

(1990) 11 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 750 of 1990 and 2556, 2371, 2372, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2553, 2554, 2555, 2570 and 255, 28, 260, 261 and 879 of 1990 of 1989

Sampat Lal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-11-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 226

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

Citation : (1990) 2 RLW 279 : (1990) WLN 395

Hon'ble Judges : Milap Chandra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Milap Chandra, J.—These 22 similar writ petitions have been filed for quashing the decision Annexure 2 of the Mines (Group II) Department, Government of Rajasthan, Jaipur dated March 25, 1989 by which it decided to withdraw the working permission given in the years 1983 and 1984 to Rajasthan State Mineral Development Corporation (in short RSMDC) to undertake mining of marbles in the areas of Rajsamand, granted mining lease in relaxation of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter to be called the 1986 Rules) to (1) M/s International Mineral Industries Limited (10 plots), (2) M/s Mewar Marbles Limited (10 plots), (3) M/s Saxeria Marbles Ltd. (5 plots) (4) M/s Nirmal Marbles Ltd. (5 Plots) and M/s Aditya Mining Limited (5 plots) (one of them impleaded as respondent no. 4 (hereinafter to be called as private respondents) who have earlier commenced the mining operation on the allotment of these plots by the RSMDC and to group the remaining 146 vacant plots in the delineated area in blocks 5 plots each and to allot them to the Khatedars of the land if they surrender their Khatedari rights and to entrepreneurs. It has also been prayed that the state of Rajasthan, Director, Mines and Mining Engineer (respondents no. 1, 2 and 3) be directed to dispose of the applications received

by them in pursuance of the gazette notification Annexure 1 dated November 19, 1981. On the request of the learned Counsel for the parties, the cases being similar were taken together and arguments were heard for their final disposal. As such they are being disposed of by this common order.

2. The facts may be narrated in short, as follows. The Mining Engineer, Rajsamand (respondent no. 3) published notice Annexure 1 in the Rajasthan Gazette dated November 19, 1981 inviting applications for grant of mining lease for the areas situated in Rajsamand and Amet Tehsils on the terms and conditions mentioned therein, The areas were divided on to 181 plots of 100x100 square meters each. In pursuance thereof, the petitioners submitted their applications for grant of mining leases for the various plots. One Rajendra Singh Mehta filed writ petition, No. 2016/81 challenging the said notification Annexure 1. The court was pleased to stay the operation of the notification by its order Anx.1B, dated January 13, 1982, in all 2761 applications were received and no action was taken on the applications due to the stay order. The respondents no. 1 to 3 appointed RSMDC as their agent and granted working permission to it for undertaking mining operation in 65 plots for marble on certain conditions. Instead of commencing the work, the RSMDC allotted 35 plots to the said five private respondents. Finding that the aforesaid working permission given to the RSMDC did not financially benefit the Government, it withdrew it and took the said decision Annexure-2.

3. The respondents admit in their replies that notification "Annexure No.2016/81 was filed by the Rajendra Singh Mehta challenging notification Annexure 1, the operation of the notification was stayed and the writ was subsequently dismissed, working permission was given to the RSMDC by the respondents no 1 to 3, it allotted 35 plots to them and subsequently the state Government took the decision Annexure 2. Several preliminary objections against the maintainability of the writ petitions have been taken in the replies, namely, (i) Efficacious alternative remedy was available, (ii) writ petitions have been filed after great delay (iii) Disputed questions of facts are involved, (iv) RSMDC has not been made a party, (v) No subsisting interest exists in favour of petitioners and (vi) Facts have been misstated in the writ petitions. It has also been averred in the writ petitions that the decision Annexure 2 was taken in the larger interest of mineral development and better working of mines, the applications of the petitioners and others were deemed to have been refused after the expiry of nine months as provided Under Rule 8 of the Rajasthan Minor Mineral Concession Rules, 1977 (hereinafter to be called "1977 Rules") the petitioners did not pursue their applications after moving them and they did not take any action against the RSMDC for granting working permission to the respondent no.4. It has further been averred that since 1986 they (private respondents) started operating the mines scientifically and mechanically after installing big and huge plants and machineries, removing over burdens, clearing the site, making payments in advance to Khatedars of the plots. Constructing 6 kms. long road, making huge investment and spending four years in developing the area and the RSMDC allotted plots and subsequently the

Government granted mining leases to them on account of their expertise, financial resources, man power and working zeal and enthusiasm. It has also been averred that Himmat Lal Hingar issued the letter Annexure 4 after he failed to get temporary injunction against them in the suit filed in the name of his wife in the court of the Munsif, Rajsamand, they have paid much more revenue to the Government and the writ petition of Rajendra Singh Mehta was dismissed by the court on June 16, 1986.

4. The learned Counsel for petitioners contended as follow. The grant of working permission to the RSMDC by the respondents no. 1 to 3 was contrary to law and consequently allotment of plots by the RSMDC to the private respondent was void ab initio. He relied upon *M.S Deb v. State of Orissa* ILR 1979 Orissa 37 at page 53 para 13. The decision Annexure 2 is arbitrary, discriminatory, mala fide, violative of principles of natural justice and illegal. It offends Articles 14 of the Constitution of India. The State Government cannot be permitted to continue to perpetuate the illegalities. The antecedents of the private respondents were even not considered by the State Government while granting leases to them. Nothing in the direction of mechanisation of mines was done by any of them. During 4-5 years, they have not been able to operate even 2-3 plots and raise their production so as to cover the normal dead- rent for the plots held by them. The provisions of Rules 65 of of the 1986 Rules were invoked by the respondents no. 1 to 3 in the colourable exercise of the powers to benefit the persons of their own choice and to sidetrack 2761 deserving applicants who are waiting their turn for grant of mining leases for the last 8 years. Reliance was placed of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . The areas were delineated in 181 plots for the better development of marble mines. In the decision Annexure 2, the respondents no. 1 to 3 have turned round and have justified the grant of leases 5-10 plots each to the private respondents. Notice Annexure 1 has not been withdrawn so far. It is still in force. The decision Annexure 2 does not speak about the exercise of powers Under Rule 65 of the 1986 Rules. Grant of working permission was a systematic device to defy and flout the stay order passed by the Court in *Rajendra Singh Mehta's* writ petition. The petitioners are in position to operate marble mines in scientific and mechanised manner, they are willing to start marble processing units and there is no warrant in picking the respondents for grant of mining leases.

5. In reply, the learned Counsel for the respondents raised several preliminary objections against the maintainability of the writ petitions. Firstly, the petitioners had efficacious alternative remedy. They could file revision before the Central Government u/s 30, Mines and Mineral (Regulation and Development) Act, 1957 (hereinafter to be called "the MMRD Act"). Reliance was placed on *Ishwarlal v. State of Rajasthan* 1988 (2) RLR 384. The applications of the petitioners stood refused on the expiry of 9 months Under Rules 8 (1) of 1977 Rules and appeals and revisions could be filed against this deemed refusal Under Rules 44 and 64 of 1977 Rules. Even after the dismissal of *Rajendra Singh Mehta's* writ petition on

June 16, 1986, appeals and revisions could be filed Under Rules 43 and 47 of 1986 Rules. Secondly, the petitioners are guilty of serious leches and gross and deliverate inactions, the applications were submitted in the year 1981 and writ petitions have been filed in the year 1989 and no satisfactory explanation has been offered of this inordinate delay. Working permission was granted to the RSMDC in the year 1983 and 1984 and during this period huge investments were made on the disputed plots, big machineries and plants were installed, overburdens were removed, 6 kms long road was constructed by the private respondents, all in the knowledge of the petitioners. In *Ramanna v. International Airport Authority* AIR 1976 SC 1628 delay of 5 months was held to be fatal. On account of this inordinate delay, a definite equity has arisen in their favour. Thirdly, many disputed questions of facts are involved in these writ petitions. Fourthly, the petitioners have not subsisting personal interest as their applications have stood refused Under Rule 8 of the 1977 Rules. Fifthly, the RSMDC to whom the working permission was granted by the State Government and who initially allotted plots to the private respondents is a necessary party.

6. It was further contended by the learned Counsel for the respondents that the respondents no. 1 to 3 cannot now fall back and snatch away the area allotted to the private respondents and grant lease to other persons, Rajsamand Marble and Khaniz Utpadak Sangh is no legal entity, Himmat Lal Hingar has sought to utilise its name in order to obstruct the working of the areas, he filed a suit in the Court of Munsif, Rajasmand as holder of power of attorney of his wife Kamla Devi against the Private respondents challenging the said decision Annexure 2, he failed to get a temporary injunction in it and, thereafter he has got failed these writ petitions in order to put pressure upon the private respondents. They further contended that it has been falsely stated in the writ petitions that the private respondents have not raised the production to cover the normal dead-rent even, in fact they have paid much more revenue, the Government in relaxation of Rules was fully competent to take decision Annexure 2, the petitioners have no bonafides, they did not move any application for impleading them as parties in the *Rajendra Singh Mehta's* writ petition, the letter of the Rajsamand Marble and Khaniz Utpadak Sangh, Kankroli is absolutely baseless and factually incorrect, the decision dated March 25, 1989 Annexure 2 is neither illegal nor arbitrary, nor discriminatory, nor violative of principles of natural justice the grant of working permission to RSMDC was perfectly legal it was taken in the best interest of the mineral development, financial assistance can be obtained for processing unit but not for mining operation without having any lease from the Government the petitioners are not in position to do marble mining in scientific and mechanised manner, they have done nothing for last 9 Years, they have filed the writ petitions after a lapse of 8 years with intention to enjoy the ready fruits of the hard labour and huge investments of the private respondents, a large part of the area is already held by Khatedars, it is not ready for grant till the Khatedars surrender their Khatedars rights, the working of the area has clearly shown that the scientific and mechanised mining of marble could be better undertaken in the

area of 5 plots each instead of stray plots of 100 x 100 sq. meters each, the answering respondents have entered into agreements with the Khatedars of the land and have made payments in advance to them and the writ petitions deserve to be dismissed with costs. They relied upon *Ishwarlal v. State of Rajasthan* 1989 (2) RLR 384 *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, *The Industrial Development and Investment Co. Pvt. Ltd. and Another Vs. State of Maharashtra and Others*, and *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*,

7. The first question for consideration in these writ petitions is whether the petitioners had an efficacious remedy for getting the order Annexure 2 quashed? A revision u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (In short "the Act") could be failed by the petitioners before the Central Government. The first contention of the learned Counsel for the petitioners was that the writ petitions cannot be dismissed on this ground after they have been admitted. It is correct that about 10 writ petitions were admitted on December 7, 1989. The orders admitting the writ petitions are not speaking orders. It cannot be said that this preliminary objection was over-ruled while admitting them. By their admission, the respondents are not deprived of taking this preliminary objection. They have specifically taken it in their replies. At the commencement of the arguments, aforesaid preliminary objection were raised by the learned Counsel for the respondents and in fact the arguments of the learned Counsel for the parties centred round the aforesaid preliminary objections. In *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, relied upon by the learned Counsel for the petitioners, the writ petition was dismissed on the ground of having alternate remedy after hearing arguments at length on merits. Such is not the case here.

8. It was next contended by the learned Counsel for the petitioners that order Annexure 2 is in fact not an order but a decision and no revision lies u/s 30 of the Act against a decision. This contention is also devoid of force. In para no. 13 of the writ petitions, this order Annexure 2 has been described as an order and not as a decision. The word "Decision" means the determination of question or controversy and not the reasons or grounds which weight with the decision taking authority in arriving at such a decision. In *Black's Law Dictionary*, "Order" has been defined as "a mandate, precept, a command or direction authoritatively given. The word "Order" has not been defined either in the Act or in the Rules. It is comprehensive enough to include every decision, award or order made under the Act. The word "Order" is not a term of art. It has no fixed legal meaning. It has been observed in *Gangadhar Lalliram Vs. Nirvachan Adhakari Marketing Society, Vijayapur and Others*, as follows:

In our opinion, the word "order" as used in Section 77 of the Act is comprehensive enough to include every decision, award or order made under the Act. The word "order" is not a term of art. It has no fixed legal meaning. In 67 CJS 520, the following statement occurs:

"order", as a noun, has been held equivalent to or synonymous with "decision", See 26 CJS 38 Note 72, "regulation", "rule", "resolution", "shipment; and "warrant" and has been compared with, or distinguished from, "regulation" and warrant".

The word "order" has not been defined in the Act like the Code of Civil Procedure, which gives it a special meaning in order to distinguish it from a decree.

9. It cannot, therefore, be said that no revision petition could be filed against the order Annexure 2 u/s 38 of the Act.

10. There is also no force in the contention of the learned Counsel for the petitioners that there exists no provision for the execution of the order passed by the Central Government u/s 30 of the Act and as such it cannot be said that it provides efficacious remedy. The facts of *Daulal Purohit v. State of Rajasthan* 1989 (1) RLR 392 are quite different and distinguishable. Observations relied upon have been made in respect of the Rajasthan Service Appellate Tribunal. It was not a case relating to the Act. Attention was invited towards the order (Annexure 6) dated August 31, 1988 of the Central Government passed in Revision Application No. 1/389/85/MIV, *Dilip Dixit v. Government of Rajasthan*, and the order of the State of Rajasthan dated September 20, 1989 (Annexure 7), enclosed with the writ petition No. 237 *Anil Kumar v. State of Rajasthan*. These two orders do not show that the order Annexure 6 was not complied with by the State Government. It is clearly stated in the order dated September 20, 1989 (Annexure 7) that the State Government has taken a policy decision not to grant any mining lease to any private sector in respect of Dolomite mineral. The circular letter No. 1 (18) /66/II dated August 26, 1966 of the Government of India in the Ministry of Mines and Geology, New Delhi runs as under:

Sub:-Classification of Dolomite as minor mineral on the analogy of limestone.

11. I am directed to say that the Mineral Advisory Board has recommended at its 12th Meeting held at New Delhi on the 4th and 5th March, 1965 (vide item 4-G (1) of the minutes) mineral depending upon its end use.

12. The matter has been considered carefully by the Central Government and it has been decided that dolomite should continue to be classified as major mineral as the conservation of this mineral to the fullest extent is essential for the following reasons-

(a) dolomite is an important and basic raw material for all blast furnaces; and

(b) dolomite is not very much in abundant supply in the country.

13. I am accordingly to request that the State Govt. may grant mine all concessions for dolomite only under the Mineral Concession Rules, 1960 at present."

14. In view of this circular, it cannot be said that the State of Rajasthan did not comply with the said order Annexure 6 of the Central Government.

15. On the contrary, it has been held in *Ishwarlal v. State of Rajasthan* 1982(2) RLR 384 as follows:

We are of the opinion that u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957 a revision lies to the Central Government against the aforesaid of the Deputy Secretary to the Government of Raj, Mines Department made in exercise of his power Under Rule 64 of the Rajasthan Minor Mineral Concession Rules, 1986. This Court has taken a consistent view that the remedy of revision to the Central Government u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957 is an alternative efficacious remedy and has declined to interfere in its extraordinary jurisdiction Under Article 226 of the Constitution of India.

Relying upon *Champa Lal v. State of Rajasthan* RLW 1914 330 *Rajesh Kumar v. State of Rajasthan*, S.B. Civil Writ Petition NO. 1928/85 decided on January 7, 1986, *Kalyan Chand v. State of Rajasthan*, S.B. Civil Writ Petition No. 1469/86 decided on September 23, 1986 and *Kanhaiya Lal v. State of Rajasthan* 1977 WLN 179 am bound with the judgment of the Division Bench.

11. There is yet another aspect of the matter. The second prayer made in the writ petitions is that the respondents no. 1 to 2 and 3 be directed to dispose of the applications of the petitioners received in pursuance of notice Annexure 1 dated November 7, 1981, published in Rajasthan Gazette dated November 19, 1981. Admittedly, the petitioners sent their applications in the year 1981 in pursuance of this notification. Rule 8(1) of the 1977 Rules ran as under:

8 Disposal of applications for the grant and renewal of the mining leases-. (1) An application for the grant of a mining lease shall be disposed of within nine months from the date of its receipt and if it is not disposed of within that period it shall be deemed to have been refused.

As such it would be deemed that the applications were refused on the expiry of 9 months of their receipt. It is correct that in S.B. Civil Writ Petition No. 2016/81- *Rajendra Singh Mehta v. State of Rajasthan*, the non- petitioners no. 1 to 3 were temporarily restrained from granting mining lease of the plots in respect of which the notification Annexure 1 was issued vide stay order dated January 13, 1983 (Annexure 1B). It is the admitted case of the parties that this writ petition was dismissed by order dated June 16, 1986 (Annexure 3). At the most, the time taken in the decision of this writ petition can be deducted from the aforesaid statutory period of 9 months. Even counting the period of 9 months from June 16, 1986 (the date of decision of the writ petition of *Rajendra Singh Mehta*) the period of 9 months expired on March 15, 1987. Admittedly, these writ petitions were filed after June, 1989. Argument was advanced that the petitioners were not aware of the said order dated June 16, 1986 given in *Rajendra Singh Mehta*'s writ petition. It is not the case of any petitioner that he was not aware of the filing of the writ petition. It is not easily believable that when the petitioners were aware of the institution of this writ petition they could not know

about the order dated June 16, 1986 (Annexure 3) within reasonable time. It is thus clear that there had been a delay of over 2 years in filing the writ petitions and no satisfactory explanation has been put forward for this inordinate delay.

12. Reliance was placed by the learned Counsel for the petitioners on two letters written by the Assistant Mining Engineer, Rajsamand to the respondents no. 2 and 3 for the extension of time for considering the applications received in pursuance of the notification Annexure 1. Admittedly, the respondents no. 1 and 2 did not extend the time. By mere writing letters, the statutory period provided in the Rule 8(1) of the 1977 Rules and 1986 Rules did not get extended.

13. Admittedly, the State of Rajasthan (respondent no. 1) appointed RSMDC as its agent for under taking mining operations and working permission was granted to it in respect of the plots mentioned in Annexure 2. It is also the admitted case of the parties that in pursuance thereof, the RSMDC allotted 35 plots to the aforesaid five private respondents. The case of these answering respondents is that in pursuance of the said allotments, they started operating the mines scientifically and mechanically after removing over burdens and clearing sites, installing big and huge plants and machineries, and making huge investments. These facts have been denied by the petitioners in their writ petitions and rejoinders. The relevant portions of the order Annexure 2 dated March 25, 1989 of the Government of Rajasthan run as under:

Therefore, in light of the above facts and to avoid further complications the working permissions given to RSMDC is hereby withdrawn with immediate effect and the State Government hereby takes the following decisions in relaxation of the rules Under Rule 65 of the Rajasthan Minor Mineral Concession Rules, 1986:

To grant mining leases to the Joint/Assisted Sector of the RSMDC over the plots already with them and the areas owned by these sectors in relaxation of rules 7 of the MMCR, 1986 with the conditions that these sectors shall:

(i) continue to undertake marble mining in scientific and mechanised manner and shall establish marble processing units.

The words "these sectors shall continue to undertake marble mining in scientific and mechanised manner" are quite significant. They show that these sectors, namely, (1) M/s. International Mineral Industries Ltd., (2) M/s. Mewar Marbles Ltd., (3) M/s. Saxeria Marbles Ltd., (4) M/s. Nirmal Marbles Ltd. and (5) M/s. Aditya Mining Ltd., answering respondents, were carrying on marble in scientific and mechanised manner prior to the issuance of the order Annexure 2. This greatly supports their version and not of the petitioners that they had not undertaken any work by the time the writ petitions were filed. Order Annexure 2 shows that the Government granted working permission for Nazrana area in December, 1984 and for parbati area in September, 1983. The case of the answering respondents is that they started development work in the latter Part of 1985/beginning of the year 1986. It is not disputed that all the petitioners are residents of Udaipur. Letter Annexure 4 was written by Himmat Lal Hingar,

President, Rajsamand Marble and Khaniz Utpadak Sangh, Kankroli on October 15, 1986 to the Chief Minister, Rajasthan, Jaipur complaining against the answering respondents. Petitioners have filed a copy of this letter in each case. In these facts and circumstance it is difficult to believe that the petitioners were unaware of the work which was carried on by these private respondents since of the year 1986. Equity has arisen in their favour. It has been observed in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , relied upon by the learned Counsel for the petitioners, as follows:

Moreover, the writ petition was filed by the appellant more than five months after the acceptance of the tender of the 4th respondents incurred considerable expenditure aggregating to about Rs, 1,25,000/- in making arrangements for putting up the restaurant and the snack bars and in fact set up the snack bars and started running the same. It would now be most inequitable to set aside the contract of the 4th respondents at the instance of the appellant. The position would have been different if the appellant had filed the writ petition immediately after the acceptance of the tender of the 4th respondents but the appellant allowed a period of over five months to elapse during which the 4th respondents altered their position. We are, therefore, of the view that this is not a fit case in which we should interfere and grant relief to the appellant in the exercise of our discretion Under Article 226 of the Constitution.

It has been observed in *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, as follows:

Now, it is well settled that the power of the High Court to issue an appropriate writ Under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction.

Reference of AIR 1990 Delhi 34 may also be made here. It would be very harsh if the mining leases granted to the private respondents are now cancelled.

14. There is great force in the contention of the learned Counsel for the

respondents that the petitioners had no subsisting interest when they filed the writ petitions. As already observed above, their applications stood refused by the deeming provisions of Rule 8(1) of the 1986 Rules immediately after the expiry of nine months from the date (June 16, 1986) of judgment given in Rajendra Singh Mehta's writ petition.

15. Many disputed questions of facts are involved in these writ petitions. It has been stated in ground no. (iv) of the writ petitions as follows: --

(iv) That the State Govt. by exercising the powers Under Rule 65 has chosen the respondent no. 4 for grant of mining lease without even considering the antecedents of the respondent no. 4 who after expiry of 4-5 years has not even been able to extend its mining activities beyond 2 plots. Nothing for mechanisation of mines has been done in as much as one of the five parties Mis. International Industries Limited had imported a wiresaw machine which at present has been given on hire to other party and was hardly used for an year. Rest 4 parties have done nothing towards mechanisation of mines so far.

Similar averments have been made in the rejoinder. These facts have been denied by the respondents. These disputed facts cannot be decided in the writ petitions.

16. There is no force in the contention of the learned Counsel for the respondents that the writ petition deserve; to be dismissed for not impleading RSMDC. Admittedly, no relief has been sought against RSMDC. It is also not in dispute that the working permission granted by the Government of RSMDC was recalled in August, 1986 and order Annexure 2 was passed by the State Government granting mining leases in favour of the private respondents in respect of the plots which were allotted to them by the RSMDC.

17. Even on merits, the writ petitions have no substance. As already observed above, no relief in respect of the working permission granted by the Government to the RSMDC has been claimed in any writ petition. The learned Counsel for the petitioners contended that the grant of working permission to the RSMDC by the respondents no. 1 to 3 was contrary to law, it was a device to circumvent the stay order Annexure 1B and consequently the allotment of 35 plots by the RSMDC to the private respondents was void ab initio. This contention has no force. Rule 9 of the 1977 Rules ran as under:

9. Refusal of application of Mining lease-. The Government may refuse to grant or renew a mining lease where it considers necessary to work the mineral/minerals applied for in the specified area by itself or through the agency of a public undertaking.

It clearly authorised the Government to work the mineral itself or through the agency of the public undertaking. It cannot be disputed that RSMDC is a public undertaking in *M.S. Deb v. State of Orissa* ILR 1980 Cut 37 relief upon by the learned Counsel for the petitioners, Manager Ore (India) Ltd. was not a public

undertaking and there was no provision in the Orissa Rules similar to the above quoted Rule 9. Rule 63 of the 1977 Rules also provided that the Government might relax any provision of the Rules in the interest of mineral development or better working of mines.

18. The learned Counsel for the petitioner attacked the order Annexure 2 dated March 25, 1989 of the Government of Rajasthan as arbitrary, discriminatory, mala fide, violative of principles of natural justice and illegal. There is no infirmity in this order. It is quite valid. The working permission granted to the RSMDC was withdrawn and the 35 plots which were allotted by the RSMDC to the private respondents have been leased out by this order. As already observed above in para no. 13, the equity has arisen in favour of the private respondents. The Rajasthan Minor Mineral Concession Rules, 1986 came into force from March 4, 1986. Rule 65 of these Rules clearly empowers the Government to relax any provision of these Rules for reasons to be recorded in writing. There is a reference of this rule in this order Annexure 2. Reasons for granting mining leases in respect of these 35 plots to the private respondents have duly been given in it. Paras no. 2 and 3 of the order Annexure 2 also contain necessary directions for remaining 146 plots. Para No. 2 of the notification Annexure 1 also provided that areas would be granted on their availability. As already observed above in para no. 11, the applications by the petitioners for the grant of mining leases stood refused Under Rule 8(1) of the 1977 Rules and also Under Rule 8(1) of the 1986 Rules. In view of these facts and circumstances, it cannot be said that the grant of mining leases in respect of the said 35 plots in favour of the private respondents was illegal.

19. Consequently, all the writ petitions are dismissed. No order as to costs.

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