
(2008) 05 RAJ CK 0039
In the Rajasthan High Court

Sanjay Sukhadia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-05-2008

Acts Referred:

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

Citation : (2008) 4 RLW 3188

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The main grievance of all above petitioners in the above writ petitions is that in the Granite Policy, 1995 framed by the State Government in exercise of the powers conferred by Rule 65A of the Rajasthan Minor Mineral Concession Rules, 1986 (for short "the Rules of 1986"), as amended in 1996 and in the Granite Policy, 2002 the State Government declared that 20% of the plots for excavation of granite shall be kept reserved for the persons of Scheduled Castes and Scheduled Tribes, yet even after more than a decade, have not implemented the said policy and consequently have not allotted a single granite mine to any of the members of Scheduled Caste and Scheduled Tribe. Before these writ petitions, D.B. Civil Writ Petition No. 7078/2003 was filed in this Court wherein the Division Bench of this Court vide order dated 11.3.2004 directed the State Government to delineate and demarcate the plots which are reserved for the persons belonging to Scheduled Caste, Scheduled Tribe and Other Backward Classes, within a period of ten weeks. In spite of said positive direction to the State Government, the respondents are granting the mining leases for the granite area to all other persons other than the members of Scheduled Caste, Scheduled Tribe and Other Backward Classes.

3. According to the petitioners, the State Government in the matter of grant of

mining lease for excavation of valuable granite is not following and implementing its own policy decision and also flouting the orders of the Division Bench of this Court. So far as the other reliefs are concerned, they are relief for individual petitioner and for consideration of their application for allotment of mining lease.

4. It would be appropriate to look into various provisions of laws under the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Act of 1957") and the Rules framed by the State Government in exercise of the powers conferred u/s 15 of the Act of 1957 which are the Rules of 1986 and particularly; Rule 65A of the Rules of 1986 and the Granite Policies declared by the State Government in the year 1991, 1995 and amendment of 1996 introducing the reservation in the matter of grant of granite lease to the persons of various categories ; and Granite Policy, 2002 framed by the State Government.

5. Section 15 of the Act of 1957 empowers the State Government to frame the Rules for the purpose of grant of mining leases of various categories to the persons in the State of Rajasthan. Though Sub-section (1) of Section 15 is wide enough to cover almost all subjects for which the State Government may frame the Rules for regulating the quarry leases, mining leases or other mineral concessions in respect of other purposes and for the purposes connected therewith. As stated above, in exercise of the powers conferred by Section 15 of the Act of 1975, the State Government framed the Rules of 1986 and repealed the earlier framed Rules of 1977. Under the Rules of 1986, for grant of mining leases, the provisions have been made under chapter-II of the Rules of 1986. As per Rule 4 of the Rules of 1986, it has been laid down that no mining leases shall be granted in respect of such mineral/minerals as Mining Engineer or Assistant Mining Engineer may notify in this behalf within his jurisdiction with the approval of the Director and it is provided that no mining lease shall be granted to a person who is not a citizen of India unless prior approval of the Government of India has been obtained. As per the said Rule 4, the mining lease can be granted only if the area is notified by the Mining Engineer/Assistant Mining Engineer with the approval of the Director. In the matter of grant of mining lease as per Rule 7, when two or more persons apply for mining lease in respect of the same area, the applicant whose application was received on earlier date shall have a preferential right for the grant of lease over the applicant whose application was received later. Exception to this general rule, as provided in Sub-rule (1) of Rule 7, is given under the Proviso to Sub-rule (1) of Rule 7 and under Sub-Rules (2) and (3) of Rule 7. The area and period to the extent of which mining lease can be granted is provided under Rules 11 and 16 of the Rules of 1986. Apart from the grant of leases, the provisions for grant of Quarry licenses have been made under Chapter-III of the Rules of 1986. Under Rule 73, a provision has been made for reservation of the area for prospecting or mining operations by the State Government. Rule 73 provides that where the Government proposes to undertake prospecting or mining operations of any mineral, it shall issue a notification reserving the area, in at least one daily newspaper having wide circulation in the State as well as in one such daily newspaper having wide

circulation in the locality nearest to the area in question. In the notification, details of the area and period for which such operations are proposed to be undertaken, are required to be given.

6. Even when detail Rules have been framed for regulating the grant of various leases in respect of the minor minerals, yet Rule 65A was inserted with effect from 20.12.1991 to give power to the State Government to adopt any method or procedure different from the procedure that is provided in the Rules, obviously in the Rules of 1986. Rule 65A reads as under:

65-A. Grant of mining leases by adopting procedure different from the given in the Rules.-Notwithstanding anything contained in these rules, Government may, by notification in the Rajasthan Gazette or atleast one daily newspaper having wide circulation in the State as well as one newspaper having wide circulation in the locality nearest to the area in question, adopt any method or procedure different from that provided in the rules for leasing out mineral deposit in the interest of mineral development.

7. In exercise of the powers conferred by Rule 65A, the State Government decided to introduce the Granite Policy, 1991 in interest of mineral development. In the Granite Policy, 1991, it was provided that the survey for existence of mineral will be made by the field officers and after the report of the Geologist in regard to the availability of the granite mineral in the concerned areas, the delineation and demarcation of the plots will be made and thereafter, the mining leases were to be allotted after inviting application as per the Granite Policy, 1991. In this policy of 1991, there was no reservation of mining area or mining plots for the members of SC/ST. However, as per Para 6 of the Granite Policy, 1991, pending applications were to be decided as per the policy in force at the time of submitting the application and the application covered by Sub-clause (ii) are to be decided by the Policy of 1991.

8. Granite Policy, 1991 was superseded by the Granite Policy, 1995 with effect from 18.1.1995. In the Granite Policy, 1995, the provisions for allotment of the mining lease were made under different categories as provided in Clause 4 of the said policy. The grant of mining lease could have been only after the delineation and demarcation of the plots because as per Clause (1), delineation is condition precedent for notifying the plots for grant of mining lease and following the provision of delineation provided by Clause (1), in Clause (4) also, it has been provided that the plots to the persons of different categories shall be allotted after they are delineated and obviously are notified. In Clause (6) of Granite Policy, 1995, provisions were made in regard to grant of those plots which were earlier delineated under Granite Policy, 1991 but "Were remained vacant or revoked. Such plots were made available for allotment under Granite Policy, 1995 after re-delineation as per the provisions made under Clause (6) of Granite Policy, 1995. In the Granite Policy, 1995, there was no reservation for the members of Scheduled Castes and Scheduled Tribes and, therefore, by amendment dated 20.2.1996, Sub-clause (5) was added providing reservation of

20% of the plots for the members of Scheduled Castes and Scheduled Tribes.

9. It will be worthwhile to mention here that a provision also has been made providing that if any person personally intimates in writing to the Director of Mines and Geology or any other officer authorised by him on his behalf about search and occurrence of a new granite deposit in the Government land and furnishes the location map of the granite deposit, the mining lease may be granted to him on preferential basis after delineation of plots in the area.

10. The grievance of the petitioners, as stated above, is that not a single plot in the entire State of Rajasthan has been allotted to any member of Scheduled Caste and Scheduled Tribe inspite of the Government's own decision under the Policy of 1995 that 20% of the plots shall remain reserved for the members of Scheduled Castes and Scheduled Tribes where granite is to be excavated.

11. The Granite Policy, 1995 continued till it was superseded by new Granite Policy, 2002 which was introduced on 2.3.2002 but without any benefit to the members of Scheduled Castes and Scheduled Tribes till new policy came into force. More unfortunate is that even after keeping reservation of 20% of the mining plots for allotment to the members of Scheduled Castes and Scheduled Tribes in the Granite Policy of 2002, the State Government has not only not allotted a single plot to the members of Scheduled Castes and Scheduled Tribes as reserved plot but the State Government has started granting granite mining lease without delineating the mining plots and has not declared and notified the plots reserved for the members of the SC/ST. Shocking is this that no plot has been reserved and almost all granite leases have been granted by the State Government inspite of the fact that the petitioners raised their grievance continuously and ultimately, the grievance was raised by the petitioners of DB Civil Writ Petition No. 7078/2003 wherein the Division Bench of this Court in its order dated 11.3.2004 after observing that it is not in dispute that even in the Granite Policy, 1995, 20% of the delineated plots were required to be reserved for the persons of Scheduled Castes, Scheduled Tribes and Other Backward Classes and held that under Granite Policy, 2002 declared by the Mines Department on 2.3.2002, the reservation of plots for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes were kept 10%, 10% and 5% respectively. It was represented before the Division Bench of this Court in the said writ petition that the Government is in the process of delineating and demarcating the plots for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes in accordance with the Granite Policy, 2002, then the Division Bench of this Court disposed of the writ petition No. 7078/2003 with a direction to the State Government to delineate and demarcate the plots which are to be reserved for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes within a period of ten weeks.

12. The petitioners have placed on record several applications and documents, one set after another, to show that even during the pendency of this writ

petition, flouting the Division Bench's directions given in writ petition No. 7078/2003, the State Government went on granting mining leases for granite and as per the information of the petitioners, the State Government virtually granted mining leases for all areas where granite is there without allotting a single mining lease to any member of Scheduled Caste and Scheduled Tribe. Not only this, to see that no plot be given to the members belonging to reserved categories, the State Government granted mining leases to various persons without delineating and demarcating the plots. It is submitted that as per Rule 4 of the Rules of 1986, unless the mining area is notified by the Mining Engineer/ Assistant Mining Engineer after obtaining approval from the Director which could have been done only after delineation and demarcation of the plots as per the provisions under the Granite Policy, no mining lease could have been granted to anybody but if that procedure would have been adopted, the State Government could not have granted the mining lease of the plots to be reserved for members of SC/ST to the persons other than the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. Therefore, all allotments made by the State Government during this period are in violation to the statutory provisions of the Rules of 1986 and in violation of Granite Policies of the year 1995 as amended in the year 1996 and of 2002 and also contrary to direction of this Court given in DB Civil Writ Petition No. 7078/2003.

13. Since the issue raised above is the foundation for the individual claims of the petitioners, therefore, it will be appropriate to consider the issue referred above first.

14. Learned Addl. Advocate General vehemently submitted that the writ petition No. 7078/2003 was disposed of by the Division Bench of this Court vide order dated 11.3.2004. DB Civil Contempt Petition No. 89/2005 was filed by Suma Ram, one of the petitioners of writ petition No. 7078/2003, alleging that the State Government has willfully disobeyed the direction of this Court given in order dated 11.3.2004. In the said contempt petition, it was averred that, "what is being done is that the plots have been allotted without delineation thereof and another set of orders have been made after delineation of the plots." In support of this contention, reference was given to the allotment of plots made in Jalore area. The said contempt petition was dismissed by the Division Bench of this Court on 21.8.2006. Therefore, the writ petitions have no merit and the petitioners are unnecessarily raising the grievance again. It is also submitted that only in view of the Division Bench decision dated 11.3.2004, interim order was passed in writ petition No. 4098/2005 by which the respondents were restrained from making further allotment from the land of khasra No. 1591 without making reservation as ordered by the Division Bench in its judgment dated 11.3.2004.

15. In the present writ petitions, the petitioners unsuccessfully raised grievance before the Division Bench of this Court by moving contempt petition that the State Government is disobeying the order of this Court dated 11.3.2004 in writ petition No. 7078/2003. The petitioners again have raised same grievance which

deserves to be rejected. It is also submitted that individually the petitioners are not entitled to any substantive relief in their favour, therefore, there is no need to re-examine the matter whether the State Government has not obeyed the direction of this Court given vide order dated 11.3.2004. It is also submitted that individual petitioners applied for allotment of the land on the basis of their own claim of search of granite underneath, which is unconnected with issue raised in these petitions, and are claiming grant of lease on the basis of their priority because of their finding out the granite in the Government land. In view of the above reason, the petitioners have joined two separate causes and are projecting that they are aggrieved because of not giving benefit of policy to the weaker section of the society. In view of the above, the writ petitioners are misleading this Court, hence, the writ petitions deserve to be dismissed.

16. On merits, learned Addl. Advocate General vehemently submitted that the Granite Policy, 1991 was superseded by Granite Policy, 1995 and the Granite Policy, 1995 has been superseded by Granite Policy, 2002. The petitioners' writ petitions are filed after coming into force of Granite Policy, 2002. In the Granite Policy, 2002, both the provisions have been kept - (1) first cum first serve which is in consonance with the Rules of 1986 (who himself has searched the granite) and (2) as provided under the Granite Policy, 2002. By Granite Policy, 2002, which was notified on 2.3.2002, all prior notifications issued under the Granite Policy, 1995 or earlier have been superseded by Clause 17. It is also submitted that under Clause 12, only in the areas which are to be delineated after notifying the area under Rule 73 of the Rules of 1986 and as provided in First Proviso of Clause 1 of the Granite Policy, 2002, the reservation is required to be provided. It is submitted that in the area delineated by the department in Chohtan Tehsil of Barmer and Desuri Tehsil of Pali, reservation has been provided. It is also submitted that Clause 12(i) provides that 50% of the plots delineated in the Government land shall be kept reserved as provided in the policy. Clause 12(iii) of the Granite Policy is required to be read with Clause 12(i) which clearly provides indicates that the reservation shall be only on delineated plots. The petitioners have not applied for grant of mining lease for any delineated plot and, therefore, they are not entitled to allotment of plot as person who discovered the granite underneath the Government land or as the applicant for delineated plot as member of reserved category.

17. In sum and substance, according to learned Addl. Government Advocate, unless and until the plots are delineated, demarcated and are notified, no person can claim preferential right for grant of granite mining lease under any of the policy of the State Government may it be Policy of 1995 as amended in the year 1996 or under the Policy of 2002. Wherever plots were delineated and demarcated and notified, the reservation of the plots was kept.

18. Learned Counsel for the State vehemently submitted that there are two separate and independent provisions in Clause (1) of the Granite Policy, 2002. As per Sub-clause (i) of Clause (1), the mining lease in the Government land shall

be granted by method of application under Chapter II of the Rules of 1986. If Government decides to grant mining lease as per Chapter-II of the Rules of 1986, it is permissible even under Granite Policy, 2002. The delineation of plots is required only as per the Proviso to Sub-clause (i) of Clause (1), when (a) Government proposes to undertake prospecting or mining operation of any mineral and any land has been reserved for that purpose (b) as per Proviso to Clause 1 of the Policy of 2002, existence of granite in the said reserved land is established by a team of Superintending Mining Engineer and Superintending Geologist. Therefore, the State Government's power to grant the mining lease by following the procedure provided in Chapter-II of the Rules of 1986 has been saved even in the Granite Policy, 2002. It is not the case of the petitioners that the Government has reserved any land under Rule 73 of the Rules of 1986 after finding out existence of granite in the Government land through the team of Superintending Mining Engineer and Superintending Geologist. Therefore, there arises no question of issuance of any notification and delineating the plots when the leases are granted under Rules of 1986. When any person is seeking mining lease after exploring the granite in Government land, he is entitled to grant of mining lease and in that situation, there cannot arise question of delineating the plot as it cannot serve any purpose. It is also submitted that neither the petitioners prayed nor can compel the respondents to initiate the process of reservation of land under Rule 73 of the Rules of 1986. It is submitted that whenever any action will be taken under Rule 73, the State Government will make provision for delineation of plot as well as for reservation of the plot for allotment to the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. Learned Addl. Advocate General in support of the State's contention that the reservations were made, relied upon a few documents wherein one or two plots were reserved for the persons belonging to Scheduled Castes and Scheduled Tribes, out of which, according to learned Counsel for the petitioners, one was withdrawn by the State Government and another is under litigation.

19. It will be worthwhile to mention here that an application for amendment of writ petition No. 5894/2005 and several other applications and documents and reply to the applications have been filed by the parties, detailed reference of which is not necessary for the purpose of deciding the issue raised by the petitioners in view of the fact that there is no dispute about passing of various orders by the State or by the concerned Minister in the matter of action to be taken for granting mining lease and orders passed for grant of granite mining leases.

20. The peculiarity is that the State Government framed the Granite Policy in the year 1995 and introduced the provision for reservation of the plots for allotment to the members of various categories including the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes, for whose interest, these writ petitions have been filed. The fundamental question is only whether the said benefit reached to the persons belonging to Scheduled Castes,

Scheduled Tribes and other Backward Classes or not? Even the State Government is not disputing that the State Government has framed the policy for grant of mining lease for excavating the granite on preferential basis to the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes. It is not the case of the State Government that the Policy has been withdrawn by the State. It is also not the case of the State Government that the State has no intention to give benefit of the State Policy to the section of public for whose benefit, the scheme was framed. The State's contention is that the State has opted a procedure and by adopting that procedure (under Rules of 1986), the granite mining leases were granted to several persons without making reservation of posts for member of SC/ST and that procedure has legal backing. In other words, it means that there is no necessity of reservation of mining plots if the Government chooses to grant leases of all the granite plots by one of the mode and procedure available under the granite policy saved by the policy itself which allows the grant of mining leases by following the procedure prescribed by Rules of 1986. Then question arises, whether the State Government can take such a plea which nullifies the State's own policy framed for the benefit of weaker section of public ?

21. From the documents which have been placed by both the parties on record, this Court has no hesitation in holding that virtually no benefit has reached to the members of the reserved category in the matter of grant of lease for granite mining. Rest issues are not of much significance because of the reason that the State has no right to say that the State has framed the policy consciously and in this case repeatedly for giving the benefit to the weaker section of the society and since there are some loopholes in the Rules and the policy can be interpreted in a manner so as to deny the benefit of the policy to the weaker section, therefore, the State is justified in proceeding in the matter of grant of mining leases for granite which benefited to the persons against the State's policy decision which was declared in exercise of the statutory powers of the State Government. It is strange that the State could not demonstrate from the facts that the benefit of making provision for reservation of grant of mining lease in favour of weaker section gave a fraction of benefit to the members of weaker section in the period of 10 years. If it was necessary to notify the area after survey by the Government officers under Rule 73 of the Rules of 1986 so as to implement the Granite Policy, 2002 to give benefit to persons for whose benefit Policy was framed, why the State did not proceed under Rule 73 of the Rules of 1986? There is no answer of State. It is not the case of the State Government that the State Government since has not allotted mining leases for granite during this period, therefore, the right of weaker section has not been denied and it can be said to be a deferment of the benefit to the weaker section. From the documents placed on the record, which speak in volumes that inspite of framing of the policy for providing benefit to the weaker section of the society, the State Government went on allotting the valuable granite mining area without reservation of plots for the members of Scheduled Castes, Scheduled Tribes and

other Backward Classes. Learned Counsel for the petitioners submitted that in fact, the whole of the area containing the granite has been allotted by the State Government without reservation, therefore, virtually the weaker section has been totally deprived from the benefit of the policy and during long period of 10 years, if not total area than substantial part of the granite area has already been excavated by the influential persons. It is not a case of deferment of benefit to the members of weaker section but it is denied totally.

22. It will be worthwhile to mention here that before the Division Bench of this Court, on behalf of the State Government, it was specifically submitted as under:

So far the Government has not delineated plots for the Scheduled Castes, Scheduled Tribes and other Backward Classes. Mr. Bhati, learned Counsel appearing for the State says that the Government is in the process of delineating and demarcating the plots for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes in accordance with Granite Policy, 2002.

23. In view of this specific stand of the State Government, the Division Bench of this Court issued directions as under:

Having regard to the Granite Policy, 2002, we direct the State to delineate and demarcate the plots which are to be reserved for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes within a period of ten weeks.

24. After giving such statement before the Division Bench of this Court for delineating and demarcating of the plots for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes in accordance with the Granite Policy, 2002, how the State Government can say that there are some provisions in law either in the Granite Policy, 2002 or under the Rules of 1986, with the help of which, the State Government can say that this is their choice to start the process in the matter of grant of mining lease of granite plots in a manner so that no benefit goes to the persons for whose benefit the State framed the policy. For the sake of argument, if there was any defect in the policy or there was any necessity for amendment in the policy and the Rules, then it should have been undertaken by the State Government forthwith. The State Government cannot say that it framed the policy but was not supposed to review the entire matter and was not under obligation to find out whether the benefit of policy has reached to the persons for whose benefit the policy has been framed by the State Government. No one (except public) can compel the State Government to frame the policy and the State Government framed the present policy to project that the State is about to give benefits to the weaker section in the matter of grant of valuable mining lease for granite and if it was a wrong decision in the year 1996, then what was the reason for declaring the Granite Policy, 2002 with the same provision for reservation of mining plots containing the granite for members of Scheduled Castes and Scheduled Tribes.

25. The petitioners have placed on record several orders passed by the State Government by which granite mining leases have been granted by various orders of the State of Rajasthan and also submitted that the contention of the State Government is contrary to their various own orders that the land can be allotted without delineation and demarcation in cases for the applications which were submitted prior to coming into force of Granite Policy, 2002 and placed on record the copy of information given by the Assistant Mining Engineer, Jalore by which he gave the details of total number of delineated plots and out of which the plots have already been allotted. This detail is given in Annex. 1. The petitioners also placed on record copy of order issued by the Directorate of Mines and Geology, Udaipur dated 25.9.2005 whereby directions were issued to take decision on the pending applications for grant of mining leases. A complete timetable was given by the mining department to various Mining Engineers for deciding the pending applications. The petitioners also placed on record several notifications issued for grant of granite leases out of which in one notification Annex.25 dated 23.11.2005, it has been stated on behalf of the State that some plots have been reserved for the persons belonging to Scheduled Castes, Scheduled Tribes and other Backward Classes and for other category of persons but according to learned Counsel for the petitioners, one plot was reserved at Narlai of Tehsil Desuri of District Pali which was cancelled by subsequent notification Annex.26 and in respect of plot at Bisalpur of Tehsil Bali, District Pali, there is already stay order.

26. Learned Counsel for the petitioners with the help of Annex.25, stated that the contention of the State that they have not proceeded to take steps under Rule 73 of the Rules of 1986, therefore, there was no need of delineation of plots and their notifying, then how the State has delineated the plots which are shown in Annex.25. Thus, for the sake of arguments, if it is accepted that the reservations could have been only on the plots which have been delineated by the State Government by issuing notification under Rule 73 of the Rules of 1986, then why the State has not proceeded under Rule 73 remained unexplained. The above question only suggests that there is possibility that State officers acted in a manner so as to frustrate the policy and did not proceed under Rule 73 and avoided to reserve the granite area of plots for the members of weaker section for whose benefit, the State framed the policy. The petitioners also tried to obtain the information about the number of plots reserved under the Granite Policy, 2002 by moving application under the provisions of Right to Information Act, copy of which has been placed on record as Annex.27. In response to the said application, the Assistant Mining Engineer, Jalore vide letter Annex.28 dated 25.5.2007 informed that from his office, no action has been taken for reserving the plots for the persons belonging to Scheduled Castes and Scheduled Tribes.

27. We may notice here that wide power has been given to the State Government to frame the Rules in exercise of the powers conferred by Section 15 of the Act of 1957 and the State has framed the Rules of 1986 and in the Rules of 1986 inserted Rule 65A with effect from 20.12.1991. By virtue of Rule 65A,

the State has been given choice to adopt any method or procedure different from that provided under the Rules of 1986 for leasing out the mineral deposit in the interest of mineral development. The intention of inserting this Rule certainly indicates that the State had intention to adopt any different method or procedure than the procedure provided in the Rules for leasing out the mineral deposit available in the State of Rajasthan. Thereafter, the State Government framed the Granite Policies of the years 1991, 1995 which was amended in 1996 and then in the year 2002. Knowing it well that the State can adopt different method and procedure for leasing out the mineral deposit in the State of Rajasthan, then reverting back to the procedure as provided under the Rules of 1986 to bypass the procedure given in the policies referred above framed by the State Government cannot have any justification as no justification has been found out from the pleadings and arguments advanced on behalf of the State Government so as to justify their plea that they can revert back to the Rules of 1986 which in the facts of the case could have been done only to frustrate the policy of the State Government itself. Rule 65A itself is a rule of law and when a procedure is prescribed by exercising power under Rule 65A of the Rules of 1986, then automatically the policy got the force of law behind it by virtue of Rule 65A itself and allowed the State Government to adopt a method different from the method and procedure prescribed under the Rules of 1986. Therefore, in the facts of the case, it was the duty of the State Government to follow the procedure as provided in the granite policies, referred above with the clear aim and object to implement it and to give benefit to the members of the weaker section and that would have been in complete consonance with the Rules of 1986 as a whole and in particular in consonance with Rule 65A and in harmony with the Granite Policies of the State Government. There is no conflict between the policies and the Rules of 1986 even if the State was under the impression that the State had choice to adopt method and procedure in the matter of grant of granite mining leases, then also it was the duty of the State Government to follow the method and procedure which may be different than the procedure(as given in Granite Policy 2002) prescribed in the Rules of 1986 itself as such because of force of law of Rule 65A of the Rules of 1986 behind the Granite Policies referred above. At the cost of repetition, it may be observed here again that there cannot be policy of giving benefit by one hand and taking it by another hand of the State Government.

28. The next important question arises in these petitions for consideration is that whether the delineation of the plots is condition precedent for grant of mining leases under the Rules of 1986 as well as under Granite Policy, 2002 ? First we may examine the Rules of 1986.

29. Sub-rule (1) of Rule 4 only provides that before grant of mining lease, notification is necessary which can be issued with the prior approval of the Director. The preferential rights of certain persons have been given by Rule 7 in the matter of obtaining the mining lease. Rule 21 provides for grant of mining lease by auction or tenders. Chapter-III deals with the subject of grant of quarry

licenses. Rule 73 provides for reservation of the area for prospecting or mining operations by the State Government. Rule 73 has been referred by learned Counsel for the parties and according to learned Counsel for the State where the Government proposes to undertake prospecting and mining operation, then notification is required to reserve the area wherein the details of the area and the period for which operations are proposed to be undertaken, are required to be disclosed. With the help of the provisions referred above, it has been argued that the delineation of the plots and its notifying is not the condition precedent.

30. In the policy of 1995, the first clause is for delineation and notification of plots. Sub-clause (1) of Clause (1) of the Policy of 1995 reads as under:

(1) Mining lease in the Government land shall be granted by auction or by inviting tenders or application as decided by Government after delineation of plots of the prescribed size.

31. Sub-clause (2) of Clause (1) of the Policy of 1995 reads as under:

(2) The plots so delineated shall be notified for grant of mining lease.

32. Clause (6) of the Policy of 1995 provides that how the mining leases shall be granted in the existing areas obviously where the granite is available. In Clause (6) also, there is reference of "plots notified" and "mining lease of redelineated plot".

Therefore, from the Policy of 1995, it appears that the provision was made for delineation and notifying of the mining plots before the lease can be granted for mining granite from the land of the State.

33. Clause (4) of the Policy of 1995 which provides for grant of mining lease to certain category of persons, also provides the grant of mining lease of the plots delineated in the Government land. Clause (4) of the Policy of 1995 can be understood as provision for grant of lease for mining plots for the persons covered under various clauses under Clause (4) of the Policy of 1995 by notification dated 20.2.1996. Sub-clauses (4) and (5) of the Policy of 1995 have been added after Sub-clause (3) which is a special provision for grant of granite mining lease to a person who personally intimates to the Director Mines (Geology) or any other officer authorised by him in this behalf about his search and occurrence of a new granite deposit in the Government land. This Clause (4) provides that to such person, mining lease may be granted on preferential basis. After delineation of the plot in the area, the maximum area which may be granted to such person shall be as per Sub-clause (3) of Clause (2) of the Policy of 1995.

34. It will be worthwhile to mention here that the word "delineation" of plots was condition precedent before grant of mining leases to any person and before grant of granite mining lease to even a person who himself has searched and found the granite deposit in the Government land and informed so to the concerned authority and applied for grant of mining lease for that particular land. It may be

because of the reason that there may be granite deposit under the soil spreading in several kilometers, then that person is entitled to lease for definite area of the land with ceiling of the area provided by Sub-clause (3) of Clause (2) of the Policy of 1995 and, therefore, unless the plot sought by the applicant is delineated, he cannot be granted lease of the land as that may be contrary to Sub-clause (3) of Clause (2) of the Policy of 1995 if the entire land is allotted to him for mining purposes.

35. As already noticed in the Policy of 1995, reservation was also introduced by amending notification dated 20.2.1996. The provision making reservation says that, "20% of the plots shall be kept reserved for the persons of Scheduled Castes and Scheduled Tribes". The Granite Policy of 1995 as such and its amendment in the year 1996 stands superseded by the Government's new Granite Policy i.e. Policy of 2002 for which the notification was issued on 2.3.2002.

36. There is material change in the provisions of Granite Policy 2002. Argument of learned Counsel for the State is that delineation before leasing out the land is not necessary is based on the language used in Clause (1) of the Policy of 2002. Sub- Clause (1) of Clause (1) of the Policy of 2002 reads as under:

1. Grant of mining lease in Government land.- (1) Mining lease in the Government land shall be granted by method of application under Chapter-II of the Rajasthan Minor Mineral Concession Rules, 1986.

Provided that where the Government land has been reserved under Rule 73 of the Rajasthan Minor Mineral Concession Rules, 1986 and existence of Granite therein has been established by a team of Superintending, Mining Engineer and Superintending Geologist, the plots for mining lease shall be delineated and allotted by application.

37. Sub-clause (1) of Clause (1) of the Policy of 2002 provides that the mining lease on Government land shall be granted by the method of application under Chapter-II of the Rules of 1986. Important is that in the Granite Policy of 2002, entire procedure for granting the mining leases as well as for grant of prospecting license has been separately and specifically given. Sub-clause (1) of clause 1 of the Granite Policy, nowhere says that in the matter of grant of mining lease in government land the "procedure" as prescribed under the Rules of 1986 shall or can be followed in any eventuality. In Sub-clause (1) of clause 1 of Granite Policy 2002 words "Mining lease in the Government land shall be granted by method of application under Chapter II of the Rules of 1986. When the State Government has framed special rules (named as Policy) and prescribed particular procedure to be adopted for a specific granite mining then the State Government cannot grant mining lease by following general rules framed for grant of mining lease, framed to deal with all minor mineral in general. Special procedure prescribed for dealing special and specific subject excluded application of general rule governing the subject broadly. The granite Policy 2002 itself provides;

Clause-2, restriction on grant of mining lease (adopted restriction of Rules of 1986 and also prescribed the certain restrictions), Clause-3, about Prospecting license, Clause-4, disposal of grant and renewal of prospecting license, Clause-6 for execution of deed of license and its transfer, Clause-7 for security deposit, Clause 8 for keeping registers, Clause 9- Conditions of licenses, Clause-10 for preferential rights of certain persons, Clause- 12 reservation of plots for mining lease including for members of SC/ST, Clause -14 for grant of said license and lease in Khatedari land or other private land etc. Therefore, Sub-clause (1) of Granite Policy, 2002 cannot be read to mean that the Government can by-pass the procedure prescribed by Granite Policy, 2002 and adopt entire procedure as given under Rules 1986 while granting granite mining lease in Government land. The meaning of the words "mining lease....shall be granted by method of application...." cannot mean "by the procedure prescribed under Chapter" of the Rules of 1986.

38. The delineation of the plots and as such, is not provided by the Rules of 1986 and according to learned Counsel, for the State, when the leases are granted by exercising power under Chapter-II and by following the Rules of 1986, it is not necessary to delineate the plots and notify them before grant of leases. That plea even if is available to the State, even then as held above, the State Government could not have avoided to follow the procedure which is prescribed in exercise of the statutory power under Rule 66A of the Rules of 1986 consciously. The Policy of 2002 or 1995 have not been framed so as to keep something on paper only. Be it as it may be, Subclause (1) of Clause (1) of the Policy of 2002 only saved the power of the State Government to adopt the "method of application" as provided under Chapter II of the Rules of 1986 but has not mandate that the Government shall not follow the procedure which it has prescribed by exercising its statutory power under Rule 65A.

39. I am conscious to the legal position that when the authority has choice to opt for one of the procedure out of two procedures prescribed by law, then no one can question the decision of the authority for opting a particular procedure. That principle has its limitation. When opting for a particular procedure is shown to be against policy decision and has been opted with clear object to deny the benefit to particular sect of society for whose benefit the policy was framed then action can be challenged on the ground of malafide in law as well as on the ground of unreasonable and legally unjustified decision in choosing the method or the procedure. Therefore, in the facts of the case, the Government should have followed the method and procedure prescribed by it itself in the matter of grant of mining leases for granite as provided by Policy of 2002.

40. Then, inaction of the Government resulting into deciding not to reserve the land under Rule 73 has any justification? This question gives birth to the question, if rest of the provision of the policy of reservation cannot be implemented without following procedure under Rule 73 and Government does not want to proceed under Rule 73 of the Rules of 1982 then why the Policy was

framed and continued for last ten years and has not been withdrawn yet? In the back drop of above facts, the persons for whose benefit policy was framed by the State in the matter of giving commercial benefit to the class of person can certainly seek direction against the State that State should obey and follow its own decision. If the State in the interest of mineral of the State and in the interest of the State would have not allotted mines to others, the petitioners may not have right to seek direction to allot land on lease. But State found excavation of granite in the State interest then the members of SC/ST cannot be denied benefit of the policy of the State. In my humble opinion, it was the duty of the State Government to implement its own policy having clear declaration that there shall be reservation of the plots for grant of mining leases. After declaring the said policy, the State Government should not have taken help of their own inaction in the matter of grant of mining leases for granite so as to deny the benefit to the weaker section of the society.

41. At this juncture, it will be relevant to mention here that the petitioners have placed on record a few documents along with application dated 3.1.2008, Annex.35 and bundle of orders passed by the Mining Engineer whereby the mining leases for granite have been granted under the policy of 2002 and there are more documents by which more leases were granted under the Policy of 2002. Therefore, it appears that the State authorities whenever found it suitable, they granted mining leases for granite under the Policy of 2002. The fact which goes to the root of the case is that the benefit has not reached to the person for whose benefit the policy has been framed.

42. There is no conflict because of the Policy of 2002 and existence of the Rules of 1986 and saving of the Rules of 1986 for the purpose of grant of lease in the Government land under the Rules of 1986.

43. At this juncture, it may be observed that if the Government has granted lease of mining area to only those persons who explored the granite under the soil in the Government land then why the State officers did not try to explore the granite even when there is a big department in the State Government known as Mining Department. A private individual could find out huge quantity of granite in the Government land but the State officers were not asked to find out the granite in the Government land and because of that only, it appears that the State submitted that the delineation of the plots is necessary in the case where the State Government has reserved any land under Rule 73 on finding out from its own officers that the granite is available in the Government land and since the State could not find out the granite, therefore, they have not delineated the granite plots for the purpose of allotting the lease for the plots under the Granite Policy, 2002. Clause 2 of the Granite Policy, 2002 and other clauses also indicate that the plots delineated under Proviso to Clause (1) of the Granite Policy, 2002 shall be notified for mining lease and it may be widely published not only in two daily newspapers having wide circulation but also on the website of the State Government. The reasons behind it is that every citizen should know that he is

also entitled to take benefit of the Granite Policy, 2002, in case, he is eligible. Notifying the area available for allotment is in consonance with the rule of fair play by the State Government in the matter of giving State largess to the public and even if when a specific notification is not required by law to intimate the public about State's decision to grant and give State property or benefit from the State property then also it is necessary that all eligible persons must know that the State has decided to give the benefit and they can take benefit by proving their eligibility. Unless the area is identified where under, granite is available, the poor public who is not much resourceful as effluent mine owners, poor public cannot get the benefit from the State.

44. It will be further worthwhile to mention here that there is no reason to believe that person who has by his own means found granite in the Government land, found the granite only up to the extent of area which can be allotted to that particular person. The maximum land which could have been allotted to a person who explored granite in the Government land is prescribed and, therefore, rest of the land certainly goes to the general public and for that purpose also, it is necessary that large chunk of land should have been delineated so as to carve out different plots out of which one could have been allotted to the person who explored granite in the Government land and other could have been made available for the public and while doing so, appropriate reservation could have been made which could have given benefit to the public and particularly to the person for whom reservation has been made in the Granite Policy, 2002.

45. In view of the above discussion, it is held that the State was under obligation to follow the Granite Policy, 2002 and has not followed the said policy in the matter of grant of lease for granite land. Rejection of contempt petition in the matter is no bar in considering issues raised by the petitioners in the writ petitions as the rejection of contempt petition is not a decision on merit of these petitions and in view of the fact that scope in contempt proceedings has limited scope. The petitions which raised important question of law and have merits cannot be rejected on technical grounds, which may deny the benefit to large public.

46. So far as individual claim of these petitioners are concerned, the petitioners' prayers in the individual writ petitions are as under:

Writ Petition No. 5894/2005

Sanjay Sukhadia v. State and Ors.

18/1. appropriate writ, order or direction in the following terms be issued:

18/1. Respondent State and its Officers shall not allot any plot of Granite until the total area delineated, including the one in which plots have been allotted is worked out and then 20% of the total area so worked out; and

18/II. It may further be directed that those who have ventonly violated the Reservation Policy be identified by the Director of Mines and Geology and are

thereafter adequately punished for having ignored the law and directions of this Hon''ble Court

18/III Any other appropriate writ, order or directions as may be considered appropriate in the facts and circumstances of this case may kindly be made.

18/IV Cost of the writ petition be allowed to the Petitioner.

Writ Petition No. 4098/2005

Rameshwar Nawal v. State and Ors.

16/1. By appropriate writ, order or direction the Hon''ble Court be pleased to direct the Respondents to consider application of the Petitioner dated 14.1.2002 and to allot him a mining lease as is found due to be given to the Petitioner.

16/II Any other appropriate writ, order or directions as may be considered appropriate in the facts and circumstances of this case may kindly be made.

16/III Cost of the writ petition be allowed to the Petitioner.

Writ Petition No. 4382/2005

Smt. Suman Nawal v. State and Ors.

(a) Respondents may be directed not to proceed to grant any mining lease in the area aforesaid and other areas without giving effect to the provision of reservation of SC/ST and other categories.

(b) The Respondents be directed to consider the application of the Petitioner dated 29.6.2002 (Ann.2) and to allot her a mining lease as is found due to be given to the Petitioner

(c) Any other appropriate writ, order or directions as may be considered appropriate in the facts and circumstances of this case may kindly be made.

(d) Cost of the writ petition be allowed to the Petitioner.

Writ Petition No. 4383/2005

Smt. Parwati v. State and Ors.

(a) Respondents may be directed not to proceed to grant any mining lease in the area aforesaid and other areas without giving effect to the provision of reservation of SC/ST and other categories.

(b) The Respondents be directed to consider the application of the Petitioner dated 6.8.03 (Ann.1) and to allot her a mining lease as is found due to be given to the Petitioner.

(c) Any other appropriate writ, order or directions as may be considered appropriate in the facts and circumstances of this case may kindly be made.

Writ Petition No. 4808/2005

Suma Ram Rathore v. State and Ors.

(a) Respondent be restrained from granting any mining lease without giving effect to the provisions in respect of reservations including the one for Scheduled Caste/Scheduled Tribe.

(b) In the meanwhile, the Respondents be directed to give mining lease in the already delineated and notified areas in the village Khambi which are still available for being allotted.

(c) Any other appropriate writ, order or directions as may be considered appropriate in the facts and circumstances of this case may kindly be made.

47. In the writ petitions No. 4098/2005, 4382/2005 and 4383/2005, there are prayers that their applications dated 14.1.2002, 29.6.2002 and 6.8.2003 respectively be considered by the respondents and allot him mining lease from the area sought by such applicant/petitioner. That prayer is innocuous and consequential both. These petitioners' applications, if have yet not been decided, they are required to be decided by the competent authority and, therefore, it is directed that the applications of the petitioners of writ petitions Nos. 4098/2005, 4382/2005 and 4383/2005 be considered by the competent authority who may pass appropriate order if the applications have not yet been decided.

48. In SBCWP No. 4098/2005 the petitioner sought relief of allotment of mine on lease basis of plot No. 8 of village Bala, Tehsil Ahore, District Jalore and respondent No. 5 in his reply pointed out that he applied for allotment of Granite Mine for the land of Khasra No. 1590 of village Bala, Tehsil Ahore, District Jalore. His application was processed by the Mining Department and area has already been demarcated and, thereafter, the proposal was sent by the Asstt. Mining Engineer, Jalore for allotment of Granite Mining lease to the respondent No. 5. His proposal was considered by the Superintending Mining Engineer and Superintending Mining Engineer has granted . sanction to the said proposal vide order dated 7.6.2005 and allot Khasra No. 1590 and in the sanction letter it is mentioned that the applicant has to complete all the formalities within 45 days and should also get contract within a period of three months. In furtherance to that, the respondent No. 5 deposited the requisite amount and obtained the certificates as directed by the mining authorities and deposited the demarcating fees etc. The respondent No. 5 therefore has invested more than Rs. 72,000/- against mining lease sanction on 7th June, 2005. The contract has already been executed on behalf of His Excellence the Governor of State of Rajasthan. However, the Mining Engineer refused to sign the agreement in view of the interim order passed by this Court in SBCWP No. 4098/2005 restraining the mining department from making further allotment from the land of Khasra No. 1590 of village Bala without making mention of direction as issued by this Court in its judgment dated 11.3.2004 in SBCWP No. 7078/2003. According to respondent No. 5, the order was only about the future allotment whereas in the petitioner's case, the allotment has already been made prior to passing of the

stay order dated 14th July, 2005. The grievance of the respondent No. 5 who became party in SBCWP No. 4098/2005 is that since all formalities have already been completed in the matter of grant of Granite Mining leases in his favour and he has deposited all the requisite amount in the department before any stay order passed by this Court, therefore, the respondent mining authorities cannot refuse to give the mine to the respondent No. 5 and particularly in view of the fact that his allotment in grant of mine is not under challenge in the writ petition.

49. From the facts it appears that large number of mines have already been leased out by the State and in view of the larger issue raised by the petitioners in these writ petitions this Court decided to allow the writ petitions and has not cancelled any of the lease granted by the State, therefore, the allotment of mine to respondent No. 5 which is not under challenge in the writ petition is not cancelled and the department will be free to complete the rest of the formalities and particularly because of the fact that it is a question of one mine, which cannot effect the larger benefit of the weaker section of the public whereas it may be prejudicial to the respondent No. 5 Who has invested money in obtaining the Granite Mining lease.

Since the State has not followed the Granite Policy, 2002 which amounts to total denial of the benefit to the members of reserved category therefore, the State is restrained from granting any lease of any granite land in the State of Rajasthan without delineating the granite plots and without notifying them. However, it is made clear that the individual persons who are entitled for allotment of granite land because of fulfilling requisite conditions for grant of mining lease under the Granite Policy, 2002 because of their entitlement under Clauses 10, 12 and 14 of the Granite Policy, 2002, their rights shall remain as they are. The pending applications for grant of mining lease reserved under any notification shall be decided in terms of the Granite Policy, 2002 [as per Sub-clause (1) of Clause 16]. The plots for which the leases have already been granted by the State cannot be cancelled in these writ petitions because of several reasons including for the reason that there is no prayer in the writ petition for cancellation of those allotments and because of the reason that by this time, the lessees might have improved the mines by incurring huge expenditure over the mine and there appears to be no fault of the persons to whom the leases were granted by the State authorities.

50. In the result, all the writ petitions are allowed and it is held that:

(1) the State is bound to proceed as per the Granite Policy, 2002 and is restrained from granting mining lease in the Government land unless the Government identifies, delineates and notifies the mine in the area by making efforts for exploring the granite from their own officers as required by Proviso to Clause (1) of the Granite Policy, 2002;

(2) exploration of granite by private individual only in accordance with the provisions under the Granite Policy, 2002, when any individual may become

entitled to allotment of mining lease under Granite Policy, 2002, then he can be granted mining lease to the extent of his entitlement after carving out the plot for which lease can be granted and to the extent of the area as provided under the Granite Policy, 2002;

(3) the State Government is directed to work out where and how to survey the granite in the Government land and how much area be made available for grant of mining lease for excavation of granite so that proper reservation of the plots may be made in accordance with the Granite Policy, 2002.

(4) No order as to costs.