, declare to be a minor mineral.

Sections 4 and 12 of the Act deals with certain general restrictions on undertaking, prospecting and mining operations. Section 13(1) enables the

Central Government, by notification in the official gazette to make Rules for regulating the grant of prospecting licences and mining leases in respect

of minerals and for the purpose connected therewith. Section 14 says that the provisions of Sections 5 to 13 shall not apply to quarry leases,

mining leases or other mineral concessions in respect of minor minerals. Section 15 empowers the State Government to make Rules for regulating

the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purpose connected therewith. The sub-

clauses of Section 15(1-A) specify various matters in respect of which such Rules may be made including collection of rent and royalty, transfer of

lease, rehabilitation of flora destroyed by the quarrying or mining operations. Section 17-A of the Act deals with the power of reservation of any

area for the purpose of conservation, available to the Central Government. In exercise of the powers conferred by Section 15(1) of the Act, the

State Government has framed the Rules called Tamil Nadu Minor Minerals Concession Rules, 1959 hereinafter referred to as the Rules, Section 2

of the Rules deals with Government lands in which the minerals belong to the Government. Section 3 of the Rules deals with ryotwari lands in

which the minerals belong to the Government. Section 4 of the Rules deals with the lands in which minerals do not belong to Government.

4. The unamended Rule 8 occurring in Section 2 of the Rules dealt with the leases of quarries to private persons, labour co-operative societies

formed by Repatriates from Sri Lanka and other Labour Cooperative Societies and the said un-amended Rule 8 reads thus:

8. Lease of quarries to private persons, Labour Cooperative Societies formed by Repatriates from Sri Lanka and other labour co-operative

Societies: (1)(a) The Collector shall publish a notice in the District Gazette inviting applications for the lease of quarries. Such application shall

contain particulars about the lease amount:

Provided that Labour Co-operative Societies formed by Repatriates from Sri Lanka and other Labour Co-operative Societies who apply in

response to such notice need not quote any lease amount in their application.

Explanation: The expression ""Repatriate from Sri Lanka"" shall mean a person who has been certified by the High Commissioner of India in Sri

Lanka to be a person affected by the scheme of the Government of Sri Lanka for repatriation of Indian Nationals and who, therefore, has left or

has been displaced from his place of residence in Sri Lanka and who has been subsequently residing in India.

(b) If only one application for the lease of quarries is received in response to such notice, the Collector shall reject the application and publish

another such notice inviting applications for lease of quarries. If only one application is received even after the publication of second notice, the

Collector, may, if he is satisfied that the grant of lease to the applicant will be in the interest of mineral development, grant the lease to the applicant

for a period of three years and in such case the lease shall not be renewed;

(c) In cases where applications are received-

(i) from a Labour Co-operative Society formed by repatriates from Sri Lanka, other Labour Co-operative Societies, individual Repatriate from Sri

Lanka and Private Indian Citizens, preference shall be given to the Labour Co-operative Society formed by the Repatriates from Sri Lanka;

(ii) from more than one Labour Co-operative Societies formed by Repatriates from Sri Lanka or from more than one of the other Co-operative

Societies, as the case may be, the lease may be granted to such of the society in the respective category which is considered to be the most

deserving in the circumstances after taking into consideration the comparative economic backwardness, the nearness of the area of operation and

the labour force of the society;

(iii) from a Labour Co-operative Society formed by the persons other than Repatriates from Sri Lanka and a Repatriate from'' Sri Lanka,

preference shall be given to the former;

(iv) from a repatriate from Sri Lanka and an Indian citizen, preference shall be given to the former:

Provided that no Repatriate from Sri Lanka or a Labour Co-operative Society formed by Repatriates from Sri Lanka or any other Labour Co-operative Society shall be granted more than two quarry leases at a given point of time. No lease shall be granted for an area exceeding ten

hectares in extent. The period of lease in all such cases shall be only three years;

(d) In the case of lease granted under Clauses (b) and (c) the lessee shall submit to the Deputy Director or Assistant Director of Geology and

Mining, as the case may be, a monthly return showing the number of workers employed in quarrying, quantity of mineral quarried and transported

and the seigniorage fee paid. The monthly return shall be furnished so as to reach the Deputy Director (Geology and Mining), or Assistant Director

(Geology and Mining), as the case may be before the 5th day of the succeeding month. The lessee shall also furnish a copy of annual audited

accounts relating to the said quarry lease to the Deputy Director or Assistant Director of Geology and Mining, as the case may be.

(e) In the case of lease granted under Clauses (b) and (c) the lessee shall pay, besides ordinary assessment, seigniorage fee for all minor minerals

removed or consumed at the rates prescribed from time to time in Appendix II to these Rules.

(2)(a) In all other cases where more than one application for lease of quarries is received from private persons the privilege of quarrying shall be

put to public auction. The auction shall be conducted by the Tahsildar having jurisdiction over the area after giving due publicity to the auction in the

following namely:

(i) by notice published in the District Gazette;

(ii) by notice in the language of the District put up at the office of the Collector, Tahsildar and Deputy Tahsildar having jurisdiction over the area;

(iii) when the anticipated bid amount is expected to exceed ten thousand rupees by advertisement in one issue of a leading Tamil daily newspaper

circulating in the District and in the State.

(b) every notice and advertisement published under Clause (a) shall inter alia specify:

(i) the date and time of auction;

(ii) the place of auction;

(iii) the amount of earnest money to be deposited for participating in the auction;

(iv) the upset price, if any, when reauction is ordered under Clause (g) below.

(c) There shall at least be seven clear days between the date of publication of notice or the date of advertisement, whichever is later, and the date

of auction.

(d) the auction shall be subject to confirmation by the Collector.

(e)(i) The Collector shall ordinarily confirm the auction in favour of the highest bidder:

Provided that where the Collector is satisfied:

(a) that the highest bid amount is not reasonable in the circumstances of the case; or

(b) that the bid amount is lower than the upset price specified in Sub-clause (iv) of Clause (b); or

(c) that it will not be in the interest of mineral development to grant the lease to the highest bidder.

he shall pass orders refusing to confirm the auction, recording the reasons therefor in writing.

(ii) An order confirming the bid shall be deemed to be the acceptance of the bid and such an order of confirmation of the sale shall be passed after

the expiry of ten days from the date of auction.

(iii) Notwithstanding anything, in Sub-clause (i) when the minerals are to be worked out by or on behalf of any person who is not a citizen of India,

the lease shall not be confirmed except with the previous sanction of the State Government.

(f) Where the privilege of quarrying is put to auction, no seigniorage fee shall be collected in addition to the bid amount and area assessment.

(g) If any person offers within ten days from the date of auction to bid in reauction at a price which shall not be less than two times the highest bid

amount, the Collector shall direct the person concerned to deposit the amount offered by him within ten days from the date of receipt of the order

of the Collector. On the deposit of such amount, the Collector shall reject all the bids and order a reauction with the upset price of the amount

offered for the privilege of quarrying;

(3) In the case of lease of quarrying in any forest declared to be a reserved forest u/s 16 of the Tamil Nadu Forest Act, 1882 (Tama Nadu Act V

of 1882) or in any land at the disposal of the Government to respect of which Rules u/s 26 of the said Act have been made, the procedure referred to above shall be followed by the District Forest Officer concerned.

(4) The lessee shall deposit as security:

(i) Ten per cent of the lease amount or bid amount when leased out by public auction in case such lease amount or bid amount can be calculated

and specified subject to a minimum of Rupees Two Thousand; and

(ii) Two Thousand Rupees in other cases.

(5) The lease deed shall be in the form set out in Appendix I to these Rules.

5. The unamended Rule 9 deals with renewal of leases and the said Rule 9 runs as follows:

9. Renewal of lease: (1) Subject to the provisions, of Clauses (b) of Sub-rule (1) of Rule 8, the Collector may on application renew a lease for a

further period not exceeding the period for which the lease was originally granted, if he is satisfied that:

(i) such renewal is in the interest of mineral development; and

(ii) the lease amount is reasonable in the case of leases originally obtained through public auction.

(2) Every application for renewal shall be made to the Collector three months prior to the date of expiry of the lease:

Provided that in the case of lease for quarrying in any forest declared to be reserved u/s 16 of the Tamil Nadu Forest Act, 1882 (Tamil Nadu Act

V of 1882) or in any land at the disposal of the Government in respect of which Rules u/s 26 of the said Act have been made, the District Forest

Officer concerned shall exercise the power of the Collector under these Rules.

6. The circumstances leading to the issue of G.O.Ms. No. 166 amending certain Rules including Rule 8 and deleting Rule 9 have been stated in the

said G.O.Ms. No. 166 in the following terms:

In order to streamline the existing system by adopting a uniform procedure for granting quarry leases for minor minerals other than granite, etc.,

covered under Rules 8-A, 8-C and 19-A of the Tamil Nadu Minor Minerals Concession Rules, 1959 and to augment the revenue resources, the

Commissioner of Geology and Mining has tent proposals to the Government for amending the existing Rules in Tamil Nadu Minor Minerals

Concession Rules, 1959. It has been suggested that it is not necessary to consider granting of leases for minor minerals such as sand, stones, etc., to Sri Lanka repatriates or labour co-operative societies on preferential basis, since they are non genuine and only controlled by influential persons.

It is also considered that renewal of quarry leases may be dispensed with. The Government have decided to accept the proposal of the

Commissioner of Geology and Mining containing draft amendments to Tamil Nadu Minor Minerals Concession Rules, 1959 in order to grant

regular leases for minor minerals other than granites, etc, covered under Rules 8-A, 8-C and 19-A of the said Rules by the Collectors of the

Districts.

7. By the amendment introduced by G.O.Ms. No. 116, the old Rule 8 was substituted by the present Rule 8. The amended Rule 8 reads thus:

8. Leasing of lands for quarrying minor minerals other than the minerals covered under Rules 8-A and 8-C of these Rules - (1)(a) The District

Collector shall publish a notice in the District Gazette inviting tender applications for grant of lease of areas for quarrying minor minerals other than

the minerals covered under Rules 8-A and 8-C of these Rules.

(b) The District Collector shall give further publicity to invitation of tender applications -

(i) by advertisements in one issue of a Tamil daily newspaper having wide circulation in the district and in the State; and

(ii) by notice in the language of the district put up at the office of the District Collector, the Revenue Divisional Officer, the Tahsildar the Block

Development Officer/Panchayat Union Commissioner having jurisdiction over the area.

(c) Every notice and advertisement published under Clauses (a) and (b) shall inter alia specify-

(i) Survey number, extent, village and taluk of the area offered for lease and the name of the mineral allowed for quarrying in the area;

(ii) last date and time for receipt of tender applications;

(iii) address to which the applications shall be sent

(iv) amount of earnest money deposit;

(v) place, date and time of opening the tender applications.

(d) There shall be at least fifteen clear days between the date of publication of the notice in the District Gazette and the last date for receipt of the tender applications.

(2) (a) All applications made in response to any notice or advertisement, shall be in the Form prescribed in Appendix VI to these Rules and the

applications shall be directly sent to the addressee specified in the notice in a sealed cover superscribed as ""Tender Application for quarrying

lease-Item No. ...in the Notice/Advertisement, dated....."" The name and address of the applicant shall also be legibly written on the sealed cover.

(b) For each item of area specified in the District Gazette notification or in the newspaper advertisement separate tender application shall be made

and the District Collector or the officer authorized by the District Collector to receive the tender applications shall prepare and maintain a list of

applications received for each area:

(c) All applications shall reach the District Collector or the officer authorized by the District Collector within the specified time and date. Any

belated application is liable to be summarily rejected.

(d) Only those persons who made applications in the manner specified in this Rule and in the notice and advertisement issued for inviting

applications shall be included in the list of eligible applicant for each area notified for grant of lease and shall be allowed to be present at the place

of opening the tender applications.

(3) Every tender application made for grant of a quarrying lease shall be accompanied by-

(a) an application fee of one thousand and five hundred rupees which shall be remitted through a demand draft obtained from any Nationalised

Bank and it shall be drawn in favour of the District Collector concerned by designation only;

(b) twenty-five per cent of the tender amount offered in the application as earnest money deposit which shall be remitted through a demand draft

obtained from any Nationalised Bank and it shall be drawn in favour of the District Collector concerned by designation only;

(c) an affidavit showing particulars of areas mineral-wise in each district of the State, which the applicant or any person jointly with him-

(i) already holds under a quarrying lease or quarrying permission.

(ii) has already applied for, but not yet granted.

(iii) is being applied for simultaneously.

(d) a valid mining dues clearance certificate obtained from the Collector of the District where the quarrying or mining lease area is situated, in the

form prescribed in Appendix VIII to these Rules for having paid mining dues such as royalty, seigniorage fee, lease amount, dead rent, surface

rent, area assessment, local cess and local cess surcharge and the penalty amount payable under the Act or these Rules or under the lease deed or

agreement already executed or entered into by the applicant.

(e) an affidavit stating that the applicant has-

(i) filed up-to-date Income Tax Returns

(ii) paid the Income Tax assessed on him

(iii) paid the Income Tax on the basis of self-assessment, as provided in the Income Tax Act 1961 or any other later instructions of the Central

Government.

(4)(a) where the application is delivered personally, its receipt shall be acknowledged in the Form in Appendix IX to these Rules. Where an

application is sent by post, it shall be sent by registered post with acknowledgment card and its receipt shall also be acknowledged by the

addressee in the Form in Appendix IX to these Rules within three days from the date of receipt of it. The acknowledgment for receipt of

applications shall be signed only by the official by the District Collector in this behalf.

(b) If any application is made for an area when there is no invitation of applications under Clause (9) of Sub-rule (1) through notice by the District

Collector, it shall summarily be rejected as premature application. If any application is received after the due time or date fixed for receipt of

application, it shall be rejected by the District Collector as time-barred application. The rejection order passed on the belated application, with the

demand draft shall be despatched to the applicant within seven days from the date of receipt or the application, retaining the application and the

cover.

(5)(a) All applications other than the belated applications received in response to any notice inviting applications under this Rule shall be opened by

the District Collector or by the officer authorized by the District Collector in this behalf on the specified date and time. The applicants who are

eligible to be present shall be permitted to be present when the applications relating to the area applied for by them are opened, provided they

produce the office acknowledgment or the postal acknowledgment showing the receipt of their applications within the due date and time and

provided they sign in the attendance record kept with the officer authorized by the District Collector. In the absence of the applicant, one nominee

of an applicant may be permitted to be present when the applications are opened and to participate in the auction, if any, provided the nominee

produces a properly sworn affidavit of the applicant authorising the nominee to do so and signed before a Notary Public who shall attest the

signature of the applicant and his nominee.

(b) Failure to quote in the tender application specific amount which the applicant is willing to pay as a annual tender amount for the area or failure

to enclose the demand draft towards payment of application fee and earnest money deposit or failure to sign the application or failure to furnish the

affidavit specified in this Rule shall result in the rejection of the application by the District Collector or by the officer authorized by the District

Collector.

In the case of such disqualified applicants, the District Collector or the Officer authorized by the District Collector shall hand over the demand draft

only to the applicant after obtaining acknowledgment for receipt of the same if he is present at the place of opening the applications or send it by

registered post in due course if he is not present but should retain the application and the cover.

(c) The District Collector or the Officer authorized by the District Collector shall declare the total number of valid applications received for an area,

names of those applicants and the annual tender amount offered for the area by each of those applicants.

(d) Where the same highest tender amount has been quoted by two or more applicants, the District Collector or the officer authorized by the

District Collector shall call such applicants alone to make their further offers. After declaring the name of the highest bidder for an area, the demand

draft received from the applicants other than the highest tender offerer or bidder shall be-returned forthwith to the applicants present on obtaining acknowledgment for receipt of the same or send it by registered post in due course if they are not present.

(6)(a) Where only one tender application is received for an area, the District Collector may grant the lease in favour of the single applicant if in is

opinion the annual tender amount offered by the applicant is reasonable in the circumstances of the case and the grant of the lease to the applicant

will be in the interests of mineral development. If the District Collector is not satisfied in the above aspects, he may reject the application

communicating the reasons therefor in writing to the applicant and issue fresh notification in the District Gazette calling for retender applications for

the area concerned;

(b) Where two or more tender applications are received for an area, the District Collector shall, ordinarily, grant the lease in favour of the highest

tenderer or the highest bidder, as the case may be:

Provided that where the Collector is satisfied - (i) that the highest tender amount or bid amount fetched for an area is not reasonable in the

circumstances of the case; or

(ii) that it will not be in the interests of mineral development to grant the lease to the highest tenderer or highest bidder, shall pass orders refusing to

grant the lease in favour of such applicant communicating to him the reasons thereof in writing;

(c) The order of the District Collector granting the lease in favour of any applicant shall be communicated to him accompanied with a copy of the

draft lease deed as in the Form in Appendix I to these Rules and a map of the area and demarcated area granted on lease to him. On receipt of the

above order of the District Collector, the applicant shall produce the original challan for the remittance of the balance amounts indicated in the

order of the Collector, the draft lease deed and the map of the area with the signature of the applicant within the stipulated time along with the

required stamp papers for preparing the original lease deed and also deposit as security ten per cent of the annual lease amount or five thousand

rupees, whichever is greater.

(d) The District Collector is empowered to make additions or modifications or deletions to the extent necessary in the lease deed in the Form in

Appendix I to these Rules.

(e) The lease deed shall be executed by the applicant on the appointed day and time with a map of the demarcated leased out area appended to it.

(f) No lessee is entitled to raise any dispute with reference to the survey and demarcation of the area leased out to him after execution of the lease

deed.

(7) Where the District Collector has granted a quarrying lease to an applicant, if the applicant fails to produce the original chalan for remittance of

the amounts specified in the lease granting order or fails to produce the signed copy of the demarcated map of the area or fails to produce the

required stamp papers for preparing the lease deed or fails to execute the lease deed within the stipulated time, the District Collector may cancel

the order granting the lease to the defaulter and forfeit the application fee and all other amounts paid by him to the State Government. In the case of

an area for which there are two or more applicants, after cancellation of an order granting the quarrying lease to the defaulter the District Collector

may grant the quarrying lease in favour of the next below highest bidder or tenderer subject to the provisions of Sub-rule 6(b). If the next highest

bidder or tenderer is not communicating his acceptance of such an offer of the District Collector within ten days from the date of receipt of the

District Collector''s offer, the District Collector shall issue fresh notification in the District Gazette calling for re-tender applications for the area

concerned

8(a) The period of any quarry, lease granted under this Rule for quarrying stones shall be five years and the period of quarry lease for quarrying

sand and other minor minerals shall be three years subject to the following conditions:

(i) The date of commencement of the period of a quarrying lease granted under this Rule shall be the first day of the first financial year of the lease

period;

Provided that where the lease deed could not be executed before the 1st day of April in the first financial year of the lease period due to

administrative delay, the lessee is entitled for proportionate reduction in the annual lease amount in the first year of the lease period:

Provided further that in cases where re-tender applications have been called for thereby there is no full period of twelve months in the first financial year of the lease period, the tender amount or bid amount offered by an applicant shall be treated as the lease amount for the remaining months in

the first year of the lease period and it shall be proportionately increased to arrive at the annual lease amount for the purpose of fixing the lease

amounts of the subsequent years of the lease period:

Provided also that the lease amounts for the second and subsequent financial years of the lease period shall be fixed by enhancing the lease amount

of the previous lease year by twenty per cent or as prescribed by the State Government from time to time.

(ii) The lease shall expire in all cases on the 31st day of March in the last financial year of the lease period as specified in the lease deed and in no

case extension of lease period shall be ordered.

(9) No applicant shall commence any quarrying operation in any area without remitting the amounts required to be paid towards the lease and

without executing the lease deed. If any quarrying is done without complying with the above conditions it shall be treated as illicit quarrying.

(10)(a) No applicant shall be granted with more than two leases within the State at a given point of time and no area granted in one lease shall

exceed five hectares in extent in the case of stone quarries and ten hectares in the case of leases for other minor minerals:

Provided that the limitation of five hectares and ten hectares respectively prescribed above shall not be applicable in cases where such sub-

divisioning of area is considered not possible and the District Collector or the District Forest Officer as the case may be, shall record the reasons

therefor and inform the State Government before any notification inviting applications for the area is published hi the District Gazette as required

under Clause (a) of Sub-rule (1).

(b) All lessees shall pay the lease amount or dead rent whichever is greater. Besides the lease amount or dead rent, the lessees shall also pay area

assessment. The dead rent and area assessment shall be paid at the rate prescribed from time to time Appendix II to these Rules.

(11) No lease granted under this Rule shall be renewed.

(12) In the case of a lease for quarrying of any mineral specified in this Rule in any forest declared to be reserved u/s 16 of the Tamil Nadu Forest

Act, 1882 (Tamil Nadu Act V of 1882) or in any land at the disposal of the State

Government in respect of which Rules u/s 26 of the said Act

have been made, the District Forest Officer concerned shall exercise the powers and discharge the duties of the District Collector under this Rule;

Again, by the amendment introduced by G.O.Ms. No. 166, the old Rule 9 providing for the renewal of the leases has been deleted. The sailent

features of the amendments introduced to the Rules by G.O.Ms. No. 166 are the following:

1) Preferential clause in the Rules to grant leases to Sri Lanka Repatriates and all Labour Co-operative Societies has been deleted.

2) The period of lease for quarrying stones is statutorily fixed as five years and that of sand quarries as three years.

3) Renewal of quarry leases provided under Rule 9 is dispensed with.

4) Lease amount or dead rent, whichever is greater, is to be levied on leases granted.

5) Specific provisions have been made in the Rules for issue of transport permits and despatch slips for lorries engaged in transport of minerals

mined.

8. Mr. R. Thyagarajan, learned senior counsel appearing for the Petitioners in W.P. Nos. 12652 and 12653 of 1994 who led the arguments for

the Petitioners submitted that G.O.Ms. No. 166, which amends Rule 8 and deletes Rule 9 is invalid and is liable to be quashed on the following

grounds:

(a) that in view of the Act, the State Legislature and the State Government have been denuded of their powers to deal with the minor minerals and

therefore the executive power of State does not tenable the State Government to issue the impugned G.O. amending Rule 8 and deleting Rule 9 of

the Rules.

(b) that the impugned G.O., is ultra vires the Act and the General Rules made thereunder.

(c) that the amended Rule 8 substituting the tender system in the place of public auction provided under old Rule 8 for the purpose of granting

quarry leases is arbitrary and unreasonable.

(d) that the impugned G.O. is violative of the doctrine of ''Legitimate Expectation''.

(e) that the impugned G.O. has not become effective in view of Section 28 of the Act.

9. Mrs. Nalini Chidambaram, learned senior counsel appearing for the Petitioners in W.P. Nos. 15362 to 15364 of 1994 submitted that the

impugned G.O. is invalid and liable to be struck down on the following grounds:

(a) The impugned G.O. is ultra vires the Act,

(b) Rule 39 still contemplates renewal of leases, when the power to renew the leases is retained under Rule 39, there is no reason to delete Rule 9

which also provided for the renewal of the leases. Even if the deletion of Rule 9 is held valid, the Petitioner is entitled to have his application for

renewal considered under Rule 39.

(c) There is no provision in the amended Rules for abatement of pending applications and therefore, the applications for renewal of leases pending

before the Collectors as on 22.6.1994 when the impugned G.O. was issued, have to be considered and orders have to be passed applying the old

Rule 9.

(d) The deletion of old Rule 9 which was based on the policy of viability of a project is invalid, arbitrary and suffers from the vices of non-

application of mind.

10. Mr. K.R. Krishnan, Learned Counsel appearing for the Petitioners in W.P. Nos. 1142, 13574, 16979, 13551, 16979 of 1994 submitted that

even if the Petitioners applications for renewal of leases cannot be considered under Rule 9 which was deleted by the impugned G.O., the said

applications for renewal can be considered under Rule 39.

11. Mr. N.R. Chandran, learned senior counsel appearing for the Petitioners in W.P. Nos. 11551 and 12202/94 contended that the impugned

G.O. amending the Rules seeks to involve change of major policy and therefore, the amendments to the Rules introduced by the impugned G.O.

cannot be sustained as a subordinate legislation. The learned senior counsel further contended that the amendments to the Rules introduced by the

impugned G.O. are only prospective and cannot affect the pending application made prior to the impugned G.O.

12. Mr. R. Singaravelan, Learned Counsel appearing for the Petitioners in W.P. Nos. 13161 and 17980 of 1994 contended that the impugned

amendments to the Rules which came into force with effect from 22.6.94 are only prospective and they cannot affect the pending applications

which have to be dealt with according to the provisions contained in the old Rule 9. The Learned Counsel further contended that the renewal of

leases is inseparable and integral part of the lease granted to the Petitioners and therefore Rule 37 protects the pending applications for renewal of

the leases. In support of his contention, the Learned Counsel relied on the decisions reported in:

1) Venugopala Reddiar v. Krishnaswami Reddiar AIR 1943 S.C. 24

2) Chandrasingh Manibhai and Others Vs. Surjit Lal Ladhamal Chhabda and Others,

3) Hoosein Kasam Dada (India) Ltd. Vs. The State of Madhya Pradesh and Others,

4) Garikapatti Veeraya Vs. N. Subbiah Choudhury,

5) State of Bombay Vs. Supreme General Films Exchange Ltd.,

6) Manujendra Dutt Vs. Purendu Prosad Roy Chowdhury and Others,

7) Dewaji Vs. Ganpatlal,

8) State of Tamil Nadu Vs. Hind Stone and Others, .

9) A.A. Calton Vs. Director of Education and Another, ,

10) Motiram Ghelabhai (Dead) through Lr Maniram Motiram Vs. Jagan Nagar (Dead) through Lrs and Others, and

11) State of Madhya Pradesh and others Vs. Rameshwar Rathod, .

13. Mr. S. Venkateswaran, Learned Counsel appearing for the Petitioners in W.P. Nos. 13133 to 13137, 13402, 13764 to 13784 of 1994,

which are Labour Co-operative Societies submitted that the impugned G.O. amending Rule 8 and deleting the preferential clause in Rule 8 to grant

leases to Labour Co-operative Societies in illegal as being violative of Articles 19(1)(c) and 14 of the Constitution of India and that the deletion of

the renewal provision Rule 9 is arbitrary and unreasonable and therefore, the impugned G.O. is liable to be set aside.

14. Per contra, the learned Advocate General submitted that Section 15 of the Act empowers the State Government 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 and

that Section 15(1)(A) of the Act enumerates the various matters, in respect of which Rules can be made by the State Government and that in view

of the provisions contained in Section 15(1) and 15(1)(A) of the Act, the State Government has ample power to issue the impugned G.O.

amending Rule 8 and deleting Rule 9 of the Rules. The learned Advocate General further contended that the amended Rule 8 prescribing the new

procedure of tender system for the purpose of granting quarry lease is in no way unreasonable and it is perfectly valid. The learned Advocate

General again contended that an application for renewal of lease is in essence an application for the grant of a lease for a fresh period, that no one

has a vested right to the grant or renewal of lease and therefore the amendment introduced by the impugned G.O. to the Rules deleting Rule 9

cannot be challenged on the ground that it suffers from the vices of arbitrariness and non-application of mind. The contention of the learned

Advocate General is that once when Rule 9 is deleted by the impugned G.O. the question of granting relief in the pending applications praying for

renewal of leases does not arise and that applications for renewal of leases pending as On 22.6.1994 when the impugned G.O. came into force

have to be dealt with only according to the new Rules in force on the date of consideration of applications for the renewal of the leases. Dealing

with the withdrawal of concessions given to the Labour Co-operative Societies, the learned Advocate General submitted that it is open to the State

Government to treat the Labour Co-operative Society separately. However, if the State Government chooses to treat the Labour Co-operative

Societies equally with others, such Labour Cooperative Societies cannot make a complaint that the action of the State Government is violative of

either Article 14 or Article 19(1)(c) of the Constitution of India. Relying on the decision in Madras City Wine Merchants'' Association and Another

Vs. State of T.N. and Another, , the learned Advocate General contended that the doctrine of legitimate expectation cannot be invoked in cases

like the present one where there is a change in the Government policy in public interest by Rules or Legislation. The learned Advocate General

submitted that the deletion of preferential clause to grant leases in favour of Co-operative, Societies being result of change in policy by legislation,

the principle of non arbitrariness is also not invokable in the present case. Dealing with the contention of Mr. R. Thyagarajan, learned senior counsel based on Section 28 of the Act, the learned Advocate General submitted that as a matter of fact the amendment introduced to the Rules

by the impugned G.O. was placed on the table of the house on 7.11.1994 and therefore, it cannot be contended that the impugned G.O. has not

become effective in view of Section 28 of the Act.

15. In the light of rival contentions of the Learned Counsel for the Petitioners and the learned Advocate General, the following points arise for

consideration in this batch of writ petitions.

1. Whether the impugned G.O.Ms. No. 166 Industries Dept. (MMC I) dated 16.6.1994 issued by the State Government in exercise of the

powers conferred under Sub-sections (1) and (1A) of Section 15 of the Act, amending Rule 8 and deleting Rule 9 of the Rules is ultra vires the

Act and whether the State Government has the power to issue the said G.O. introducing various amendments to the Rules, amending Rule 8 and

deleting Rule 9?

2. Whether the amended Rule 8 introducing tender system in the place of public auction for the purpose of granting quarry lease is unreasonable

and arbitrary and is liable to be struck down.

3. Whether the impugned G.O. deleting the preferential clause in old Rule 8 to grant leases to the Labour Co-operative Societies is invalid on the

ground that it offends Articles 14 and 19(1)(c) of the Constitution of India?

4. Whether the amendment introduced by G.O.Ms. No. 166 deleting Rule 9 which provided for renewal of leases, is invalid on the ground of

arbitrariness and non-application of mind?

5. Even if the deletion of Rule 9 by the impugned G.O. is held valid, can the Petitioners as a matter of right apply for renewal of quarry leases

under Rule 39 and can the applications for renewal of leases pending on the date when Rule 9 was deleted, be dealt with and disposed of under

Rule 39?

6. Whether the Petitioners who submitted applications for renewal of leases under Rule 9 and which are pending on 22.6.1994 when the impugned

G.O. came into force, and entitled to have those applications for renewal disposed of by applying the old Rule 9 which was in force on the date of

submission of the applications for renewal or whether those applications have to be dealt with only according to the Rules in force on the date of

consideration of such applications for renewal of leases?

7. Whether the amendments introduced to the Rules by the impugned G.O.Ms. No. 166 involve a major policy decision and whether cannot be

done by subordinate legislation?

8. Whether the impugned G.O. amending Rule 9 and deleting Rule 9 is violative of the doctrine of legitimate expectation?

9. Whether the impugned G.O. has not become effective in view of Section 28 of the Act?

10. To what relief, if any, the Petitioners are entitled to in these writ petitions?

16. Point No. 1: The contention of Mr. R. Thyagarajan, learned senior counsel appearing for the Petitioners in W.P. Nos. 12652 and 12653 of

1994 is that the impugned G.O. is ultra vires the Act, that the State Government has no power to deal with minor minerals and that the impugned

G.O. issued by the State Government amending the Rules relating to minor minerals is invalid and liable to be quashed. There is no merit in the

above contention of the learned senior counsel. The Act was enacted by the Parliament under Entry 54 List I of the 7th Schedule of the

Constitution of India. The aforesaid Entry enables the Central Government to regulate mines and mineral development in public interest by making

such declaration and the Parliament, has, in fact, made such declaration by Section 2 of the MMRD Act. In respect of minor minerals, the

Parliament by the said MMRD Act has left the powers of regulating minor minerals to the State Governments u/s 15 of the MMRD Act. Different

State Governments have exercised such power u/s 15 of the MMRD Act and State of Tamil Nadu has enacted in 1959 the Mineral Concession

Rules. Section 15(1) of the Act gives power to the State Government to make Rules for regulating the grant of quarry leases, mining leases and

other mineral concessions in respect of minor minerals and for the purposes connected therewith. Section 15(1A) enumerates the matters in

respect of which the State Government can frame Rules in exercise of the power under Sections 15(1) and 15(1A) of the Act. In D.K. Trivedi &

Sons v. State of Gujarat AIR 1986 S.C. 1323, the Apex Court dealing with the nature of the Rule making power conferred upon the State

Government by Section 15(1) of the Act observed as follows:

Bearing this in mind, we now turn to examine the nature of the Rule making power conferred upon the State Governments by Section 15(1).

Although u/s 14, Section 13 is one of the sections which does not apply to minor minerals, the language of Section 13(1) is in pari materia with the

language of Section 15(1). Each of these provisions confers the power to make Rules for ""regulating"". The Shorter Oxford English Dictionary,

Third Edition, defines the word ""regulate"" as meaning ""to control, govern, or direct by rule or regulations; to subject to guidance or restrictions; to

adapt to circumstances or surroundings"". Thus, the power to regulate by Rules given by Sections 13(1) and 15(1) is a power to control, govern

and direct by Rules the grant of prospecting licences and mining leases in respect of minerals other than minor minerals and for purposes connected

therewith in the case of Section 13(1) and the grant of quarry leases, mining leases and other mineral concessions in respect of minor minerals and

for purposes connected therewith in the case of Section 15(1) and to subject such grant to restrictions and to adapt them to the circumstances of

the case and the surroundings with reference to which such power is exercised. It is pertinent to bear in mind that the power to regulate conferred

by Sections 13(1) and 15(1) is not only with respect to the grant of licences and leases mentioned in those Sub-sections but is also with respect to

purposes connected therewith"", that is, purposes connected with such grant.

17. On a careful examination of the amendments introduced to the Rules by the impugned G.O., made in exercise of the power under Sections

15(1) and 15(1A) of the Act, we are of the view that the said amendments are in no way inconsistent with any of the provisions of the Act. It must

be remembered that the amendments introduced by the impugned G.O. relate to Rule 8 and 9 which occur in S.II of the Rules which deal with the

Government lands in which minerals belong to the Government. As the name of the Rules itself indicates the Tamil Nadu Minor Mineral

Concession Rules, 1959, gives certain concessions and therefore, it is open to the State Government to decide to whom the mineral concessions

have to be granted and under what conditions or procedures by which such concessions should be granted. As pointed out by the Apex Court in

State of Tamil Nadu Vs. Hind Stone and Others, , the public interest which induced the Parliament to make the declaration contained in Section 2 of the Act has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals.

Parliament''s policy is clearly discernible from the provisions of the Act. It is the conservation and the prudent and discriminating exploitation of

minerals with a view to secure maximum benefit to the community. There are clear signposts to lead and get the subordinate legislating authority in

the matter of making of Rules. In view of the provisions contained in Sections 15(1) and 15(1A) of the Act and the observations of the Supreme

Court referred to above, it cannot be contended that the State Government which is the Rule-making authority u/s 15 has exceeded its power in

issuing the impugned G.O., amending Rule 8 by deleting the preferential clause in the said Rule to grant leases in favour of the Labour Cooperative

Societies, dispensing with the renewal of quarry leases and changing the mode of granting quarry leases from public auction to tender system. The

statutory Rules made by the State Government by the impugned G.O. in exercise of the powers u/s 15 of the Act though subordinate to the Act

has to be treated as part of the Act The Supreme Court in Hind Stone case 94 L.W. 89 (S.C) (S.N.) in para 11 has observed as follows:

A statutory Rule, while ever subordinate to the parent statute, is, otherwise, to be treated as part of the statute and as effective. Rules made under

the Statute;, must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if

contained in the Act and are to be judicially noticed for all purposes of construction or obligation"" The State of Uttar Pradesh and Others Vs. Babu

Ram Upadhya, : See also Maxwell; Interpretation of Statutes, 11th Edn., pp.49-50. So, Statutory Rules made pursuant to the power entrusted by

Parliament are law made by Parliament within the meaning of Article 302 of the Constitution. To hold otherwise would be to ignore the complex

demands made upon modern legislation which necessitate the plenary legislating body to discharge its legislative function by laying down broad

guidelines and standards, to lead and guide as it were, leaving it to the subordinate legislating body to fill up the details by making necessary Rules

and to amend the Rules from time to time to meet unforeseen and unpredictable situations, all within the frame work of the power entrusted to it by

the plenary legislating body.

In view of the principle laid down by the Apex Court in Hind Stone case 94 L.W. 89 (S.C.) (S.N.), we are of the view that it is wholly

unnecessary to refer to the various decisions referred to by Mr. R. Thyagarajan, learned Senior Counsel in support of his contention that the

impugned G.O. is intra vim the Act and that the State Government has no power to deal with the minor minerals, because the decisions relied on

by the learned Senior Counsel have no relevance to the issue that arises for consideration under Point No. 1 referred to above.

18. In view of the specific provision contained in Section 15 of the Act and principles laid down by the Apex Court in the decisions referred to

above we have no hesitation in rejecting the contention of the learned senior counsel appearing for the Petitioners that the amendments introduced

to the Rules by the impugned G.O. are ultra vires the Act, and that the State Government has no power to issue the impugned G.O. We are clearly

of the view that the State Government has ample power u/s 15 of the Act issue the impugned G.O. introducing the various amendments to the

Rules dealt with therein. Point No. 1 is answered accordingly.

19. Point No. 2: The learned senior counsel appearing for the Petitioners submitted that the amended Rule 8 introducing the tender system in the

place of public auction for the purpose of granting quarry lease of minerals other than granite is arbitrary and unreasonable and therefore, the

amended Rule 8 is liable to be struck down. However, we are unable to accept the above contention of the learned senior counsel for the

Petitioners. As already pointed out, Section 15 of the Act enables the State Government to make Rules to decide the persons by whom and the

manner in which the applications for quarry leases, mining leases or other mineral concessions may be made. Section 15(1-A)(d) of the Act

empowers the State Government to frame Rules specifying:

the term on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be

granted or renewed.

The old Rule 8(1) as it stood prior to the amendment provided that the Collector shall publish a notice in the District Gazette inviting applications

for the lease of quarries. The old Rule 8(2) says that in case where more than one application for leases of quarries is received from persons, the privilege of quarrying shall be put to public auction. The Government in order to simplify and streamline the procedures for granting quarry leases

other than granites and to help the persons who are really interested in getting the lease of stone or sand quarries, amended Rule 8 dispensing with

the public auction and introducing the tender system for the purpose of granting quarry lease of minor minerals like sand and rough stone. The

amended Rule 8(1) provides for leasing of lands for quarrying minor minerals other than the minerals covered under Rule 8(A) and 8(C) by inviting

tender applications. The amended Rule 8(5) says that all the applications other than the belated applications received in response to any notice

inviting applications under Rule 8(1) shall be opened by the District Collectors or by the officer authorized by the District Collector in this behalf on

the specified date and time. The applicants who are eligible to be present shall be permitted to be present when the applications relating to the area

applied for by them are opened. In the absence of applicant, one nominee of that applicant may be permitted to be present when the applications

are opened and to participate in the auction. Rule 8(5)(c) says that the District Collector or the officer authorized by him shall declare the total

number of valid applications received for an area, the names of those applicants and the actual tender amount offered for the area by each of those

applicants. Rule 8(5)(d) provides that where the same highest tender amount has been quoted by two or more applicants the District Collector or

the officer authorized by the District Collector shall call such applicants alone to make their further offers. After declaring the name of the highest

bidder for an area, the demand draft received from the applicants other than the highest tenderer or bidder shall be returned forthwith to the

applicants present or sent it by registered post in due course, if they are not present. Further Rule 8(6)(b) clearly provides that where two or more

tender applications are received for an area, the District Collector shall, ordinarily, grant the lease in favour of the highest tenderer or the highest

bidder as the case maybe.

20. The reasons for amending Rule 8 introducing the tender system for granting quarry leases in the place of public auction are stated in paras 8

and 9 of the counter affidavit filed by the Respondents in W.P. No. 11551/94 in the following terms:

The contention of the Petitioner in ground (b) of para 5 of the affidavit is untenable. Though the Petitioner has stated that dispensing of the method

of public auction is invalid and is contrary to the ruling of the Supreme Court he has not furnished any details about the same and in what way the

dispensation of public auction is invalid is also not explained by the Petitioner. In this respect it is pointed out that the tender system has been

introduced only with a view to get more revenue to the State and to avoid collusion among bidders which will result in reduction in the bid amount

and thus will be leading to loss of revenue to the State and to avoid intimidation of genuine bidders in the auction conducting places by muscle men

of the locality. As such, there is a reasonable nexus with the object of the said amendment. As such, the change in the system, i.e. public auction

system to be closed tender system is considered necessary and as the best suited method by the Government and hence this change cannot be

objected by the Petitioner.

The Petitioner''s statement in ground (c) of para 5 of the affidavit that the procedure inviting tenders and calling bidders who submit tenders for the

same amount for negotiations is not in public interest and it is likely to encourage the formation of syndicate, is totally unfounded and unsustainable.

The tenderers are at liberty to be present at the time of opening of tender applications so that they can very well see the number of applicants for

an area, the highest offer made for an area and if the same offer has been made by more than one person further offers can be made by such

highest offerers, etc. These are the best procedures evolved to make the scheme successful and to further the interests of the State. There is no

ground for formation of any syndicate in this method because it is the closed tender system giving liberty to any person to make his offer secretly

and there cannot be any intimidation of the applicants who is genuinely desiring to getting the lease. Only in the public auction system it has been

noticed that there are combination and collusion among the bidders for quoting low tease amounts thereby causing loss of revenue to the

Government.

In para 21 of the counter affidavit filed in W.P. No. 11551/94, it is further averred as follows:

In the recent years some people joined together and they are not allowing others to take part in the public auction and they will not bid higher

amount in collusion with the group. Those who are really interested in taking the quarry in auction are threatened by a set of people which

ultimately resulted in loss of revenue to Government. In the mentioned rules, tender system has been introduced and there is no chance for collusion

and there is every possibility to those, who are really interested in taking the lease or quarry by offering the maximum amount, they can afford to

quote and in view of the above facts, the rules issued in the G.O.Ms. No. 166, Industries, (MMC I) Department, dated 16.6.1994 is legal and in

the interest of the mineral development besides increase in revenue to the Government.

21. In view of the reasons given by the first Respondent in the counter affidavit filed in W.P. No. 11551/94 for introducing the tender system in the

place of public auction for granting quarry leases, we are of the view that the policy decision of the Government to replace the public auction

method by the tender system for the purpose of granting quarry lease cannot be considered as unreasonable or arbitrary. As pointed out by the

Apex Court in Premium Granites and Another Vs. State of Tamil Nadu and Others, the mineral concession rules have been framed by the State of

Tamil Nadu in exercise of power u/s 15(1) of the MMRD Act for development of minor minerals in the State ""in public interest"". The development

of minor minerals cannot and should not be confined to a set of principle or policy. With the advancement of technology and changes in the socio-

economic and political set up in the country and also changes in the economic and political scenario in other countries, there is bound to be

exigencies requiring re-appreciation of the policy of the development of minor minerals in the State. The Supreme Court in the above decision

further observed as follows:

It is not the domain of the Court to embark upon unchartered ocean of public policy in an exercise to consider as to whether a particular public

policy is wise or a better public policy can be evolved. Such exercise must be left to the discretion of the executive and legislative authorities as the

case may be. The Court is called upon to consider the validity of a public policy only when a challenge is made that such policy decision infringes

fundamental rights guaranteed by the Constitution of India or any other statutory right.

22. The Apex Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth

and Others, while holding that it is not for the Court to examine the merits and demerits of the policy laid down by the rule making body, observed

as follows:

It would be wholly wrong for the Court to substitute its own opinion for that of the legislature or its delegate as to what principle or policy would

best serve the objects and purposes of the Act and to sit in judgment over the wisdom and effectiveness or otherwise of the policy laid down by

the regulation making body and declare a regulation to be ultra vires merely on the ground that, fit the view of the Court, the impugned provisions

will not help to serve the object and purpose of the Act. So long as the body entrusted with the task of framing the rule or regulations acts within

the scope of the authority conferred on it, in the sensa that the rules or regulations made by it have a rational nexus with the object and purpose of

the Statute, the Court should not concern itself with the wisdom or efficaciousness of such rules or regulations. It is exclusively within the province

of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what

measures, substantive as well it procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects

and purposes of the Act. It is not for the Court to examine the merits or demerits of such a policy because its scrutiny has to be limited to the

question as to whether the impugned regulations fall within the scope of the regulation-making power conferred on the delegate by the a Statute.

In para 16, the Supreme Court further observed as follows:

The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a

wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and

improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down,

on the ground that it its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purpose of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters

covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from

any legal infirmity in the sense of its being wholly beyond the scope of the regulation making power or its being inconsistent with any of the

provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.

The Apex Court in the above decision further held that the constitutionality of the regulation has to be adjudged only by a three-fold test, namely

(1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the Statute on the delegate; (2) whether

the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parent enactment and lastly (3) whether they

infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution.

23. Further, as held by the Supreme Court in Indian Express Newspapers v. Union of India 1985 (1) SCC 641, a subordinate legislation cannot

be struck down on the ground that it has not taken into account the relevant circumstances which the Court considers relevant. A careful

examination of the amended Rule 8 shows that it does not suffer from the vices of unreasonableness or arbitrariness. No doubt, the Supreme Court

in State of Uttar Pradesh Vs. Shiv Charan Sharma and Others, has held that public interest is, better served if the right to extract minor minerals is

sold in public auction rather than on the application by a party. In para 4 of the said decision, the Apex Court observes thus:

Public auction with open participation and a reserved price guarantees public interest being fully sub-served. That is what High Court by the

judgment under appeal directed.

Further, it is seen from the counter affidavit filed in W.P. No. 11551/94 that there are number of difficulties in conducting public auctions for the

purpose of granting leases of quarries and that the combination and the collusions among the bidders resulted in loss of revenue to the Government.

We must also point out here that even in the tender system prescribed by the amended Rule 8 for granting quarry case, the right to quarry is not sold to a party on his application. A perusal of Rule 8(5)(c), 8(5)(d) and 8(6)(b) referred above clearly goes to show that even under the tender

system prescribed under Rule 8 all the persons who are interested in getting quarry lease can participate and submit their tender forms and only

person who offers highest price will get the lease to quarry minerals In Union of India and others Vs. Hindustan Development Corpn. and others, ,

the Apex Court has held that inviting tenders is one of the fair ways of awarding contracts. In these circumstances, we are of the view that the

impugned amendment to Rule 8 introducing tender system in the place of public auction system for granting quarry lease is just and valid and it is

not liable to be struck down on the ground of arbitrariness and unreasonableness. Point No. 2 is answered accordingly.

24. Point No. 3: The next attack on the impugned G.O. is with regard to the deletion of the preferential clause in old Rule 8 to grant leases to

Labour Co-operative Societies. Mr. S. Venkateswaran, Learned Counsel appearing for the Petitioners in W.P. Nos. 13133 to 13137, 13402,

13764 to 13784 of 1994 filed by the Labour Cooperative Societies contended that the impugned G.O. denying preference to the Co-operative

Societies is illegal and is violative of Articles 14 and 19(1)(c) of the Constitution. We are unable to agree with the above contention of Mr. S.

Venkateswaran. It is seen from the counter affidavit filed on behalf of the first Respondent in W.P. No. 13402/94 etc., that all the members of the

Labour Co-operative Societies are not quarry workers and that the activities of Labour Co-operative Societies are controlled by influential

persons and the benefits of the concession are passed on to selected persons and not to the actual quarry workers. As pointed out in the counter

affidavit in W.P. No. 13402/94 etc., obtaining of quarry lease cannot be considered as the only means to promote the economic interest of the

members of the Labour Co-operative Societies. In the bye-laws of almost all the Labour Co-operative Societies the object of formation of the

Societies are shown to be ""to promote the economic interest of labourer members of the society and to find available and profitable employment

for them by obtaining contracts from Government, Public bodies, private bodies or individuals and by executing these contracts through the

members and to encourage thrift, self-help and co-operation among the members and the society may also act as agent for the joint purchase of the domestic and other requirements of its members"". Therefore, it cannot be said that non-grant of quarry leases on preferential basis to the

Labour Co-operative. Societies would defeat the above objectives enshrined in the bye-laws and render them defunct as contended by the writ

Petitioners. Further, the Societies which have already enjoyed the preferential concessions till 22.6.1994 definitely would be in a position to

compete with others in the tender-cum-public auction system. Further, as per Section 15(1A)(a) of the Act, the State Government can make rules

to decide the persons by whom and the manner in which the applications for quarry leases, mining leases or other mineral concessions may be

made. The Labour Co-operative Societies can also make applications along with others as and when applications are invited by the District

Collectors by the notification issued in the District Gazette. In paras 3 and 4 of the counter affidavit filed on behalf of the first Respondent in W.P.

No. 13402/94 etc., the Government gives the following reasons for amending Rule 8 by deleting the preferential clause in favour of the Labour

Co-operative Societies:

3. I state that there are number of Labour Cooperative Societies in Tamil Nadu. Only few of them requiring quarry leases are functioning. There is

lot of competition among these Societies of different kinds in getting the quarry leases and the net result is rivalry between these Societies and

increase in litigation leading to non-operation of prominent quarries for considerable period. Besides, already there are heart burns among local

Labour Co-operative Societies formed by the members of the Scheduled Case in providing first preference to the Labour Co-operative Societies

formed by the repatriates from Sri Lanka. Further, I submit that the entire mineral revenue from minor minerals with reference to sand quarries and

ordinary stone quarries are being allocated to the local panchayats and Panchayat Unions concerned to augment their revenue resources for their

developmental works. Of late, because of the litigations relating to local cess and local cess surcharge on mineral revenue there is depletion of

revenue to these local bodies from mines and quarries. Therefore, Government considered it necessary to find out ways and means for augmenting

the financial resources of the local bodies. With this view in the background and to streamline the existing system by adopting uniform procedure for granting quarry teases for minor minerals, Government decided to delete the provisions of preferential grant of leases to Labour Co-operative

Societies and Sri Lanka repatriates and also to delete the provisions for renewal of leases so that there can be boosting up of revenue that is, the

tender amount/lease amount vide the new tender system introduced by the recently amended rules.

4. It is submitted that despite the earlier attempts, rearranging the order of priority among the Sri Lankan Repatriates and Labour Co-operative

Societies, there was no improvement in the mineral revenue but only led to series of litigations questioning the propriety of the, changes. The earlier

rules provided for collection of seigniorage fee in respect of leases granted to the Labour Co-operative Societies. But it is seen that there is no

improvement in the revenue receipt from those quarry leases and there is also some stay granted against the increase in seigniorage fee made in the

year 1992. The commissions and omissions by such Societies made the District Collectors, who are being the best judges of the local

circumstances, propose that the entire provisions for granting of quarry leases on preferential basis to all categories of person may be deleted from

the rules. The Government are also of the view that the Sri Lankan Repatriates and the Labour Co-operative Societies are not genuine but only

controlled by influential persons.

As a result of the amendments introduced to Rule 8 by the impugned G.O., deleting the preferential clause in favour of the Labour Co-operative

Societies, such Labour Co-operative Societies are not prevented from submitting the tenders for quarry leases and getting the same, by offering

proper price. It is already pointed out it is always open to the Labour Co-operative Societies to submit their tender forms as and when applications

are invited by the District Collectors by the notification in the District Gazette for grant of quarry leases and all that is done by the amendment to

Rule 8 is that the concession given to the Labour Co-operative Societies has been taken away. As rightly contended by the learned Advocate

General it is open to the State to treat the Labour Co-operative Societies separately giving a preferential treatment to them, in the matter of

granting of quarry leases. However, if the State Government takes a policy decision to treat the Labour Co-operative Societies equally with others, the Labour Co-operative Societies cannot make a complaint that such a policy of the State to treat Co-operative Societies equally with others is

violative of Article 14 of the Constitution of India. Where the State Government takes a policy decision to treat the Co-operative Societies equally

with others, as pointed out by the Supreme Court in Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs.

Paritosh Bhupeshkumar Sheth and Others, , this Court exercising jurisdiction under Article 226 of the Constitution cannot go into the merits and

demerits of such policy laid down by the rule making authority and strike down the rule on the ground that in the opinion of the Court, the policy of

the State Government is not a wise or prudent policy. There is also no merit in the other contention of the Learned Counsel for the Petitioners that

the amendment introduced to Rule 8 deleting the preferential clause in favour of Labour Co-operative Societies offends Article 19(1)(c) of the

Constitution. In All India Bank Employees'' Association Vs. National Industrial Tribunal and Others, , the constitutional validity of Section 34-A of

the Banking Companies Act was challenged on the ground that it contravened the fundamental right guaranteed to Trade Unions by Article 19(1)

(c) of the Constitution, as it prevented them from effectively exercising the concomitant right of effective collective bargaining in respect of wages,

bonus, etc., before Tribunals by shutting out important and relevant evidence. The Apex Court in the above decision while holding that Section 34-

A of the Banking Companies Act is constitutionally valid and did not offend either Article 19(1)(c) or Article 14 of the Constitution, held as

follows:

The point for discussion could be formulated thus:

When Sub-clause (c) of Clause (1) of Article 19 guarantees the right to form associations, is a guarantee also implied that the fulfilment of every

object of an association so formed is also a protected right, with the result that there is a constitutional guarantee that every association shall

effectively achieve the purpose for which it was formed without interference by law except on grounds relevant to the preservation of public order

or morality set out in Clause 4 of the Article 19? Putting aside for the moment the case of Labour Unions to which we shall refer later, if an

association were formed, let us say for carrying on a lawful business such as a joint stock company or a partnership, does the'' guarantee by Sub-

clause (c) of the freedom to form the association, carry with it a further guaranteed right to the company or the partnership to pursue its trade and

achieve its profit making object and that the only limitations which the law could impose on the activity of the association or in the way of regulating

its business activity would be those based on public order and morality under Clause (4) of Article 19? We are clearly of the opinion that this has

to be answered in the negative. An affirmative answer would be contradictory of the scheme underlying the text and the frame of the several

fundamental rights which are guaranteed by Part III and particularly by the scheme of the seven freedoms or groups of freedoms guaranteed by

Sub-clauses (a) to (g) of Clause (1) of Article 19. The acceptance of any such argument would mean that while in the case of an individual citizen

to whom a right to carry on a trade or business or pursue an occupation is guaranteed by Sub-clause (g) of Clause (1) of Article 19, the validity of

a law which imposes any restriction on this guaranteed right would have to be rested by the criteria laid down by Clause (6) of Article 19, if

however he associated with another and carried on the same activity-say as a partnership, or as a company etc., he obtains larger rights of a

different content and with different characteristics which include the right to have the validity of legislation restricting his activities tested by different

standards, viz., those laid down in Clause (4) of Article 19. This would itself be sufficient to demonstrate that the construction which the Learned

Counsel for the Appellant contends is incorrect, but this position is rendered clearer by the fact that Article 19--as contrasted with certain other

Articles like Articles 26, 29 and 30--grants rights to the citizen as such, and associations can lay claim to the fundamental rights guaranteed by that

Article solely on the basis of their being an aggregation of citizens, that is, in right of the citizens composing the body. As the stream can rise no

higher than the source, associations of citizens cannot lay claim to rights not open to citizens, or claim freedom from restrictions to which the

citizens composing it are subject.

(19). The resulting position may be illustrated thus: If an association were formed for the purpose of carrying on business, the right to form it would

be guaranteed by Sub-clause (c) of Clause (1) of Article 19 subject to any law restricting that right conforming to Clause (4) of Article 19. As

regards its business activities, however and the achievement of the objects for which it was brought into existence, its rights would be those

guaranteed by Sub-clause (g) of Clause (4) of Article 19 subject to any relevant law on the matter conforming to Clause (6) of Article 19; while

the property which the association acquires or possesses would be protected by Sub-clause (f) of Clause (1) of Article 19 subject to legislation

within the limit laid down by Clause (5) of Article 19.

In para 21 of its judgment, the Supreme Court has further held as follows:

There is no doubt in the context of the principles underlying the Constitution and the manner in which its Part III has been framed the guarantees

embodied in it, are to be interpreted in a liberal way so as to sub-serve the purpose for which the Constitution makers intended them and not in

any pedantic or narrow sense, but this however does not imply that the Court is at liberty to give an unnatural and artificial meaning to the

expressions used based on ideological considerations. Besides it may be pointed out that both under the Trade Unions Act as well as under the

Industrial Disputes Act the expression ''union'' signifies not merely a union of workers but includes also unions of employers. If the fulfilment of

every object for which a union of workmen was formed were held to be a guaranteed right, it would logically follow that a similar content ought to

be given to the same freedom when applied to a union of employers which would result in an absurdity. We are pointing this out not as any

conclusive answer, but to indicate that the theory of Learned Counsel that a right to form unions guaranteed by Sub-clause (c) of Clause (1) of

Article 19 carries with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that

any legislation not falling within Clause (4) of Article 19 which might in any way hamper the fulfilment of those, objects, should be declared

unconstitutional and void under Article 13 of the Constitution, is not a proposition which could be accepted as correct.

It is also useful to refer to the following observations of the Apex Court in para 28 of the said judgment:

We have, therefore, reached the conclusion that the right guaranteed by Sub-clause (c) of Clause (1) of Article 19 does not carry with it a concomitant right that the unions formed for protecting the interests of labour shall achieve the purpose for which they were brought into existence,

such that any interference to such achievement by the law of the land would be unconstitutional unless the same could be justified as in the interests

of public order or morality. In our opinion, the right guaranteed under Sub-clause (c) of Clause (1) of Article 19 extends to the formation of an

association and in so far as the activities of the association are concerned or as regards the steps which the union might take to achieve the purpose

of its creation, they are subject to such laws as might be framed and that the validity of such laws is not to be tested by reference to the criteria to

be found in Clause (4) of Article 19 of the Constitution.

Thus, as pointed out by the Apex Court in the decision referred to above, the right to form association guaranteed under Article 19(1)(c) does not

carry with it a fundamental right in the fulfilment of the association to every object for which it is formed. The ratio of the above decision is directly

applicable to the facts of the present case. As already pointed out what is given to the Labour Cooperative Societies under the old Rule 8 is a

preferential treatment or concession in the matter of grant of quarry leases. When the State Government has the power to give a concession or

preferential treatment to Labour Co-operative Societies, it equally has the power to withdraw the preferential treatment or concession given to the

Labour Co-operative Societies, if the facts and circumstances warrant such a withdrawal of the concession. In the counter affidavit filed on behalf

of the first Respondent in W.P. Nos. 13402/94 etc., the first Respondent has given valid reasons are given for deleting the clause in old Rule 8

giving a preferential treatment to Labour Co-operative Societies in the matter of grant of quarry leases. In these circumstances, we have no

hesitation in rejecting the contentions of Mr. S. Venkateswaran that the impugned G.O., deleting the preferential clause to grant quarry leases in

favour of Labour Co-operative Societies is invalid as it offends Articles 14 and 19(1)(c) of the Constitution Point No. 3 is answered accordingly.

25. Point No. 4: The main contention of Mrs. Nalini Chidambaram, learned senior counsel appearing for the Petitioners in W.P. Nos. 15362 to

15364 of 1994 is that the old Rule 9 was based on the policy of viability of a project and the deletion of the said Rule by the impugned G.O., is invalid, arbitrary and suffers from the vices of non-application of mind. The further contentions of the learned senior counsel is that Rule 39 which

empower the State Government to grant or renew quarry leases in special cases, still contemplates renewal of lease and when the State

Government has a special power to renew the lease under Rule 39, there is no reason to delete Rule 9 by the impugned amendment which

provides for the renewal of leases under normal circumstances. We are unable to accept the above contention of the learned senior counsel. As

pointed out by the Supreme Court in Hind Stone case an application for renewal of lease is in essence of an application for grant of lease for a

fresh period and that no one has a vested right to the grant of renewal of lease. It must be pointed out that even under the old Rule 9, it is not

obligatory on the part of the Collector to grant renewal of lease and that there is also no existing contract to the effect that leases already granted

shall be renewed. As per the terms of the lease deed executed by the Petitioners, they are not entitled for any renewal of leases. Though under old

Rule 9, the Petitioners had a right to make an application for renewal of lease they cannot claim that they are entitled for the renewal automatically.

Further no promise was made or could be deemed to have been made to them at the time of granting of the original lease that there will be no

alteration of the rules or regulations regarding these leases or renewal of the leases. The main thrust of the amendment introduced by G.O.Ms. No.

166 is to streamline and simplify the procedure and to provide avenues for increasing the revenue to the State through the lease of quarries of

minor minerals. As already pointed out, the underground mineral belongs to the State Government and the land containing the stone quarries also,

belongs to the Government and under the Rules certain concessions are given when such concessions are given, it is open to the Government to

decide to whom these minerals concessions can be granted and subject to what conditions, such concessions can be granted. The other argument

of the learned senior counsel for the Petitioners based on the viability of the project has no merit because the amendment introduced to Rule 9

related only to lease of ordinary sand and stone quarries and not applicable to export, worthy granites and in such cases of stone and sand

quarries, the question of any big project being involved or the question of the viability of the project does not arise. The Government has given valid reason for deleting Rule 9 in para 16 of the counter affidavit filed in W.P. No. 11551/94 and the relevant portion of para 16 reads thus:

The provisions of Rule 9 have been deleted by the impugned amendments since the Government felt it necessary to do so since long term leases

are being granted for three years in the case of sand quarries and five years in the case of stone quarries instead of the yearly public auction system

which prevailed previously. Hence, there is no necessity for renewal of such long term leases and if leases are granted through tender system alone

there can be better revenue earning to the State through the quarry leases granted by adopting tender system. Rule 39 is a rule vesting special

powers on the State Government and in cases where it is considered necessary the State Government may direct the grant of renewal of a lease

besides the other special powers. In no way the deletion of the provisions of Rule 9 can be treated as inconsistent to the provisions of Rule 39.

There is also no merit in the contention of the Learned Counsel for the Petitioners that the deletion of Rule 9 denying the right of renewal of leases

is invalid on the ground of violation of Article 19(1)(6) of the Constitution and that it imposes an unreasonable restriction on the freedom of an

individual to carry on a trade. Again, when the Government takes a policy decision not to grant renewal of leases, the correctness or otherwise of

the policy decision of the rule making authority is beyond the scope of enquiry of this Court while considering the validity of the amendments

introduced by the impugned G.O. deleting Rule 9.

26. According to Section 15(1A) of the Act, the State Government may make rules relating to the terms on which and conditions subject to which

and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed. From the above provision, it is

clear that it is not obligatory on the part of the Government to grant lease or to renew a lease already granted. Renewal of lease even under old

Rule 9 does not follow as a matter of course because the renewal is also required to be in the interest of mineral development and the lease amount

also has to be reasonable in the case of leases originally obtained through public auction. In Hind Stone case, the Apex Court while dealing with

the question whether the renewal of quarry lease is obtained automatically, held as follows:

The next question for consideration is whether Rule 8-C is attracted when applications for renewal of leases are dealt with. The argument was that

Rule 9 itself laid down the criteria for grant of renewal of leases and therefore Rule 8-C should be confined, in its application to grant of leases in

the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically for the

mere asking. The applicant for the renewal has, particularly to satisfy the Government that the renewal is hi the interests of mineral development

and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is

applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable

in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the

mining of minor minerals it is decided to stop grant of leases in the private sector in the interests of conservation of the particular mineral resource,

attainment of the object sought will be frustrated if renewal is to be granted to private entrepreneurs without regard to the changed outlook. In fact,

some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in

favour of such persons would make the making of Rule 8-C a mere exercise in futility. It must be remembered that an application for the renewal

of a lease is in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8-C is attracted in

considering applications for renewal of leases also.

27. The Apex Court in Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, , in para 59 of the judgment has

approved the decision of this Court that the bar licence granted under the Tamil Nadu Liquor (Vending in Bar) Rules, 1992 valid for one year only

and the renewal thereof is not automatic. The contention of Mr. N.R. Chandran, learned senior counsel that there is non-obstante clause in Rule 8-

C of the Rules with which the Apex Court is concerned in Hind Stone case and that makes the difference and therefore, the ratio of Hind Stone

case cannot be applied to the facts of present case. We do not agree with the above contention. The various decisions relied on by Mr. R.

Singaravelan, Learned Counsel for the Petitioners in W.P. Nos. 13161 & 17980/94 deal with the right of appeal available to a party which is a

vested right and therefore the decision relied on by the Learned Counsel have no relevance to the issue involved in the present batch of cases viz.,

the right to have renewal of a lease which, as held by the Supreme Court in Hind Stone case, is not a vested right and therefore, we are not

referring to the various decisions relied on by Mr. R. Singaravelan, in detail.

28. For the reasons stated above, we have no hesitation in rejecting the contention of the Learned Counsel for the Petitioners that the amendments

introduced by the impugned G.O.Ms. No. 166, deleting Rule 9 is invalid on the ground of arbitrariness and non-application of mind. Point No. 4 is

answered accordingly.

29. Point No. 5: The contention of Mrs. Nalini Chidambaram is that Rule 39 confers powers on the State Government to grant or renew quarry

leases in special cases and that when the power to renew leases is retained under Rule 39 there is no reason to delete Rule 9 which provides for

renewal of leases under normal circumstances. The learned senior counsel further contended that even assuming that the amendment introduced to

the Rules by the impugned G.O. deleting Rule 9 is valid, the applications submitted by the Petitioners for renewal under the deleted Rule 9 which

were pending before the Collectors on the date when the impugned1 G.O. came into force with effect from 22.6.1994, the pending applications

can be considered and disposed of by the Government under Rule 39. We are unable to accept the above contention of the learned senior

Counsel appearing for the Petitioner. Rule 39 deals with the powers of the State Government to grant or renew quarry leases or permission etc., in

special cases and the said Rule runs as follows:

Notwithstanding anything contained in these rules, the State Government, if in any case, are of the opinion that in the interest of mineral

development and in the public interest, it is necessary to do so, they may, by order and for reasons to be recorded-

(a) grant or renew a lease or permission, to quarry any mineral; or

(b) allow the working of any quarry for quarrying, any mineral, on terms and conditions different from those laid down in these rules.

Rule 39 is a special provision for relaxation or exemption in appropriate cases without changing the general policy as a whole as contained in the

other provisions of the Rules. The Apex Court in Premium Granites and Another Vs. State of Tamil Nadu and Others, , while upholding the

validity of Rule 39, observed as follows:

If the State Government has an authority to follow a particular policy in the matter of quarrying of granite and it can change the provisions in the

Mineral Concession Rules from time to time either by incorporating particular rule or amending the same according to its perception of the

exigencies, it will not be correct to hold that in each and every occasion when such perception requires a change in the matter of policy of

quarrying a minor mineral in the State, particular provision of the Mineral Concession Rules is got to be amended. On the contrary, if a suitable

provision empowering exemption or relaxation of other provisions in the Mineral Concession Rules is made by confining its exercise in an objective

manner consistent with the MMR Act and in furtherance of the cause of mineral development and in public interest, by giving proper guidelines,

such provision containing relaxation or exemption cannot be held to be unjustified or untenable on the score of violating the other provisions of the

Mineral Concession Rules.

Further as pointed out by the Supreme Court in the Premium Granite case, it is for the State Government to grant lease under Rule 39 if it is of the

opinion that such a lease is necessary in the interest of mineral development and in public interest. Rule 39 is an exception to the Rules governing

the grant of mineral lease. While exercising the power under Rule 39 any of the conditions laid down in the other rules will not become applicable.

Therefore, it is in exceptional cases when the State Government considers it necessary in the interest of mineral development and in public interest

it can grant. Even in the cases that were concerned in the aforesaid Premium Granites and Another Vs. State of Tamil Nadu and Others, grants

were made for the purpose of development or minerals and in public interest. The Supreme Court also held on going into the merits of the case that

the reasons given by the State Government for exercising the power under Rule 39, viz., for the purpose of scientific development of the minerals

and earning foreign exchange, were sufficient to justify the exercise of the power. Accordingly, it upheld the order passed by the State Government granting leases, while considering the validity of Rule 39.

30. Dealing with the nature of the power conferred on the State Government by Rule 39, this bench by the judgment in W.A. Nos. 1283 &

1339/94 dated 11.11.1994 has pointed out that the Tamil Nadu Minor Mineral Concession Rules, 1959 provide for regular granting of mining

leases in respect of reserved and non-reserved minor minerals and that Rule 39 is an exception to the other Rules providing for grant of mining

leases. In the above judgment we have further held as follows:

Therefore, it is clear that if it has to meet an exceptional situation when the Government decides to adopt a particular policy, deviating from the

policy contained in the main rules, in the interest of mineral development and in public interest, it can invoke Rule 39 of the Rules and grant mining

leases without changing the provisions contained in the other rules. Thus, Rule 39 gives power to the State Government to grant mining leases in

furtherance of the cause of mineral development and in public interest, but it does not confer any right on the persons to seek mining lease under

Rule 39 of the Rules. The decision of the State Government, granting a mining lease under Rule 39 of the Rules, would be open to judicial review

as the discretion has got to be exercised objectively and in furtherance of the cause of mineral development and in public interest.

If it is held that Rule 39 gives a right to an applicant to seek grant of a mining lease, it would defeat the very object of the rule of reservation for

State exploitation and also the object of Rule 39, as explained by the Supreme Court in Premium Granites and Another Vs. State of Tamil Nadu

and Others, . If it is held that the applications are to be entertained regularly as is done under the other Rules, the very object of Rule 39 would be

lost. It is one thing to say that one can apply under Rule 39 of the Rules and it is quite another thing to say that the applicant has a right to have

such application considered under Rule 39 of the Rules. As the discretion has to be exercised in furtherance of the cause of mineral development

and in public interest, it will be open to the State Government, if those two interests are to be served, to consider the application, but it cannot be

held that as a matter of course, an applicant will have a right to have his application considered.

Further, the power under Rule 39 can be exercised only by the State Government whereas even according to the Petitioners, their application for

renewal of leases for sand and stone quarrying are pending before the District Collectors. Again, the discretion under Rule 39 has to be exercised

in furtherance of mineral development and in public interest. That being so, the Petitioners as a matter of course are not entitled to apply for

renewal of lease under Rule 39 after deletion of Rule 9 by the amendment introduced by the impugned G.O. Similarly, the Petitioners are also not

entitled to have their applications for renewal of quarry leases submitted before the Collectors under old Rule 9 and pending on 22.6.94 when the

old Rule 9 was deleted, considered and disposed of by the Collector under Rule 39. Point No. 5 is answered accordingly.

31. Point No. 6: Mrs. Nalini Chidambaram, learned senior counsel appearing for the Petitioners in W.P. Nos. 15362 to 15364/94 submitted that

there is no provision in the amended rules for abatement of pending applications and therefore the pending applications for renewal of quarry leases

have to be considered and orders have to be passed applying the old Rule 9. The contention of the learned senior counsel is that the Rules are only

prospective and cannot affect the pending applications made prior to the impugned G.O. The contention of Mr. R. Singaravelan, Learned Counsel

for the Petitioners in W.P. Nos. 13161 & 17980/94 is that the renewal is an inseparable and integral part of the leases already granted, and hence

Rule 37 of the amended rules can be invoked to protect the pending applications for renewal. There is no merit in the above contentions of the

Learned Counsel for the Petitioners. By the impugned G.O.116, Rule 9 providing for renewal of leases has been deleted with effect from

22.6.1994. As already pointed out, the Supreme Court in Hind Stone case, has held that no one has a vested right to the grant or renewal of

quarry lease and no one can claim a vested right to have an application for grant of renewal of lease dealt with in a particular manner by applying

particular provisions and in the absence of any vested right in any one, an application for renewal has to be dealt with according to the rules in

force on the date of the disposal of the applications.

32. In Hind Stone case, applications for renewal of leases were filed when Rule 8-C was not in force. The validity of Rule 8-C, which came to be

introduced enabling the State Government to reserve the mineral for exploitation by the Corporation came to be challenged. The Supreme Court

upheld the validity of Rule 8-C. In that case, a contention was also advanced that renewal applications were not governed by Rule 8-C of the new

Rules because they were filed before the new Rules came into force. While considering this contention, the Supreme Court observed thus:

The next question for consideration is whether Rule 8-C is attracted when applications for renewal of leases are dealt with. The argument was that

Rule 9 itself laid down the criteria for grant of renewal of leases and, therefore, Rule 8-C should be confined, in its application, to grant of leases in

the first instance. We are unable to see the force of the submission. Rule 9 makes it dear that a renewal is not to be obtained automatically, for the

mere asking. The applicant for the renewal has, particularly, to satisfy tile Government that the renewal is in the interests of mineral development

and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is

applicable at the time of the grant of tease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable

in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the

mining of minor minerals it to decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resource,

attainment of the object sought will be frustrated if renewal is to be granted to private entrepreneurs without regard to the changed outlook. In fact,

some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in

favour of such persons would make the making of Rule 8-C a mere exercise in futility. It must be remembered that an application for the renewal

of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8-C is attracted in

considering applications for renewal of leases also.

Thus, the Apex Court, held that an application for renewal of the lease is in essence an application for the grant of a lease for a fresh period, and

therefore the new Rule 8-C is attracted in considering applications for renewal of lease also. It was also pointed out that there was no right vested

in the applicants to have the application disposed of on the basis of the Rules that were in force at the time of making the application for renewal.

The relevant portion of the judgment in this regard is as follows:

Another submission of the Learned Counsel in connection with the consideration of applications for renewal was that applications made sixty days

or more before the date of G.O.Ms. No. 1312 (2-12-1977) should be dealt with as if Rule 8-C had not come into force. The submission was that

it was not open to the Government to keep applications for the grant of leases and application for renewal pending for a long time and then to

reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came

into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to

have an application disposed of tit a reasonable time clothes an applicant for a tease with a right to have the application disposed of on the basis of

the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a

vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the

absence of any vested rights in any one, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the

disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the

submission of the Learned Counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be

dealt with as if Rule 8-C did not exist.

This bench by the judgment dated 14.9.1993, in W.P. No. 964/93, following the ratio of Hind Stone case, has held as follows:

The application for renewal of lease shall have to be considered as per the rules existing on the date the application is considered. The application

for renewal of lease is in effect and substance an application for grant of lease for a fresh period. There is no vested right in the applicant seeking

renewal or grant of a lease to have his application considered in a particular manner and with reference to a particular rule existing on the date the

application was filed. No such right accrues in the absence of a vested right.

In view of the above legal position, it has to be held that the applications for renewal of quarry leases which were pending before the District

Collectors on 23.6.1994 when the impugned G.O. deleting Rule 9 came into force have to be dealt with and disposed of applying only the

amended rules which are in force on the date of the consideration and disposal of the applications for renewal of the leases and not according to

the old Rule 9 which was in force on the date of submission of the applications for renewal. Rule 37 relied on by Mr. R. Singaravelan, Learned

Counsel for the Petitioners has no relevance to the question of renewal of leases as the said Rule only deals with only when leases already executed

and hence we reject the contentions of Mr. R. Singaravelan Learned Counsel for the Petitioners in W.P. Nos. 13161 & 17980/94 based on Rule

37. Point No. 6 is answered accordingly.

33. Point No. 7: The contention of Mr. N.R. Chandran, learned senior Counsel is that the amendments introduced to the Rules by the impugned

G.O.Ms. No. 166 dated 16.6.1994 involved a major change of policy which was a legislative function and therefore, beyond the competence of a

subordinate legislating body. We do not agree with the above contention of the learned senior counsel. As already stated the impugned G.O.

introduced the following changes in the Rules:

(1) Preferential Clause in the Rules to grant leases to Sri Lanka Repatriates and all Labour Co-operative Societies is deleted.

(2) The period of lease for quarrying stones is statutorily fixed as 5 years and that of sand quarrying as three years.

(3) Renewal of quarry leases is dispensed with.

(4) Lease amounts or dead rent whichever is greater is to be levied on leases granted.

(5) Specific provisions have been made in the Rules or issue of transport permits and despatch slips for lorries engaged in transporting of minerals

mined.

In our view, the amendments introduced to the Rules by the impugned G.O. cannot be said to involve a major change of policy, because the policy

of the Act remains the same and it is the conservation and the prudent and discriminating exploitation of minerals with a view to secure maximum

benefit to the community. If in pursuit of the avowed policy of the Act and in order to streamline the existing system by adopting a uniform procedure for granting quarry leases for minor minerals other than granites and to augment the revenue resources, the authority competent to make

the subordinate legislation amended Rule 9 substituting the system of public auction by tender system for the grant of quarry leases, and deleting the

provisions in Rule 8 giving preference to Labour Cooperative Societies in the grant of quarry lease and deleted Rule 9 which enabled the

authorities to renew the quarry leases, we are unable to see any major change or policy involved in the said amendments introduced by the

impugned G.O. merely because what was previously permitted under old Rules is no longer permitted under the amended Rules. In Hind Stone

case, the Apex Court pointed out that even if a decision is taken to ban private mining of a single minor mineral for the purpose of conserving it,

such a ban, cannot be said to involve any change of policy. For all the reasons stated above, we reject the contention of Mr. N.R. Chandran,

learned senior Counsel that the amendments introduced to the Rules by the impugned G.O.Ms. No. 166 involved a major policy decision and

cannot be done by subordinate legislation. Point No. 7 is answered accordingly.

34. Point No. 8: Mr. R. Thyagarajan, learned senior Counsel submitted that the Petitioners who were having quarry leases for the previous year

are entitled to legitimately expect to have the quarry leases renewed under the old Rule 9, that the impugned G.O.Ms. No. 166 which introduced

amendments to the Rules deleting Rule 9 takes away the right of the Petitioners to have the quarry leases renewed under the deleted Rule 9 and

thus the amendments affect the legitimate expectations of the Petitioners and therefore, the impugned G.O. deleting Rule 9 is violative of the

doctrine of legitimate expectation and hence it is liable to be struck down. There is no substance in the above contention of the learned senior

counsel. The settled position of law on the doctrine of legitimate expectation is that the legitimacy of an expectation can be inferred only if it is

founded on the sanction of law or custom or an established procedure followed in regular and natural sequence and the person who bases his claim

on the doctrine of legitimate expectation in the first instance must satisfy that there is a foundation and thus has locus standi to make such a claim. In

considering the same several factors which give rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the Courts

cannot interfere with the decision on the ground of violation of the doctrine of legitimate expectation. Further, if there is a change of policy or in

public interest a decision is altered by a rule or legislation, no question of legitimate expectation would arise.

35. The Apex Court in Union of India and others Vs. Hindustan Development Corpn. and others, , after elaborately dealing with the various

aspects of the doctrine of legitimate expectation and after referring to the decisions of various Courts summaries the law on the subject as follows:

Legitimate expectations may come in various forms and owe their existence to different kind of circumstances and it is not possible to give an

exhaustive list in the context of vast and fast expansion of the governmental activities. They shift and change so fast that the start of our list would

be obsolete before we reached the middle. By and large they arise in cases of promotions which are in normal course expected, though not

guaranteed by way of statutory right, in case of contracts, distribution of largess by the Government and in somewhat similar situations. For

instance in cases of discretionary grant of licences, permits or the like, carries with it reasonable expectation, though not a legal right to renewal of

non-revocation, but to summarily disappoint that expectation may be seen as unfair without the expectant person being heard. But there again the

Court has to see whether it was done as a policy or in the public interest either by way of G.O., rule or by way of a legislation. If that be so, a

decision denying a legitimate expectation based on such grounds does not qualify for interference unless in a given case, the decision or action

taken amounts to in abuse of power. Therefore the limitation is extremely confined and if the according of natural justice does not condition the

exercise of the power, the concept of legitimate expectation can have no role to play and the Court must not usurp the discretion of the public

authority which is empowered to take the decisions under law and the Court is expected to apply an objective standard which leaves to the

deciding authority the full range of choice which the legislature is presumed to have intended. Even in a case where the decision is left entirely to the

discretion of the deciding authority without any such legal bounds and if the decision is taken fairly and objectively, the court will not interfere on the ground of procedural fairness to a person whose interest based oft legitimate expectation might be affected. For instance if an authority who

has full discretion to grant a licence and if he prefers an existing licence holder to a new applicant, the decision cannot be interfered with on the

ground of legitimate expectation entertained by the new applicant applying the principles of natural justice. It can therefore be seen that legitimate

expectation can at the most be one of the grounds which may give rise to judicial review but the grating of relief is very much limited. It would thus

appear that there are stronger reasons as to why the legitimate expectation should not be substantively protected than the reasons as to why it

should be protected. In other words such a legal obligation exists whenever the case supporting the same in terms of legal principles of different

sorts, is stronger than the case against it. As observed in Attorney General for New South Wales case, ""To strike down the exercise of

administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts

adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous form a basis

for invalidating the exercise of a power when its exercise otherwise accords with law."" If a denial of legitimate expectation in a given case amounts

to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the

same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more

cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the

decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of

administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned

by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the

future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is ""not the key which unlocks the

treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits"", particularly when the element of speculation and uncertainty is inherent in that very concept. As cautioned in Attorney General for New South Wales case the Courts should

restrain themselves and restrict such claims duly to the legal limitations. It is a well-meant caption. Otherwise a resourceful litigant having vested

interests in contracts, licences etc., can successfully indulge in getting welfare activities mandated by directive principles thwarted to further his own

interests. The caution, particularly in the changing (sic) becomes all the more important.

36. In Madras City Wine Merchants'' Association and Another Vs. State of T.N. and Another, , Bar licences were granted under Tamil Nadu

Liquor (Vending in Bar) Rules, 1992, framed in exercise of the powers under Sections 17C, 17D, 21 and 54 of Tamil Nadu Prohibition Act, to all

retail vending licencees for Indian made foreign liquor. Such bar licences issued were valid for a period of one year and renewal thereof was not

automatic. The initial period of bar licences expired on 31.5.1993 and the Tamil Nadu Liquor (Vending in Bar) Rules, 1992 were repealed with

effect from 1.6.1993, in exercise of the same legislative power under Sections 17C, 17D, 21 and 54 of the T.N.P. Act by issuing G.O.Ms. No.

44 dated 3.3.1993. The validity of G.O.Ms. No. 44 was challenged on the ground of violation of doctrine of legitimate expectation. The Apex

Court held that the bar licencees cannot invoke the doctrine of legitimate expectation as there may be no legitimate expectation on the part of the

bar licensees nor there was any promise made by the Government in this regard. The Apex Court after referring to several decisions, held as

follows:

From the above it is clear that legitimate expectation may arise-

(a) if there is an express promise given by a public authority, or

(b) because of the existence of a regular practice which the claimant can reasonably expect to continue;

(c) Such an expectation must be reasonable. However, if there is a change in policy or in public interest the position is altered by a rule or

legislation, no question of legitimate expectation would arise.

37. Coming to the facts of the present case, we are of the view that the doctrine of legitimate expectation cannot be invoked by the Petitioners in

the present cases for the following reasons:

(a) There is no express promise made by any public authority to the Petitioners that the quarry leases held by them will be renewed.

(b) Though the old Rule 9 enabled the Petitioners to apply for renewal of their quarry leases such renewal of leases is not automatic. As pointed

out by the Supreme Court in Hind Stone case the Petitioners have no vested right to the grant or renewal of quarry leases and they cannot also

claim a vested right to have their applications for renewal of leases dealt with in a particular way by applying a particular provision and in the

absence of any vested rights in the Petitioners, the applications for renewal have to be dealt with only according to the rules in force on date of the

consideration of the applications for renewal. In these circumstances, the Petitioners'' expectation cannot be considered as a reasonable or

legitimate expectation.

(c) The Government taking a policy decision to delete the renewal provision contained in old Rule 9, in public interest and in exercise of the

powers conferred u/s 15 of the Act, has issued G.O.Ms. No. 166 deleting the said Rule 9.

As pointed out by the Supreme Court in decision reported in Madras City Wine Merchants'' Association and Another Vs. State of T.N. and

Another, , if there is a change in policy or in public interest the decision is altered by a Rule or legislation, the question of legitimate expectation

would not arise. In these circumstances, we have no hesitation in holding that the impugned G.O.Ms. No. 166 is not liable to be struck down on

the ground that it is violative of the doctrine of legitimate expectation. Point No. 8 is answered accordingly.

38. Point No. 9: The contention of Mr. R. Thyagarajan, learned senior Counsel is that as per Sub-section (3) of Section 28 of the Act the rules

framed in exercise of the power u/s 15 of the Act have to be placed before the table of the House and that inasmuch as the requirements of Sub-

section (3) of Section 28 of the Act are not complied with by placing the amended rules contained in the impugned G.O. before the table of the

House, the impugned G.O. has not become effective and cannot be enforced. We are unable to accept the above contention of the learned senior

counsel in view of the letter produced by the learned Advocate General before us. The said letter produced by the learned Advocate General clearly goes to show that the amended rules as found in the impugned G.O. were placed before the House on 7.11.94. In view of the above

factual position, we reject the contention of Mr. R. Thyagarajan, learned senior counsel that the impugned G.O. has not become effective in view

of Section 28 of the Act. Point No. 9 is answered accordingly.

39. Point No. 10: In view of our findings on points 1 to 9 we declare that the amendments introduced to the Rules by the impugned G.O. are valid

and they are not liable to be quashed. In view of our finding on Point No. 6, the Petitioners are not entitled to have the applications pending before

the Collectors either for grant of quarry leases or for renewal of the quarry leases dealt with and disposed of under the old rules as they are no

longer in force. We cannot direct the District Collectors to dispose of the pending applications for renewal of the quarry leases under old Rule 9,

because the said rule has been deleted by the impugned G.O. and the same is no longer in force. Again, the applications for the grant of quarry

leases made under the old rules also cannot be considered in view of the fact that the amended Rule 8 contemplates the grant of quarry leases by

calling for tenders in the place of the public auction provided under the unamended Rule 8. Therefore the prayer of the Petitioners for the grant of

quarry leases under old Rule 8 by way of public auction also cannot be granted. The District Collectors can grant quarry leases after the G.O.Ms.

No. 166 came into force on 22.6.1994, only in the manner provided under the amended Rule 8, i.e., by calling for tenders. In these circumstances,

the Petitioners herein are not entitled to any relief in this batch of Writ Petitions and accordingly they are dismissed. No costs.

