

(2016) 04 GUJ CK 0107

In the Gujarat High Court

Case No : Special Civil Application No. 20552 of 2015 to Special Civil Application No. 20556 of 2015 With Special Civil Application No. 3536 of 2016.

Rameshbhai Ukkad Vasava - Petitioners @HASH State of Gujarat and 4

Date of Decision : 29-04-2016

Acts Referred:

Constitution of India, 1950 — Article 14

Mines And Minerals (Development And Regulation) Act, 1957 — Section 15

Citation : (2016) AIRCC 3031

Hon'ble Judges : N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. Satyam Y. Chhaya, Advocate, for the Petitioners No.1; Mr. Tirthraj Pandya, AGP On Advance, for the Respondents No.1

Final Decision : Dismissed

Judgement

Mr. N.V. Anjaria, J. - All the petitions involve common facts, impugned orders are based on similar grounds, therefore they raise identical issues. Accordingly the captioned group of petitions with consent and request of learned advocates for the parties were taken up and heard together. They are being disposed of by this common order.

2. In all petitions the challenge is directed against order passed by the Collector and confirmed by the Revisional Authority which rejected the applications of the respective petitioners for grant of quarry lease. The petitioners pray that the case may be remanded to the Revisional Authority for rehearing of the Revision Applications. They pray that respondent-authorities may be directed not to grant the area in question in favour of any other party and the applications of the petitioners for grant of quarry leases may be allowed.

3. Extracting the relevant facts from each of the petitions, the petition of first mentioned Special Civil Application No.20552 of 2015 appears to have applied for quarry lease the area opposite Survey No.203, 263, opposite riverbed Narmada at Indore, Taluka Jhagadiya, Surat, on 07th November, 2007. The fourth respondent-the Collector, Bharuch by his order dated 01st March, 2011 rejected

the application on the ground that the area under demand was included in the block area, and that Indore Gram Panchayat in its Resolution dated 29th November, 2010 passed in view of revenue opinion of Mamlatdar, had not given consent for blocking out the land, therefore the application of the petitioner was rejected. The Revisional Authority by his impugned order dated 19th September, 2015 while confirming the ground given by the Collector, also noted that in view of Rule 69 of Gujarat Minor Minerals Concession Rules, 2010 and under Resolution dated 13th December, 2013 of the Industries and Mines Department, policy is provided to dispose of the areas for mining of simple mineral sand by transparent method by holding public auction. The challenge is addressed to these orders.

3.1 The petitioner of Special Civil Application No.20553 of 2015 applied on 07th November, 2007 for quarry lease in riverbed of Narmada at Survey No.203 and 263 at Village Indroda, Bharuch. The application of the petitioner Special Civil Application No.20554 of 2015 was of the same date for the same village for survey No.430. Case of petitioner of SCA No.20555 of 2015 was no different in terms of the survey number demanded as well as the date of application, in SCA No.20556 of 2015, the petitioner applied on the same date for survey No.250 and 251 in the same riverbed at the same village.

3.2 As far as SCA No.3536 of 2016 is concerned, the petitioner had applied on 16th April, 2007 for lease in respect of riverbed land survey No.137 at Dalwad, Taluka Mansa, Gandhinagar. His application was rejected by the Collector on 04th June, 2011 on the ground that method of public auction was proper method. The Revisional Authority in impugned order dated 03rd October, 2015 upheld the view with reference to Rule 69 of 2010 Rules and referring to principle of transparency.

4. At the outset, learned advocate for the petitioners relied on orders of this Court in respect of similar orders whereby the case was remanded to the Revisional Authority on the ground that the applications of the petitioners were prior to 31st March, 2010, therefore as per Resolution dated 13th December, 2013, the policy of public auction would not apply to such applications and that in similar cases the authorities have taken a different view than taken in the impugned orders.

4.1 The above submission was not accepted by the Court and the course of remand of the matter was not adopted, more particularly in view recent decision of the Supreme Court in *Sulekhan Singh v. State of U.P.* [AIR 2016 SC 228] laying down a principle on the subject that auction of quarry leases is a method which stands informed by the tenets and spirit of Article 14 and sub-serve the larger interest of public revenue. Having noticed the aforesaid judgment of the Apex Court having been holding the field, recourse of remanding the matter as was done in the other cases was not deemed appropriate course, as it would amount to a mechanical exercise. Learned advocates for the parties made submissions on all the aspects of the controversy emerging from the impugned

orders, learned advocates of both the sides were heard in extenso.

5. Adverting at the outset to the said decision of the Apex Court in *Sulekhan Singh (supra)*, it propounds the principle in relation to the controversy. The question considered by the Apex Court in the aforementioned decision is whether the High Court was justified in quashing mining lease granted in favour of the appellants by orders dated 24th May, 2014 and 26th May, 2014 on the ground that the said lease were granted in violation of the Government Order dated 31st May, 2012, under which mining leases could only be granted under Chapter IV of the U.P. Minor Minerals (Concession) Rules, 1963 by way of e-tendering in the interest of transparency and to safeguard the public revenue.

5.1 Prior to the aforesaid Government Order, the leases were granted by the Mining Authorities in State of U.P. otherwise than by way of auction. The change of policy was brought about by the aforesaid Government Order which provided as under.

"To bring transparency in connection of approval of mining lease in the state, the decision has been taken to grant lease through e-tendering system by inviting tenders under the provisions of chapter-4 of Uttar Pradesh Minor Minerals (Concession) Rules, 1963. By this step, by lifting the minor minerals on remission, the transparency would increase and along with that competition would take place and due to that State Government would get maximum rate."

5.1.1 The Supreme Court in terms observed in paragraph 5 of the judgment that the above change of policy was consistent with the position of law that State largesse ought to have been distributed by non-arbitrary method consistent with Article 14 of the Constitution.

"The above change of policy appears to be consistent with the position of law that State largesse ought to be distributed by non arbitrary method consistent with Article 14 of the Constitution (see (2012) 3 SCC 1 *Centre for Public Interest Litigation v. Union of India*; (2012) 10 SCC 1 *Natural Resources Allocation, in Re, Special Reference No.1 of 2012*; (2014) 9 SCC 516 *Manohar Lal Sharma v. Principal Secretary* and (2014) 6 SCC 590 *Goa Foundation v. Union of India*)."

(Para 5)

5.1.2 It was further held that pendency of application does not create vested right for the application being considered otherwise than by way of said Government Order dated 31st May, 2012, that is by way of e-tendering.

6. Leaving the delineation with regard to decision in *Sulekhan Singh (supra)* at this stage, learned advocate for the petitioners Mr.Satyam Chhaya as well as learned advocate Mr. Nirav Mishra for one of the petitioners raised following submissions.

6.1 Learned advocate for the petitioners submitted with reference to the decision of the Supreme Court in *Sulekhan (supra)* that it was with respect to policy dated 31st May, 2012 of State of Uttar Pradesh which was subsequently withdrawn on

22nd October, 2014. As per the policy dated 31st May, 2012 all applications pending on 31st May, 2012 stood rejected and it was resolved that after 31st May, 2012, all the applications would be considered only as per Chapter IV of the Uttar Pradesh Minor Mineral Concessions Rules, 1963 and procedure mentioned in Chapter II of the said Rules, were given go by. It was submitted that in State of Gujarat, there is no such policy which recognised that on the cutoff date (31st March, 2010) all applications stood rejected and thus, this is basic factual difference in both the cases. He also referred to the provisions of Uttar Pradesh Minor Mineral Concession Rules, 1963 in an attempt to submit that the principle laid down in Sulekhan (supra) cannot be applied to the petitioner's case.

6.2 Learned advocate for the petitioner next referred to the order dated 12/13th February, 2014 passed by Division Bench of this Court in Letters Patent Appeal No.824 of 2013 as well as order in Miscellaneous Civil Application No.1230 of 2014 being a review application arising from the order in the aforesaid Letters Patent Appeal. It was submitted that the Letters Patent Bench in paragraphs 11.2 and 12 of the judgment directed the State Government to grant all the leases only by way of auction, however the State filed review application in respect of the said direction in which the State took a stand that the public auction was not invariable rule for disposal of major mineral, therefore direction of holding public auction for disposal of minor minerals in each and every case would not be justified. It was submitted that thereafter order came to be passed in Miscellaneous Civil Application No.1032 of 2014 as well as Miscellaneous Civil Application No.966 of 2014 which show that the earlier order of the Letters Patent Bench in Letters Patent Appeal No.824 of 2013 aforesaid was recalled.

6.3 Next submitted and relied on, on behalf of the petitioner was the guidelines dated 06th April, 2011 by the Commissionerate of Geology and Mining, further circular dated 01st October, 2011 from the office of the Commissioner of Geology as well as the Resolution dated 13th February, 2013. It was submitted on those basis that in the Resolution dated 13th December, 2013, cut-off date of 31st March, 2010 is specifically mentioned, therefore applications filed on or before 31st March, 2010 would not be governed under the policy. Such applications may be considered as per procedure prescribed under the Rules of 2010, submitted learned advocate for the petitioner. The guidelines dated 06th April, 2011 and 01st October, 2011 by the office of Commissionerate of Geology and Mining appear to have been formulated upon the meeting of Coordination-cum-Empowered Committee Meeting held on 23rd March, 2011. It recorded that (a) In the case of applications for private land for minor and major mineral concession other than lignite, bauxite, manganese and lime stone, normally no block notification will be issued and decision will be taken as per prevailing GRs and procedure. (b) The availability of all mineral bearing area in Government land for major and minor minerals will be put in public domain. (c) Disposal of application for major minerals received as stated above shall be disposed of as per MCR, 1960 and guideline issued time to time by State Govt. in respect of such mineral. (d) Disposal of application of minor minerals received after 31st

March, 2010 (i) In case of prime location area, the application will be disposed off by way of public auction and (ii) In case of scattered mineral bearing area/low demand area, the application will be invited after the same is put in public domain. The applications will be disposed of as per rule 8(2) of GMMCR, 2010. In case of multiple applications in the same category, the same shall be disposed off by way of draw system; next circular dated 01st October, 2011 clarified paragraph (d)(i) of the guidelines dated 06th April, 2011 stating that in such area, if single category application is received, then the same should be disposed of by auction, whereas if more than two applications are received, the disposal shall be by public action. It was submitted that the guidelines came to be translated into comprehensive Resolution dated 13th December, 2013 which finally dealt with the question of the disposal of the applications received after 31st March, 2010 for minor mineral ordinary sand.

6.4 In the draft amendment dated 23rd March, 2016, it was contended on behalf of the petitioners with reference to the said guidelines and Resolution that the State Government had decided the date of 31st March, 2010 as per the aforesaid Resolution to be the classifying date for the applications filed on or before 31st March, 2010 and those filed thereafter. It was submitted that only those applications which are post-31st March, 2010 are provided to be disposed of by mode of public auction as per the policy evolved. It was submitted that the same is in tune with the Rules. It was submitted that under Rule 69 of the Rules, the competent authority has powers to sell by public auction or otherwise dispose of the right to remove any minor mineral or collection of royalty thereon on the terms and conditions prescribed by the general or specific order of the Government. Learned advocate for the petitioner submitted therefore that reading Rule 69 of the Rules with the guidelines as well as policy dated 13th December, 2013 brings out that the Government can classify in respect of the applications made after 31st March, 2010 for the purpose of applying the procedure of auction, whereas rest of the applications are not included for auction.

6.5 It was further sought to be harped that the Revisional Authority failed to appreciate the prevailing policy and did not consider the other orders passed in similar cases and therefore acted in breach of Article 14 of the Constitution. According to learned advocate for the petitioner, the impugned order suffered from apparent error and it misinterpreted the Resolution and overlooked orders in similar cases.

6.6 All the petitions were contested by filing affidavit-in-reply by respondent No.1-State through Under Secretary, Industries and Mines Department, in which it was contended that there was no legal right, much less infringed, of the petitioners and it was denied that any discriminatory treatment was meted out to the petitioners in the matter of deciding their applications for grant of mining lease for sand. Following contentions are raised.

(a) In the impugned order dated 19/09/2015, the revisional authority has placed

reliance on Rule 69 of the Gujarat Minor Minerals Concession Rules, 2010 and the said application came to be rejected on the ground that the lease in question would be disposed of by auction proceeding (Para 8 of affidavit-in-reply);

(b) While deciding the application of the petitioner, respondent no.4 has observed that the area as demanded by the petitioner is covered under block and considering the revenue opinion received by Mamlatdar, Jagadiya, dated 20/01/2011 which was passed upon one resolution no.8 dated 29/11/2010 passed by Indore Gram Panchayat wherein the said Gram Panchayat did not consent for the formulation of a block and therefore, on the basis of such negative opinion, respondent no.4 deemed it fit to reject the application of the petitioner for grant of ordinary sand mining (para 9 of the affidavit-in-reply);

(c) Such procedure to call for the opinion of concerned Mamlatdar and requirement of consultation of concerned Gram Panchayat is envisaged under Rule 4(6). Perusal of Rule 4 makes it glaring clear that no quarry lease for permit of Parwana shall be granted for minor mineral in the schedule area without the recommendation of the Gram Sabha at the appropriate level and therefore, it was incumbent upon the authority to seek necessary approval or recommendation from the concerned Gram Panchayat, as the area demanded by the petitioner falls under schedule area. Hence, by no stretch of imagination it would be considered that respondent no.4 has passed the impugned order dated 01/03/2011 without following due process of law and in contravention to any of the Governing policies (para 10 of the affidavit-in-reply);

(d) As per Rule 69 of Gujarat Minor Mineral Concession Rules, 2010, it is provided that in certain cases area for mining of minerals may be allocated by way of public auction (para 11 of the affidavit-in-reply);

(e) Provisions of Rule 69 provides discretionary powers to the authority in the matter of allocation of any lease area for the mining purpose by way of a public auction or otherwise. Such powers conferred under Rule 69 have not been modified by resolution dated 13th December, 2013. It is still within the discretionary powers of the authorities to allocate any lease area for mining purpose by putting such area in the public domain for auction. Therefore, the order passed by both the authorities are well within provisions of Rules and the policies framed by the Government time and again. In view of what is stated herein above the petition deserves to be dismissed as is being an attempt of misreading and misinterpreting the orders passed by respondent no.4 and revisional authority, especially, when policies of State Government have not been brought under challenge by the petitioner (para 13 of the affidavit-in-reply).

6.7 learned Assistant Government Pleader Mr.Tirthraj Pandya succinctly elaborated the aforesaid propositions with reference to the facts of the case and various Circulars and policy guidelines issued by the State Government in relation to disposal of mining lease applications. He highlighted the language of Rule 69 of the Gujarat Minor Minerals Concession Rules, 2010 (hereinafter

referred to as "Rules of 2010"), to submit that the policy of auction is in tune with and only congruent to the said provision. He also submitted that there is no vested or crystallised right to get the quarry lease granted for any of the petitioners.

7. Having noted the submissions, broad outline of controversy and having referred to the Supreme Court decision in Sulekhan Singh (supra), relevant provisions of the Act and the Rules may be briefly visited with.

7.1 In the present cases, the issue is related to minor mineral-ordinary sand. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 confers power of the State Government to make Rules in respect of mines and minerals. Gujarat Minor Minerals Concession Rules, 2010, framed in exercise of statutory powers inter alia define the term "quarry lease" in Section 2(vii). Rule 4 deals with grant of quarry lease which reads as under in its relevant part.

"4. Grant of Quarry Leases.-(1) Save as otherwise expressly prescribed in these rules,.....

(2)... ..

(3) No quarry lease shall be granted by the Competent Authority in respect of any minor mineral except in accordance with such general instructions and directions as may be issued by the Commissioner from time to time regarding the conservation and scientific economic development of such mineral."

7.2 Rule 5 of the Rules deals with renewal of quarry lease. Rule 6 provides for application to be made for grant of quarry lease. Rule 8 concerns priority and its relevant part is reproduced hereunder.

"Rule-8 Priority.-[1] On receipt of an application under rule 7, the Competent Authority, after making such inquiries as it deems fit, may sanction the grant of a quarry lease to the applicant or refuse to sanction the same within ninety days from the date of submission of the application;

Provided that the time-limit shall be applicable only if the application is complete in all respect. In case of delay or rejection of the application, specific reasons thereof shall be recorded by the Competent Authority.

[2] Where two or more persons have applied for a quarry lease in respect of the same land the quarry lease shall be granted to the applicant in the following order of priority -

[i] a person who has set up a mineral based industry in the State which consumes the minor mineral as raw material in the industrial units established in the State;

[ii] a local authority, Board, Corporation under the State Government or a co-operative society;

[iii] a person who intends to set up a mineral based industry in the state;

[iv] other applications:

Provided that where a person holding a mining lease in respect of an area applies for a quarry lease in respect of that area, he may be given priority over all other applicants:

Provided further that where two or more persons of the same category mentioned in clause [I] to [iv] have applied for a quarry lease in respect of the same land on the same day, the Competent Authority after taking into consideration the following matters, grant the lease to such one of the applicants or distribute the mineral bearing land in such manner between the applicants as it deems fit,-

[a] any special knowledge or experience in quarry possessed by the applicant;

[b] the financial resources of the applicant;

[c] the type and qualification of the technical staff employed or to be employed by the applicant;

[d] the investment which the applicant proposes to make in quarry and in the industry based on the mineral.

[e] such other matters as may be cancelled mined by the Competent Authority:

Provided also that where the Competent Authority is satisfied that the person specified in clause [iii] above, to whom a quarry lease is granted has failed to establish an industry, within a period of two years may cancel the quarry lease, after giving him an opportunity of being heard and for the reasons recorded in writing.

[4] Notwithstanding anything contained in sub-rule (2), the competent authority may, subject to such general instructions and directions as may be issued by the Commissioner from time to time regarding conservation and scientific and economic development of the minerals, for any special reasons to be recorded in writing, grant a quarry lease to an applicant whose application."

7.3 Similarly, Rule 10 providing for grant of quarry lease, says that competent authority after making such inquiries as it deems fit, may grant the quarry lease over a part or the whole of the area applied for. For refusal of the application, the reasons shall be communicated. Section 70 is the power of the Government to give directions.

7.4 Rule 69 and Rule 70 which are necessary for the purpose of this controversy, is reproduced.

"Rule 69 Disposal of minor minerals by public auction in certain cases.- Notwithstanding anything contained in the foregoing provisions, it shall be lawful for the Competent Authority to sell by public auction or otherwise dispose of the right to remove any minor mineral or of collection of royalty thereon in such cases or class of cases and on such terms and conditions as the Government

may be a general or special order direct."

"70 Power of the Government to give Direction

The grant or renewal of quarry lease, quarry permit and quarry parwana under these rules shall be subject to such general instructions and directions as may be issued by the Government from time to time regarding conservation and scientific and economic development of minerals and industrial use of the Mineral in the State."

7.5 This Court in *Patel Vishnubhai Maganbhai v. State of Gujarat* [2014 (3) GLH 425] decided group of matters being Special Civil Application No.14354 of 2011 being a lead matter, in all those petitions, guidelines issued by the Commissioner of Geology and Mines Department, State of Gujarat came to be challenged and it was prayed that the applications of those petitioners were liable to be disposed of in accordance with the provisions of Mines and Minerals (Development and Regulation) Act, 1957 read with Gujarat Minor Mineral Concession Rules, 2010. The said petitioners were the applicants for obtaining quarry lease in the river-bed of Panam. The petitioners were aggrieved because of impugned guideline clause (d).

7.6 In *Patel Vishnubhai Maganbhai (supra)*, the facts were that when the applications of those petitioners were pending, the competent authority invited the application from public domain. The policy was prescribed that in case of multiple applicants the same will be decided by draw system. The petitioners placed reliance on Rule 4(3) and Rule 8(4) of the Rules to submit that application should be considered on the basis for first-cum-first-serve. It was the contention that by virtue of the impugned instructions and guidelines, the pending applications were made redundant. This Court held interpreting the provision of Rules 16 and 17 that those Rule confer powers on the Government to issue direction from time-to-time keeping in mind the object of conservation of minerals. It was held that the procedure prescribed for adoption of method of public auction and placing the leases in public domain had an access with the said object. It was underlined that such method provide transparency and fairness. The Court held that the pending applications would be governed by the said instructions and Rules 6 and 8 would have no applicability, finally relating and refusing to exercise the jurisdiction under Article 226 of the Constitution. The Court had also occasion to look into the operational purport of the said Rules and the policy of granting leases by auction which was with reference to the classifying date of 31st March, 2010 as per the guidelines, subsequently translated into Resolution dated 13th December, 2013.

7.7 A yet another Division Bench decision of this Court in *Vijaykumar Ramdhan Bairwa v. State of Gujarat* being Special Civil Application No.10675 of 2014 and cognate petitions decided on 19th June, 2015 deserves reference as becoming to the controversy on hand. In that, the petitioners had challenged the vires of sub-rule (4) of Rule 8 as well as vires of Rule 69 of Gujarat Mineral Minerals

Concession Rules, 2010, urging that the said Rules were ultra vires Articles 14, 19(1)(g) and 21 of the Constitution and that they were repugnant to the Mines and Minerals (Development and Regulation) Act, 1957. The petitioner in that case had applied for grant of quarry lease after coming into force of 2010 Rules. The applications of the petitioners came to be rejected by the Collector in view of the Circular issued by the Commissioner of Geology and Mines.

7.7.1 The Division Bench negatived the challenge observing and holding inter alia thus,

"... .. The Circular of the Commissioner issued under Rule 60 of Rule 2010 provides the procedure as to how the application for minor mineral has to be disposed of. It provides that application is to be disposed of by way of public auction. Rule 69 of the Rule 2010 starts with a non-obstinate clause and has an overriding effect of all other Rules of 2010. Further in various decisions, the Apex Court has repeatedly laid down that public auction is the safety method for distributing public largess or settling public largess in favour of an individual and any element of bias is ruled out. The paramount importance is given to State revenue. The Commissioner has to act to ensure that the State gets its revenue while grant of quarry lease by way of auction and in the Circular itself it has been made clear that any scattered or low demand area where there is no demand, lease can be settled otherwise than auction proceedings. All these steps have been taken by the Commissioner in the interest of revenue which is a paramount consideration for the State. In our opinion, Rule 69 or sub-Rule (4) of Rule 8 of Rule 2010 are not ultra vires to Articles 14, 19(1)(g) and 21 of the Constitution of India as there is no discrimination made by the State and according to prime area, scattered area and low demand area, demarcation has been made which does not violate any of the fundamental rights of the petitioner and the petitioner is free to participate in the auction proceedings or whatever way the respondents have advertised, he may apply for the lease in such a manner as the respondents have required in the advertisement." (para 2)

".... Chapter VIII under the head "Miscellaneous" contain two important rules viz. Rules 69 and 70 conferring powers upon the competent authority notwithstanding anything contained in the forgoing provisions viz. provisions contained in Chapter IV, V & VI, it shall be lawful for the Competent Authority to sell by public auction or otherwise dispose of the right to remove any minor mineral or of collection of royalty thereon in such cases or class of cases and on such terms and conditions as the Government may by a general or special order direct and Rule 69 if perused in the context of object and reasons of the Act, 1958, Rules, 2010 and relevant section and rules produced herein above a duty is cast upon the Central Government, State Government and the authorities contained in the definition clause of the Act and Rules to see and also to enforce the conservation and scientific and economic development of such mineral. If for any good reason the Government by issuing any general order directs that particular area including any minor mineral is to be placed in public domain,

which may include disposal of minor mineral by public auction in certain cases or otherwise dispose of the right to remove any minor mineral or question of royalty, including issuance of order/directions about scattered area and having low domain it cannot be said that priority mentioned in Rule 8 for considering application for grant of lease is to be followed mandatorily and it is obligatory upon the Government to undertake such procedure prescribed in Rule 8 in all cases all time. Even if Rule 69 is considered along with Rule 4(3) and 8(4), it is clear that Legislature has cast duty upon the State Government to provide all measures for conservation and scientific and economic development of the minerals so that sustainable growth and development of economy continues and natural resources and wealth of the country is not subjected to indiscriminate and mindless excavation. That Section 69 is reinforced by Section 70 which confers power upon Government to give direction in case of grant or renewal of quarry lease, quarry permit and quarry parwana under these Rules, including Rule 69 subject to such general instructions and directions that may be issued by Government from time to time and again keeping in mind conservation and scientific and economic development of minerals and industrial use of the mineral in the State. Therefore, a close reading of Rules 69 and 70 with Rules 4(3) and 8(4) abundantly make it clear that Government and its authorities are empowered to carve out a procedure for grant of lease if need arise, on assessment of overall facts and circumstances the disposal of minor minerals is to be placed in public domain, and to be disposed of either by following public auction or any other good method to dispose of such minerals and by further incorporating suitable terms and conditions in such general or specific order, directions can be issued." (Para 9.4)

7.8 In the present case, it is heavily contended by learned advocate for the petitioners that their application is prior to 31st March, 2010, therefore Resolution dated 13th December, 2013 providing for disposal of lease applications by auction, would not apply as the same is applicable to the applications made after 31st March, 2010 and not those pending prior to the said date.

7.9 This Court in Patel Vishnubhai Maganbhai (supra) relied on the following observations from M/s.Hind Stone (supra),

"The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C 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 in a reasonable tune clothes an applicant for a lease 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. None 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 anyone, 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 or renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C did not exist."

7.9.1 This Court held,

"It is trite that in cases of applications received and remained pending after issuance of instructions/orders on or before 31.03.2010 and remained pending will be governed by rules, orders, instructions in force on the date of decision that may be taken on such applications, and therefore, it cannot be said that instructions/orders/circulars issued by the State Government after receipt of applications under Rules 6 and 8 of the Rules, 2010 will have no applicability and such applications will be governed by the rules, circulars, orders, instructions in force on the date when such applications are considered and decided by the competent authority." (Para 10.2)

"The grant of quarry lease prior to advertisement, which remained pending before the competent authority by itself would not confer any right upon applicant and policy/guidelines/instructions prevailing at the time of taking decision will be applicable. Therefore, the impugned public advertisement cannot be said to be illegal." (Para 10.4)

7.10 The principle that a person does not have any vested right for grant of lease, and further that one cannot claim a vested right to get one's application dealt with in a particular way, was emphasised by the Apex Court by referring to its own decision in *State of Tamil Nadu v. Hind Stone* [AIR 1981 SC 711],

"In *Hind Stone* (supra), this Court observed:

"13. 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 GOMs No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 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 applications 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 in a reasonable time clothes an applicant for a lease 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 anyone, 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 or renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist." (Para 21)

8. On the same lines, though on a different subject but propounding a principle that only those rules which are in operation on the date of applying them would govern the case, another Supreme Court decision in *Punjab University v. Subhash Chander* [AIR 1984 SC 1415] deserves a reference. In that case Regulation under the Punjab University Act regarding some percentage of marks as grace marks to candidates appearing in university examination was prevalent in the year 1965. In the meantime in 1970 the said Regulation was amended reducing percentage of grace marks for the MBBS candidates. The question arose was that for the candidate who had joined MBBS Course in the year 1965 but set to appear for final MBBS examination in 1974, whether the original Regulation or the amended Regulation would apply. It was held that the amendment cannot be held retrospective to become invalid as regards the candidates. A candidate respondent had joined MBBS Course in 1965 and that there was no promise to him that when he would appear in subsequent examinations, the very Regulation would govern. The Supreme Court held thus,

"Declaration that S failed by virtue of amended regulation as regards grace marks was not invalid. There was no element of retrospectivity in the change brought by the amendment. It cannot be said to be retrospective in operation merely because though introduced in 1970 it was applied to S, who appeared for the final examination in 1974, after he had joined the course earlier in 1965. No promise was made or could be deemed to have been made to him at the time of his admission in 1965 that there will be no alteration of the rule or regulation in regard to the percentage of marks required for passing any examination or award of grace marks and that the rules relating thereto which were in force at the time of his admission would continue to be applied to him until he finished his whole course." (Paras 9 to 12)

8.1 The principle of law manifested from the aforesaid decisions squarely answers to make the contention of learned advocate for the petitioners fallacious that since their applications were prior to 31st March, 2010, they would not be governed by the policy of disposing of the leases by auction and that they were entitled to be granted lease by means otherwise than auction. The mere fact that the petitioners had made application prior to the said date would not in any way create for them a right much less a vested right to contend that the policy of

auction may not be applied to them. When the juncture of disposal of the area of lease demanded by the petitioner comes, the policy as made applicable as to the method of disposal of lease would apply and governed the procedure for grant of lease. It cannot be simpliciter contended that since the applications were prior in point of time with reference to particular date mentioned in the Resolution, they would qualify for grant of leases without auction or otherwise than by way of auction.

9. The aforesaid proposition also emanates from the decision in *Sulekhan Singh* (supra), therefore reverting to it, it would be noticed that nearly the same situation and the contentions were obtained in that case (See paragraphs 14 & 15 of the judgment). The appellants sought an exception to said G.O. dated 31st May, 2012 by contending that they had already applied pursuant to earlier notice in accordance with the Rules; earlier notice on 18th July, 2009 were issued to the appellants, which came to be cancelled by Order dated 10th February, 2012. It was contended that since the said order was prior to 31st May, 2012, the appellants acquired a right to get lease as an exception to Order dated 31st May, 2012. The High Court passed interim order in their favour which led to grant of mining leases to the appellants. The said grant came to be challenged before the High Court of Allahabad as violative of Government Order dated 31st May, 2012. The Allahabad High Court held that no pending application as on the date of Government Order could be taken into cognizance, reiterating the basic principle of law that mere filing of an application either for the grant of a lease or for renewal of lease does not confer a vested right for grant or renewal and an application has to be disposed of on the basis of the Rules as they stand on the date of disposal of the application. This proposition of law was noted to be enunciated by the Supreme Court also in *State of Tamil Nadu* (supra)].

9.1 The aforesaid G.O. was challenge before the High Court on the ground that the applications made prior to 31st May, 2012 were required to be dealt with without applying the Government Order. The Allahabad High Court has rejected the said plea by its judgment in *Nar Narain Mishra v. State of U.P.* [2013 (2) ADJ 166], against which Special Leave Petition came to be dismissed by the Supreme Court.

9.1.1 It was thus held by the Allahabad High Court that no direction for grant of lease contrary to Government Order dated 31st May, 2012 could be issued and cancelled all applications pending on 31st May, 2012. The Supreme Court in *Sulekhan Singh* (supra) considered the matters in the aforesaid background dealing with the controversy, observing and holding as under.

"It is in this background that the present matters were considered by the High Court. To seek an exception to G.O. dated 31st May, 2012, the appellants contended that they had already applied in pursuance of notice dated 18th July, 2009 in accordance with Chapter II of the Rules. When the said notice was cancelled and fresh notice dated 10th August, 2010 was issued, the appellants challenged the same. They were relegated to their departmental remedy. They

challenged the order passed by the department again by another writ petition and the High Court directed the matter to be considered vide order dated 10th February, 2012. As the said order was prior to 31st May, 2012, appellant acquired a right to get lease as an exception to order dated 31st May, 2012. The High Court passed an interim order in their favour which led to the grant of mining leases on 24th May, 2014 and 26th May, 2014." (Para 14)

"The stand of the appellants was held to be against the earlier High Court judgments. Thus, after hearing finally, the High Court rejected this plea as follows :-

"It is not in dispute that their applications for grant of lease had not been disposed of prior to the date of declaration made under Rule 23 (1) of the Rules of 1963 and they had been granted the lease by means of order dated 24.05.2014 and 26.05.2014, after the date of declaration, i.e. 31.05.2012. In Nar Narain Mishra's case, this Court held that those petitioners, who have claimed mandamus for directing consideration of their lease renewal application, which were pending on 31.05.2012 could not be granted any relief. Similarly applications for grant of fresh lease under Chapter II of the Rules, 1963, which were pending on 31.05.2012 could also not be directed to be considered. In Public Interest Litigation (PIL) No.31643 of 2014, Sukhan Singh v. State of U.P. & 3 others. This Court has considered the judgment of the Hon'ble Supreme Court rendered in Deepak Kumar's case (supra) as well as judgment of this Court in Nar Narain Mishra's case (supra) and has held that "The basic position in law is that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application." (para 15)

9.1.2 In paragraph 20 of the decision in Sulekhan Singh (supra), the pervasive and salutary principle was underlined that disposal of the leases by auction was the method which was valid to the touchstone of Article 14,

"The plea of the appellants that they had acquired a vested right prior to G.O. dated 31st May, 2012 cannot be accepted. Order dated 31st May, 2012 was issued by the State of U.P. to bring about transparency and to safeguard the Government revenue and was consistent with the decisions of this Court in Article 14 of the Constitution. The validity thereof was upheld by the High Court in Nar Narain Mishra (supra). The said judgment applied to the mineral in question as specifically laid down by the High Court. The High Court upheld the stand of the State that pendency of application did not create any right in favour of the appellants. All applications pending as on 31st May, 2012 stood rejected including the application of the appellants. Admittedly, the appellants did not make an application after the changed policy dated 22nd October, 2014 and thus the said G.O. had no application to the present case. We are not called upon to decide validity of order dated 22nd October, 2014 in cancelling order dated 31st May, 2012. This question can be gone into as and when raised." (Para 20)

9.3 In the cases under consideration, the Panchayat concerned or the Revenue Authority, as the case may be, has not given opinion for including the area in question into blocks for the purpose of auction. In respective cases, the Collector closed the applications of the petitioners on that ground. In view of the settled principle above that it is at the time when the quarry leases to be disposed of, the method for disposal as may be prevent would have to be made applicable. The petitioners cannot seek a kind of advance ruling that their applications only on the ground of being prior to a particular date, would not be so considered. The petitioners cannot insist that their applications are liable to be considered in a particular way only, more particularly when the other way is the only way congruent to and consistent with the principle of equality under Article 14 of the Constitution, the norm of transparency and always insisted upon ideal in law that the State property must in all normal cases should be disposed of by auction to sub-serve the interest of public revenue.

9.4 Submission on behalf of the petitioners that in other similar cases where the applications of those persons was prior to 31st March, 2010, the Revisional Authority allowed the Revision, remanded the matter and in some cases the lease has granted, is of no avail and has to be straightway rejected, the reason being that Article 14 does not operate in negative way. A wrong decision or a decision contrary to the legal principle cannot be basis for claiming equality. It cannot be a valid instance to be compared for extending the principle of Article 14 to other case. Learned advocate for the petitioners further harped that this Court in some other petitions in which the facts were similar, remanded the matters. It is true that such orders of remand was passed, however having noticed in particular the decision in Sulekhan Singh (supra) and the principle highlighted therein, the Court is not inclined to adopt the court of remanding the matter.

9.5 Law of the land declared by the Apex Court must be applied. If in applying the principle of law set out by the Apex Court, a different view is required to be taken or a different course is required to be charted by the High Court, the same can be said to be eminently permissible. The law of precedent permits the Court to be unbound by its own decision when such decision is shown to be not consistent with the position of law enunciated by the highest court and holding the field. In this view, the pressingly made submission was not accepted that like other petition being Special Civil Application No.21271 of 2015 in which as per the previous orders passed therein, the cases were remanded, the present one may also be remitted back. In any view, the aforesaid orders cannot be said to be laying down anything. They do not constitute a precedent as such to be followed more particularly when, definite principles on the controversy have been laid down by the Apex Court as discussed herein.

10. As the trite proposition of law is noted herein above and need no reiteration here, unless justified with reference to acceptable exceptions, disposal by public auction, all the State's largesse or public properties including grant of quarry

leases, would be the only method which will pass through the scanner of Article 14 in terms of fairness, reasonableness, transparency and the interests of public revenue. Any other method than public auction shall require a scrutiny for its fairness, reasonableness and justification.

10.1 When the policy Circular dated 13th December, 2013 dealing with the disposal of the quarry leases is closely seen, it is titled as one dealing with applications received after 31st March, 2010 and for such application, the Resolution lays down the criteria of disposal by way of public auction. Apart from the title, the Resolution nowhere mentions about the date of 31st March, 2010 perceived as a dividing line for the policy prescription contained in the Resolution. In any view, it is for the State to supply the rationale for suggesting and providing that post- 31st March, 2010 applications for quarry lease would be dealt with mode of public auction, and only upon such rationale being supplied, the submission on behalf of the petitioners can be accepted that their applications being prior to 31st March, 2010, may be dealt with otherwise than by means of public auction and the quarry leases as applied by them may be granted to them. Such proposition cannot be said to be flowing from Rule 69 of 2010 Rules.

10.2 It may be true that prescription of a cutoff date and selection thereof is permissible for purpose of classifying group of similarly situated persons or a particular class for the purpose of giving treatment to such class, provided the cut-off date has a rationale behind it. It is only such rationale which permits to make two different classes which otherwise would have been one homogeneous class for the purpose of Article 14 of the Constitution. A cut-off date per se and without backed by its reasonableness and rationale would not stand to justify as a basis of permissible classification.

10.3 If the twin propositions are to be summarised from the foregoing discussion and the position of law emerging, it has to be held that for disposal of quarry lease, the method which should govern, save and except for valid exceptions in law, is the public auction. A particular cut-off date without anything else for dealing with the quarry lease applications cannot be said to have any rationale and it cannot be rationally contended that merely because the applications of persons for quarry lease is prior to a particular date, the applicants can claim that they be disposed of otherwise than by way of auction eventhough, as such all the applications and the applicants constitute a single homogeneous class for the purpose of grant of quarry lease. A mere pendency of prior application to a particular date, though may be pending long, cannot create a vested or crystlised right. They are liable to be considered in law at the time when the juncture is reached for grant of quarry lease, on the basis of the prevalent rules and the policy on such date.

11. Having considered the statutory provisions, having taken into account the prescriptions of the policy reflected in the Resolutions and Circulars issued by the State Government in respect of grant of and disposal of the applications for

quarry leases, and in view of legal principles highlighted above, the impugned orders passed by the revisional authority rejecting the revision application of the petitioner in each case as well as the corresponding order of the Collector rejecting the application of the respective petitioner for grant of quarry lease, are held to be not warranting any interjection in exercise of writ jurisdiction.

11.1 However, the following directions shall govern in respect of the applications of the petitioners and grant of quarry lease by the authorities.

(i) The application for grant of quarry lease made by each of the petitioner in the captioned petitions shall not be treated as closed by virtue of the present order;

(ii) The applications shall remain alive. The request of the petitioners for grant of quarry lease shall be considered at the time of disposal of the quarry lease area concerned, if the competent authority decides to make available the area for the purpose of grant of quarry;

(iii) At such relevant time, the application of the petitioners-applicants, if they so chose, shall be considered in accordance with law and the norms of policy as may be prevalent at that time;

(iv) The respondent-State authorities shall be necessarily guided by the law laid down by this Court in Patel Vishnubhai Maganbhai (supra) and the same, in general, stand informed and guided by the principle of fairness and equality in the matter of allotment of quarry lease as emphasised by the Apex Court in Sulekhan Singh (supra), in particular the principle underlined in paragraph 20 of the judgment, and the proposition laid down in the present order;

(v) The impugned orders are not interfered with and are maintained for the discussion and reasons herein above.

12. All the petitions stand disposed of as dismissed, however qualified by the aforesaid directions. Notices in each of the petition stand discharged. No order as to cost.