

(2019) 02 JH CK 0022

In the Jharkhand High Court

Case No : Writ Petition (c) No. 177, 323 Of 2019

Shah Brothers

APPELLANT

Vs

Union Of India Ad Ors

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 8A(6), 9, 9A, 9B, 9C, 13, 26(2)
Trade and Merchandise Marks Act, 1958 — Section 56(4)
Passports Act, 1967 — Section 10(3)
Mineral Concession Rules, 2016 — Rule 12(10), 30, 35, 36
Mineral (Auction) Rules, 2015 — Rule 10, 13, 13(ka)(11), 15, 16, 16(1)
Mineral Concession Rules, 1960 — Rule 24A, 24(A)(6)
Constitution Of India, 1950 — Article 32, 77, 166, 166(1), 166(2), 166(3), 226

Citation : (2019) FFLT 24

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Amarendra Sharan, Indrajit Sinha, Krishanu Ray, Anil Kumar Sinha, Krishanu Ray, Ajit Kumar, Aprajita Bhardwaj, Shristi Sinha, Rajiv Sinha, Niraj Kumar, Shreesha Sinha

Final Decision : Dismissed

Judgement

1. Since in both the writ petitions similar issues are involved, therefore the same have been heard together and are being disposed of by this common order.
2. These writ petitions have been filed under Article 226 of the Constitution of India whereby and whereunder order dated 04.01.2019/10.01.2019 as contained in Memo No.28/M / Memo No.54/M passed by the order of the Governor under the signature of Joint Secretary, Department of Mines and Geology, Government of Jharkhand by which the mining lease for iron ore has been cancelled with immediate effect with a direction to forfeit the performance security.
3. The brief facts of the case of the petitioners as per the pleadings made in the writ petitions is that mining lease was granted, they have successfully

commenced the mining operation which was renewed time to time and lastly it has been extended upto 09.07.2022 by virtue of the provision as contained in Section 8-A(6) of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act, 1957) and in pursuance thereto, supplementary lease deed was executed.

4. The stand of the petitioners is that they are operating the mines after following the statutory provision and after getting the required clearance from the Pollution Control Board under Forest Conservation Act, etc, while doing so, show cause has been issued under the provision of Rule 12(10) of Mineral Concession Rules, 2016 for the irregularity to be remedied within the period of 60 days.

5. The petitioners have replied the same, the authorities have authorized Member Board of Revenue to get the matter enquired, in pursuance thereto, full fledged enquiry has been conducted by the Member Board of Revenue, the report has been submitted and acting upon the said report the impugned decision has been taken by cancelling the lease deed.

6. The petitioners have assailed the said order on the following grounds:-

i. The show cause notice has been issued by the District Mining Officer, hearing has been done by the Member Board of Revenue and the order has been passed by the other authority, therefore, there is violation of principles of natural justice on the basis of the principle that the order is required to be passed by the authority who has heard the party.

ii. The Member Board of Revenue to whom the enquiry has been directed to be conducted is no authority under the statute to conduct the enquiry, however, there is a provision as contained under Section 26(2) of the Act, 1957 conferring power upon the Central or the State Government to delegate the power. By virtue of the notification, the State Government has come out with an order published in the Gazette notification on 26.06.2018 issued by one Joint Secretary, Mines and Geology Department, the same cannot be said to be a notification in terms of the provision of Section 26(2) of the Act, 1957.

iii. Copy of the enquiry report has not been supplied so prejudice has been caused. In the enquiry report, there is no concrete finding regarding the commission of irregularity rather on presumption and on prima facie irregularity, the authorities have accepted it and cancelled the lease.

iv. Notice is required to be issued by the State Government as per the terms of the provision of Rule 12(10) of Rules, 2016 but the same has been issued by the District Mining Officer.

v. The impugned decision has been taken not by the State Government rather with the approval of the Chief Minister and hence, the same is without jurisdiction.

vi. The State Government means the order to be passed with the due approval of the Cabinet and the Chief Minister cannot be a Cabinet rather he can be said to be a part of the Cabinet and therefore, the decision taken cannot be said to be of the State Government.

7. Learned Advocate General has represented the State of Jharkhand and on the strength of the counter affidavit it has been stated that the Mineral Concession Rules, 2016 has come in supercession to the Mineral Concession Rules, 1960 and primary object is to protect the mineral resources and carry out the mineral work strictly in pursuance to the provisions of law and therefore a provision has been made under the Mineral Concession Rules, 2016 as under Rule 12(10) which stipulates that if the lessee makes any default in the payment of royalty as required under Section 9 or makes any default in the payment of dead rent as required under Section 9-A or payment of monies as required under Section 9-B or Section 9-C or payments under Rule 13 of Mineral (Auction) Rules, 2015 or commits breach of any of the conditions specified in sub-rules (1), (2), (3) and (4), the State Government shall give notice to the lessee requiring him to pay the royalty or dead rent or remedy the breach, as the case may be, within 60 days from the date of receipt of the notice and if the royalty or dead rent is not paid or the breach is not remedied within the said period, the State Government may, without prejudice to any other proceedings that may be taken against him, terminate the lease and forfeit the whole or part of the performance security.

The provision contained therein is very express and explicit which confers power upon the State Government to allow time of 60 days to put the things right and in case of its failure after lapse of 60 days the licence of mining lease would be cancelled, meaning thereby, there is no stipulation made in the said provision that after lapse of the period of 60 days, a further show cause notice is required to be given.

The State Government through the District Mining Officer when got information about irregularities committed by the petitioners which being contrary to the terms and conditions of the lease agreement, show cause notices have been issued giving therein 60 days time to remedy the things.

The petitioners have filed their reply.

The State Government in exercise of power contained under Section 26(2) has come out with an order on 26.06.2018 with the approval/recommendation of the Chief Minister-cum-Departmental Minister under the signature of Joint Secretary, Mines and Geology Department conferring therein power upon the Member Board of Revenue to hear, in pursuance thereto, the hearing has been done by the Member Board of Revenue, Jharkhand before whom the petitioners have appeared, responded to the notice and the Member Board of Revenue after full fledged enquiry has found that the irregularities have been found to be prima facie proved and on acting upon the same, the State Government has issued the order of cancellation of the lease deed.

The Mines and Geology Department is under the Chief Minister and being the departmental Minister of the said department, the entire record has been placed before him who has approved it and sent it before the Governor and thereafter by the order of the Governor, impugned decision has come, therefore, it cannot be said that the decision is not by the State Government.

Every decision of the Central Government or the State Government is to be taken in the name of the President or the State as stipulated under the provision of Article 77 and Article 166 of the Constitution of India as the case may be and it is evident from the impugned decision, although it has been signed by the Joint Secretary of the Department but has been issued in the name of the Governor and therefore, it is the order passed by the State Government.

The notice has been issued by the District Mining Officer by the order of the Deputy Commissioner who on behalf of the State Government has executed the agreement with the petitioners.

The Deputy Commissioner has authorized the District Mining Officer who being the head in the district to look into and monitor the mining operations for its regulation, and when the District Mining Officer has found that the irregularities have been committed, he has issued notice on the direction of the Deputy Commissioner and therefore it is not correct to say that the Deputy Commissioner acting on behalf of the State Government since the executor of the agreement is having no jurisdiction to issue notice.

The maintainability of the writ petitions has been raised on the ground of availability of alternative remedy of revision under Rule 30 of the Rules, 2016 and it has been contended that if there is alternative remedy of revision having efficacious remedy, the writ petitions may not be entertained.

8. In response, learned Senior Counsel representing the petitioners Mr. Amarendra Sharan and Mr. Anil Kumar Sinha have jointly submitted regarding the maintainability of the writ petitions that when there is violation of principles of natural justice, the writ by the High Court is to be entertained under Article 226 of the Constitution of India and it is a case wherein the principles of natural justice has been violated so that the writ petitions may be entertained.

They have given much emphasis on the finding of the enquiry report by referring to the enquiry report submitting therein that the enquiry has not properly been conducted since according to them none of the conditions of the lease licence has been violated but the Member Board of Revenue has not appreciated the things in right perspective, and therefore, since the hearing has been done by one person while the final decision has been taken by another, there is absolute non-application of mind so far as the factual aspect is concerned hence, the order may be quashed and remit it before the competent authority for taking a fresh decision.

9. Having heard the learned counsel for the parties and their submission have

been appreciated, this Court before looking into the issue on merit, thinks it proper to first answer the question regarding the maintainability of the writ petitions.

The factual aspect involved in this case is to be assessed both on the ground of the principles of natural justice and the jurisdiction.

This Court is dealing first the question of violation of principles of natural justice so that the writ petition may be entertained before this Court under Article 226 of the Constitution of India.

10. There is no doubt about the settled position of law that the writ petition can be entertained even when the alternative remedy is available since it is the self imposed restriction upon the High Court not to entertain a writ petition if the alternative remedy is available.

11. Learned counsel for the petitioners have relied upon the judgment rendered in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 SCC 1 and Maneka Gandhi vs. Union of India, reported in AIR 1978 SC 597.

By referring to it, it has been submitted that the writ under Article 226 can be entertained if there is violation of principles of natural justice. This court thinks it proper to have a discussion with respect to the factual aspect vis-a-viz the ratio laid down by Hon'ble Apex Court in the case of Whirlpool Corporation (supra).

It would be evident from the perusal of the aforesaid judgment that the factual aspect involved therein pertains to Trade Marks Act, 1940 under which the petitioner of the said case was registered and a certificate of registration to that effect was issued on 31.07.1957, renewed twice in 1962 for a period of 7 years and again for 7 years w.e.f. 22.02.1970. Since further renewal was not obtained after 1977, it was removed from the register but the appellants continued to publish their trade mark Whirlpool as also the company's name through publication with its wide circulation in the country and thus managed to maintain their reputation among the business circle including the prospective customers and buyers.

The trustees of the company have applied for registration of trade mark Whirlpool to which the appellant filed their opposition but their objection were dismissed by the Assistant Registrar. The appeal against that said order was filed, the appeal was admitted, in the meantime Whirlpool was registered as trade mark on Chinara Trust and certificate of registration was granted, against which a suit (Suit No.1705 of 1994) was filed in Delhi High Court in which an order for temporary injunction has been granted in favour of the appellant which has been upheld by the Division Bench of the High Court as also by the Hon'ble Apex Court.

In the suit the amendment application has also been filed so as to include the ground of infringement of appellant's trade marks but that application was not disposed.

At that juncture, a notice was issued under Section 56(4) of Trade and Merchandise Marks Act, 1958 which was challenged and the issue was raised that the notice is not to be challenged since it is at the initial stage but the Hon'ble Apex Court by laying down the rule that the Registrar should not have issued the notice to the appellant under Section 56(4) of the Act for cancellation of the Certificate of Registration/Renewal already granted in view of the pending proceedings in which the temporary injunction has been granted, meaning thereby, on the basis of the ground of jurisdiction the said notice was quashed.

The reference of the judgment of Maneka Gandhi (supra) has been made in order to establish the argument that even if the statute does not say about providing an opportunity of hearing, the natural justice is the mandate. It is not in dispute that the judgment is to be tested on the basis of the factual aspect involving in each and every case and there cannot be general application of the judgment. In the case of Maneka Gandhi (supra) which has been given in a context of Indian Passport Act wherein there is a provision as contained under Section 10(3) that before impounding of the passport, no notice is required to be given. When the passport has been impounded, the same has been challenged before the Hon'ble Apex Court under Article 32 of the Constitution of India by challenging the vires of Section 10(3) of the Indian Passport Act. The Hon'ble Apex Court has declined to interfere with the vires of the aforesaid provision on the ground that going abroad is not a fundamental right. But since it was cancelled without providing an opportunity and without showing any reason, it has been laid down therein that before taking any adverse action, a notice is required to be given so that the principles of natural justice may be followed.

In view of the above mentioned findings it is not the case where the Court has come to the conclusion that the decision impugned is without jurisdiction or suffers from the violation of principles of natural justice.

12. The factual aspect of the case in hand pertains to Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act, 1957).

In order to appreciate this argument, this Court thinks it proper to deal with the Act, 1957 which has been enacted for the development and regulation of mines and minerals under the control of the Union.

The relevant provisions of the M.M.D.R. Act, 1957 therein are Section 2 which speaks as follows:-

"Declaration as to the expediency of Union control.- It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals."

Section 3(a) speaks as follows:-

"(a) "leased area" means the specified in the mining lease within which mining operations can be undertaken and includes the non-mineralised area required

and approved for the activities falling under the definition of mine..."

Section 3(aa) speaks as follows:-

"minerals" includes all minerals except mineral oils."

Section 3(e) speaks as follows:-

"(e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral."

Section 4-A speaks as follows:-

"4-A. Termination of prospecting licenses or mining lease.--(1) Where the Central Government, after consultation with the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution, or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for maintaining safety in the mines or for such other purposes, as the Central government may deem fit, it may request the State Government to make a premature termination of a prospecting license or mining lease in respect of any mineral other than a minor mineral in any area or part thereof, and, on receipt of such request, the State Government shall make an order making a premature termination of such prospecting license or mining lease with respect to the area or any part thereof.

(2) Where the State Government is of the opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of a prospecting license or mining lease with respect to the area or any part thereof covered by such license or lease.

(3) No order making a premature termination of a prospecting license or mining lease shall be made except after giving the holder of the license or lease a reasonable opportunity of being heard.

(4) Where the holder of a mining lease fails to undertake mining operations for a period of [two years] after the date of execution of the lease or, having commenced mining operations, has discontinued the same for a period of [two years], the lease shall lapse on the expiry of the period of [two years] from the date of execution of the lease or, as the case may be, discontinuance of the mining operations:

[Provided that the State Government may, on an application made by the holder

of such lease before it lapses and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to continue such operations for reasons beyond his control, make an order, within a period of three months from the date of receiving of such application, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse:

Provided further that such lease shall lapse on failure to undertake mining operations or inability to continue the same before the end of a period of six months from the date of the order of the State Government.:

Provided also that the State Government may, on an application made by the holder of a lease submitted within a period of six months from the date of its lapse and on being satisfied that such non-commencement or discontinuance was due to reasons beyond the control of the holder of the lease, revive the lease within a period of three months from the date of receiving the application from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the lease:

Provided also that no lease shall be revived under the third proviso for more than twice during the entire period of the lease.]

Section 8 speaks as follows:-

"[8. Periods for which mining leases may be granted or renewed.- (1) The provisions of this section shall apply to minerals specified in Part A of the First Schedule.

(2) The maximum period for which a mining lease may be granted shall not exceed thirty years.

Provided that the minimum period for which any such mining lease may be granted shall not be less than twenty years.

(3) A mining lease may be renewed for a period not exceeding twenty years with the previous approval of the Central Government.]"

[8-A. Period of grant of mining lease for minerals other than coal, lignite and atomic minerals.

- (1) The provisions of this section shall apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per

the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining lease, including existing mining leases, of Government companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.]"

Section 13 speaks as follows:-

"13. Power of Central Government to make rules in respect of minerals.-(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of [reconnaissance permits, prospecting licenses and mining lease] in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the person by whom, and the manner in which, applications for [reconnaissance permits, prospecting licenses or mining leases] in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgment of the receipt of any such application may be sent;

(c) the matters which may be considered where applications in respect of the same land are received on the same day;

[(d) the terms and conditions of auction by competitive bidding, the details of mines and their location, the minimum size of such mines and such other conditions which may be necessary for the purpose of coal mining operations including mining for sale by a company under sub-section (1) and sub-section (2) of section 11-A;]

(e) the authority by which [reconnaissance permits, prospecting licenses or mining leases] in respect of land in which the minerals vest in the Government may be granted;

(f) the procedure for obtaining [a reconnaissance permit, a prospecting licenses or a mining lease] in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such [a permit, license or lease] may be granted or renewed;

(g) the terms on which, and the conditions subject to which, any other [reconnaissance permit, prospecting license or mining lease] may be granted or renewed;

(h) the facilities to be afforded by holders of mining lease to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

[(i) the fixing and collection of fees for [reconnaissance permits, prospecting licenses or mining lease] surface rent, security deposit, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable;]

(j) the manner in which rights of third parties may be protected (whether by payment of compensation or otherwise) in cases where any such party may be prejudicially affected by reason of any [reconnaissance, prospecting of mining operations];

(jj) parameters of existence of mineral contents under clause (a) of sub-section (2) of section 5;]

(k) the grouping of associated minerals for the purposes of section 6;

(l) the manner in which, and the conditions subject to which, [a reconnaissance, permit, a prospecting license or a mining lease] may be transferred;

(m) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passages for water for mining purposes on any land comprised in a mining lease;

- (n) the form of registers to be maintained under this Act;
- (p) the reports and statements to be submitted by holders of [reconnaissance permits or prospecting licenses] or owners of mines and the authority to which such reports and statements shall be submitted;
- (q) the period within which applications for revision of any order passed by a State Government or other authority in exercise of any power conferred by or under this Act, may be made [the fees to be paid therefor and the documents which shall accompany such applications] and the manner in which such applications shall be disposed of;
- [(qq) the manner in which rehabilitation of flora and other vegetation such as trees, shrubs and the like destroyed by reason of any prospecting or mining operations shall be made in the same area or in any other area selected by the Central Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the prospecting license or mining lease;]
- [(qqa) the amount of payment to be made to the District Mineral Foundation under sub-section (5) and (6) of section 9-B;
- (qqb) the manner of usage of funds accrued to the National Mineral Exploration Trust under sub-section (2) of section 9-C;
- (qqc) the composition and functions of the National Mineral Exploration Trust under sub-section (3) of section 9-C; (qqd) the manner of payment of amount to the National Mineral Exploration Trust under sub-section (4) of section 9-C;
- (qqe) the terms and conditions subject to which mining leases shall be granted under sub-section (3) of section 10-B; (qqf) the terms and conditions, and procedure, subject to which the auction shall be conducted including the bidding parameters for the selection under sub-section (5) of section 10-B;
- (qqg) the time limits for various stages in processing applications for grant of mining lease or prospecting licence-cum-mining lease under sections 10-B, 11-A, 11-B, and section 17-A, and their renewals;
- (qqh) the terms and conditions for grant of non-exclusive reconnaissance permits under sub-section (1) of section 10-C;
- (qqi) the terms and conditions for grant of prospecting licence-cum-mining leases under sub-section (4) of section 11;
- (qqj) the terms and conditions, and procedure, including the bidding parameters for the selection under sub-section (6) of section 11;
- [(qqja) the terms and conditions and amount of transfer charges under the proviso to sub-section (6) of section 12-A;]
- (qqk) the amount to be payable by a Government company or corporation, or a

joint venture for grant of mining lease under sub-section (2-C) of section 17-A; and]

(r) any other matter which is to be, or may be, prescribed under this Act.

[13-A. Power of Central Government to make rules for the grant of prospecting licenses or mining lease in respect of territorial waters or continental shelf of India. - (1) The Central Government may, by notification in the Official Gazette, make rules for the grant of prospecting licenses or mining leases in respect of any minerals underlying the ocean within the territorial waters or the continental shelf of India.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

(a) the conditions, limitations and restrictions subject to which such prospecting licenses or mining leases may be granted;

(b) regulation of exploration and exploitation of minerals within the territorial waters or the continental shelf of India;

(c) ensuring that such exploration or exploitation does not interfere with navigation; and

(d) any other matter which is required to be, or may be, prescribed.]

Section 26 speaks as follows:-

"26. Delegation of powers. - (1) The Central Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by -

(a) such officer or authority subordinate to the Central Government; or

(b) such State Government or such officer or authority subordinate to a State Government;

(2) The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act may confer power and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto."

It is evident from the aforesaid provision in order to develop and regulate the mines and minerals, the Act 1957 has been enacted upon wherein the provision has been made under the provision of Section 8-A(6) that the period of lease

granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

The provision of Section 8-A has been inserted by virtue of the Act 10 of 2015 w.e.f. 12.02.2015.

In view of the provision contained in Section 13 of the Act, 1957 in Mineral Concession Rules, 1960 has been promulgated wherein a provision has been provided under Rule 24-A which pertains to renewal of mining lease as referred hereinbelow:-

"[24-A. Renewal of mining lease. - [(1) An application for the renewal of a mining lease shall be made to the State Government in Form J, at least twenty four months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf:

Provided that in cases where the mining lease is due to expire on or before the 7th January, 2017, the application for renewal shall be made at least twelve months before the date on which the lease is due to expire.]

[(2) The renewal or renewals of a mining lease granted in respect of a mineral specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government with the previous approval of the Central Government.

(3) The renewal or renewals of a mining lease granted in respect of a mineral not specified in Part A and Part B of the First Schedule to the Act may be granted by the State Government:]

[Provided that before granting approval for second or subsequent renewal of a mining lease, the State Government shall seek a report from the Controller General, Indian Bureau of Mines, as to whether it would be in the interest of mineral development to grant the renewal of the mining lease:

Provided further that in case a report is not received from Controller General, Indian Bureau of Mines in a period of three months of receipt of the communication from the State Government, it would be deemed that the Indian Bureau of Mines has no adverse comments to offer regarding the grant of renewal of mining lease.]

[(6) If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes

order thereon, whichever is earlier:

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of the notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957).]

[(8) Notwithstanding anything contained in sub-rule (1) and sub-rule (6), an application for the first renewal of a mining lease, so declared under the provisions of section 4 of the Goa, Daman and Diu Mining Concession (Abolition and Declaration as Mining Lease) Act, 1987, shall be made to the State Government in Form J before the expiry of the period of mining lease in terms of sub-section (1) of section 5 of the said Act, through such officer or authority as the State Government may specify in this behalf:

Provided that the State Government may, for reasons to be recorded in writing and subject to such conditions as it may think fit, allow extension of time for making of such application upto a total period not exceeding one year.]

[(9) If an application for first renewal made within the time referred to in sub-rule (8) or within the time allowed by the State Government under the proviso to sub-rule (8), the period of that lease shall be deemed to have been extended by a further period till the State Government passes orders thereon [or the date of expiry of the maximum period allowed for first renewal, whichever is earlier].]

[(10) The State Government may condone delay in an application for renewal of mining lease made after the time limit prescribed in sub-rule (1) provided the application has been made before the expiry of the lease.]"

It is evident from the aforesaid provision that the same has been inserted by virtue of notification issued on 10.02.1987 which provides that an application for the renewal of mining lease shall be made to the State Government in Form J, at least 24 months before the date on which the lease is due to expire, through such officer or authority as the State Government may specify in this behalf and if an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier.

Provided that the leases where applications for first renewal of mining lease have

been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of the notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earlier.

The aforesaid provision as contained in sub-rule (6) to Rule 24(A) has been incorporated under the statute w.e.f. 18.07.2014.

It is evident from the provision as contained under Rule 24-A that there was a concept of renewal till the final decision to be taken by the State Government if the application has been made before the expiry of the lease deed.

13. Thereafter in supercession to the provision of the Mineral Concession Rules, 1960 a new rule has been promulgated known as Minerals (Other than Atomic Hydrocarbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as the Rules, 2016) wherein it has been provided under the provision of Rule 12(10) which speaks as follows:-

"12(10).--If the lessee makes any default in the payment of royalty as required under section 9 or payment of dead rent as required under section 9-A or payment of monies as required under section 9-B or section 9-C or payments under rule 13 of the Mineral (Auction) Rules, 2015 or commits a breach of any of the conditions specified in the sub-rules (1), (2), (3) and (4), the State Government shall give notice to the lessee requiring him to pay the royalty or dead rent or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty or dead rent is not paid or the breach is not remedied within the said period, the State Government may, without prejudice to any other proceedings that may be taken against him, terminate the lease and forfeit the whole or part of the performance security."

Thus, it is evident that in view of the provision as contained in Section 13, a Rule was enacted upon in the year 1960 in pursuance thereto the provision was for deemed renewal of the licence as provided under the provisions of Rule 24-A(6) and thereafter a significant departure has come by taking away the concept of deemed renewal rather a provision has been enacted under the provision of Rule 12(10) of the Rules, 2016 which provides that in case of violation of any of the terms and conditions of the lease or the enactment the notice is to be given to the lease holders for remedial measures by providing therein 60 days time and in case the remedy would not be taken, the State Government would cancel the lease licence with immediate effect along with the forfeiture of the earnest money.

It is to be seen why the remarkable departure has been made from the provision of law that is from the Rules of 1960 to that of the Rules, 2016. In between periods, the matter regarding the minerals has come before the Hon'ble Apex

Court for its consideration first in the case of M.C. Mehta vs. Union of India, reported in (2004) 12 SCC 118 wherein the issue arose for consideration was whether the mining activity in the Aravalli Hills causing environmental upgradation and what directions are required to be issued, while considering this issue, the Hon'ble Apex Court has considered EIA 1994 and the Circular dated 14th May, 2002, in doing so, the Hon'ble Apex Court categorically held in paragraph 37 of the report that the intention of the Ministry of Environment and Forest was not to legalise the continuation of mining activity without compliance of requisite stipulations, if that were unfortunately so, then it would demonstrate lack of sensitivity of the Ministry of Environment and Forest to the principle of sustainable development and the object behind issuing EIA 1994, to Court it does not appear that MOEF intended to legalise the commencement or continuation of mining activity without compliance of stipulations of the notification. In any case, a statutory notification cannot be notified (modified) by issue of circular. Further, if MOEF intended to apply this circular also to mining activity commenced and continued in violation of this notification, it would also show total non-sensitivity of MOEF to the principles of sustainable development and the object behind the issue of notification. Circular has no applicability to the mining activity.

14. Thereafter the matter came for consideration of the Minerals Act in the case of Goa Foundation vs. Union of India and Ors., reported in (2014) 6 SCC 590 wherein there was a challenge to the report of Justice Shah Commission in respect to its conclusion pertaining to the State of Goa, the same was dealt with in paragraphs 11 to 14 of the said application.

The Hon'ble Apex Court has not quashed the report but took the view to examine the legal environmental issues raised in the report of Justice Shah Commission and on the basis of the findings of these issue, the concept of deemed renewal has been said to be illegal law keeping the fact into consideration that before renewal of the licence to operate the mining operations, the State Government is required to see as to whether the terms and conditions of the lease is being followed or against act and in such a situation wherein there is no violation of terms and conditions of the lease deed or any enactment of the minerals law, the licence is to be renewed subject to fulfillment of the other conditions, meaning thereby, the concept of deemed licence has been deprecated by the Hon'ble Apex Court keeping the fact into consideration the larger issue involved under mining operation leading to the environmental as well as sustainable development issues.

Then the matter has again been looked into by the Hon'ble Supreme Court in the case of Common Cause vs. Union of India being W.P.(C) No.114 of 2014 wherein by dealing with the scope of Section 21(5) of the Act, 1997, its scope has been enhanced, enhancing enhancing to the forest clearance, environmental clearance, prevention of air pollution, prevention of water pollution, etc.

The judgment pronounced in the Goa Foundation's case was on 21.04.2014 while in Common Cause's case was on 16.05.2014 and it is only thereafter the Central

Government in exercise of power conferred under Section 13 of the Act, 1957 has come out with the Rules, 2016 notified in the Gazette of India on 04.03.2016 inserting therein the provision of Rule 12(10) requiring for remedial measure in case of any irregularity of terms and conditions of the lease deed or in any enactment leading to the mineral acts.

It is thus evident that under the provision of Rules, 1960 that there was a concept of deemed renewal wherein the licence would be renewed if the application would be filed during subsistence period of the lease deed, 12 months prior the date of its cancellation and if the State Government would not renew it, the licence would be deemed to be renewed, meaning thereby, under the aforesaid statute, there was no provision to cancel the mining lease but in the provision of Rules, 2016 by inserting the provision of Rule 12(10), the rule has been provided to remedy the irregularity within the period of 60 days from the date of notice and in case of failure, the lease deed would be cancelled with immediate effect, meaning thereby, there is no provision under the said statute to give second show cause notice that is after lapse of 60 days in case the lease holders have not remedied the irregularities as pointed out to them by virtue of notice.

This provision suggests that the lease holders are to carry out the mining operation works subject to fulfillment of the conditions of the lease deed and the provision of the minerals Act.

The State Government acting in pursuance to the provision of Rule 12(10) has issued notice to the petitioners to remedy the irregularities within a period of 60 days, the same has been responded to by the lease holders disputing the allegation of commission of irregularity which has been enquired into by the Member Board of Revenue on the authority issued to him in view of the order passed by the departmental authority on 26.06.2018 wherein it has been found by the Member Board of Revenue that the irregularities have not been remedied rather the irregularities are continuing, accepting the aforesaid report, the impugned decision has been taken.

15. It is the cardinal rule of interpretation that when a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other manner, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of State of Uttar Pradesh vs. Singhara Singh and Ors., reported in AIR (1964) SC 358, wherein it has been held at paragraph 8 as under:

"....its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted...."

Reference has also made to the judgment rendered by the Hon'ble Apex Court in

the case of Babu Verghese and Ors. vs. Bar Council of Kerala and Ors., reported in (1999) 3 SCC 422, wherein it has been at paragraphs 31 & 32 as under:

"31. It is the basic principle of law long settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner or not at all. The origin of this rule is traceable to the decision in Taylor v. Taylor which was followed by Lord Roche in Nazir Ahmad v. King Emperor who stated as under:

"[W]here a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all."

32. This rule has since been approved by this Court in Rao Shiv Bahadur Singh v. State of V.P. and again in Deep Chand v. State of Rajasthan. These cases were considered by a three-judge bench of this Court in State of U.P. v. Singhara Singh and the rule laid down in Nazir Ahmad case was again upheld. This rule has since been applied to the exercise of jurisdiction by courts and has also been recognized as a statutory principle of administrative law."

Reference to the judgment rendered by the Hon'ble Apex Court also needs to be made in the case of Commissioner of Income Tax, Mumbai vs. Anjum M.H. Ghaswala & Ors., reported in (2002) 1 SCC 633, wherein it has been held at paragraph 27 as under:

"..... it is a normal rule of consideration that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself...."

Reference has also made to the judgment rendered by the Hon'ble Apex Court in the case of State of Jharkhand & Ors. vs. Ambay Cements & Anr., reported in (2005) 1 SCC 368, wherein it has been held at paragraph 26 as under:

"....it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of interpretation that where a statute is penal in character, it must be strictly construed and followed....."

Reference has also made to the judgment rendered by the Hon'ble Apex Court in the case of Zuari Cement Ltd. vs. Regional Direction ESIC Hyderabad & Ors. (in Civil Appeal No.5138-40/2007), reported in (2015) 7 SCC 690, wherein it has been held at paragraph 14 as under:

"14. As per the scheme of the Act, the appropriate Government alone could grant or refuse exemption. When the statute prescribed the procedure for grant or refusal of exemption from the operation of the Act, it is to be done in that manner and not in any other manner. In State of Jharkhand v. Ambay Cements, it was held that: (SCC p. 378, para 26)

26.... it is the cardinal rule of interpretation that where a statute provides that a particular thing should be done, it should be done in the manner prescribed and

not in any other way."

It is the settled position in law that a thing is required to be done strictly in pursuance to the provisions of law, if any deviation, then ultimately the provision as contained under the statute will have no effect.

16. It is evident that a thing is to be done as per the provision provided under the statute, here in the instant case, a notice has been given for remedying the irregularity by providing therein 60 days time as provided under the statute and it is evident from the provision as contained in Rule 12(10) that there is no provision giving second show cause notice after the lapse of the period of 60 days and therefore it cannot be said that by not providing show cause notice before cancellation of lease deed would be said to be in violation of principles of natural justice.

It needs to refer herein that there is difference in between the show cause and notice. Show cause means to show the cause while notice means to inform and apprise and as such the notice may not be construed to be show cause.

17. It has been argued by the learned counsel for the petitioners that hearing has been done by one person while the decision has been taken by the another which is also to be tested in view of the provision as contained in Rule 12(10).

18. The principle of hearing by one and taking final decision by another would be applicable if the statute required for giving show cause notice before taking final decision while as has been referred hereinabove that under the provision of Rule 12(10) there is no such provision to give show cause notice before cancellation of the lease deed rather only requirement is to give 60 days time by way of notice to remedy the irregularity. In case of its failure, the lease licence would be cancelled, meaning thereby, hearing by one and taking decision by another would be relevant.

19. Here in the instant case, in view of the provision of Rule 12(10), there is no such provision rather the only requirement under the aforesaid provision is to remedy the irregularity within the period of 60 days and in the instant case while the notices have been issued giving therein 60 days time and for that the authority was given to the Member Board of Revenue to enquire into the matter wherein the petitioners have participated full-fledgedly denying therein that there is no irregularity but the Member Board of Revenue has come to a finding that there is a regularity and therefore, he has prima facie satisfied that there is irregularity which having been accepted by the department and the file has been sent before the Chief Minister who happens to be the Departmental Minister and therefore decision for cancellation of lease deed has been taken and issued by the order of the Governor, therefore, the opportunity of hearing by one and final decision taken by another would not be applicable in absence of any provision under Rule 12(10) that a show cause notice is to be given for cancellation of lease deed rather there the word is "notice" not "show cause notice", notice that too for remedial measure and not to explain as to why the lease deed be not

cancelled, if the wording in the statute would be that explain as to why the lease deed be not cancelled then what has been submitted by the learned senior counsel for the petitioners, would be said to be acceptable but under the provision of Rule 12(10) there is no stipulation of the word "show cause notice" rather notice to remedy the irregularity within a period of 60 days and in case of its failure the licence would be cancelled with immediate effect.

It can also be seen from the provision as contained in Section 4-A(6) of the Act, 1957 wherein the provision has been made to provide reasonable opportunity of being heard before terminating the prospecting licence of mining lease but the said stipulation is not there in the provision as contained in Rules, 2016 and hence, the intent of the provisions of Rules, 2016 is only to issue notice to the lease holder to rectify their breach.

It also needs to answer the issue raised by the learned counsel for the petitioners with respect to the provision of Section 26(2) of the Act, 1957 which contains a provision of delegation of powers as quoted above.

It is evident from the aforesaid provision that the State Government may by notification in the official Gazette direct that any power exercisable by it under this Act as may be specified in the notification be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

The arguments advanced on behalf of the petitioners are that the notification as referred in the counter affidavit said to have been issued under Section 26(2) is not a notification by a State Government rather it is an order, even accepting that, that is an order, the question when by virtue of the said order the Member Board of the Revenue has only been authorized to conduct an inquiry and it is evident from the provision as contained in Section 26(2) of the Act, 1957, the State Government by notification in the Official Gazette may direct to any authority to act in pursuance to the provision of the Act, action means the final decision and admittedly the Member Board of Revenue has not taken the final decision rather he has only been authorized by the aforesaid order to enquire into the matter and as such the said argument is not having any basis in view of the fact that here the order has been passed in the name of the Governor of the State.

20. It is settled position of law that a judgment has got no universal application rather its applicability depends upon the factual aspects involved in each and every case, therefore, the factual aspect involved in the case in hand is quite different to that of the factual aspect involved either in Whirlpool Corporation (supra) or Maneka Gandhi (supra). In view thereof, the aforesaid judgments are not applicable in the facts and circumstances of the instant case.

21. The next limb of submission is that the copy of the enquiry report has not been supplied so prejudice has been caused and therefore, there is violation of principles of natural justice, and further in the enquiry report there is no concrete

finding regarding the commission of irregularity rather on presumption and on prima facie irregularity, the lease has been cancelled.

So far this argument is concerned as has been discussed hereinabove that the copy of the enquiry report is required to be given when before taking final decision, a notice is required to be given but under the provision of Rule 12(10) of the Rules, 2016, there is no such provision that before cancelling the lease deed a notice is required to be given as discussed in the preceding paragraphs.

So far as the prejudice part is concerned that will also not help the petitioners for the reason that prejudice only in case of taking final decision before it, a show cause notice is to be given to explain as to why the lease licence be not cancelled but in absence of such stipulation made under the provision of Rule 12(10), ground of prejudice will not vitiate the decision taken by the authority on cancellation of the mining lease.

Here the reference of the judgment rendered by the Hon'ble Apex Court in the case of Mohammad Ramzan vs. Union of India and Managing Director ECIL Hyderabad vs. B. Karunakar, reported in (1993) 4 SCC 727 has been made by the learned counsel for the petitioners. The ratio laid down in the Mohammad Ramzan's case by Hon'ble Apex Court was that due to non-supply of the copy of the enquiry report in a departmental proceeding, the providing ipso-facto vitiate but the said view has been reversed by Hon'ble Apex Court in the case of Managing Director ECIL Hyderabad (supra).

The ratio laid down therein that non-supply of enquiry report will not automatically vitiate the departmental proceeding rather it is incumbent upon the delinquent employee to show the prejudice caused due to non-supply of the enquiry report before taking final decision in the departmental proceeding.

The ratio of the aforesaid judgment will not be applicable in view of the fact that either in the case of Mohammad Ramzan or M.D. ECIL, the issue before the Hon'ble Apex Court was of the departmental proceeding and in case of non-supply of the enquiry report what would be its effect in the final decision taken in the departmental proceeding and in that circumstances the Hon'ble Apex Court in the Mohammad Ramzan Khan's case has laid down the ratio that supply of enquiry report is an important part to look into the findings given by the enquiry officer before inflicting the punishment major in nature but the same view having been reversed in the case of M.D. ECIL (supra) the Hon'ble Apex Court since was dealing with the issue of departmental proceeding which is supposed to be proceeded in pursuance to the provision of Public Inquiries Act, 1950 read with Applicable Discipline and Appeal Rules which provides the provision to provide reasonable and sufficient and adequate opportunity to the delinquent employee to defend himself but that fact is not here rather here the provision pertains to the Minerals Act containing therein the provision of Rule 12(10) of the Rules, 2016 and therefore, the ratio laid down by Hon'ble Apex Court in the case of M.D. ECIL (supra) will not be applicable.

Even accepting the arguments of the learned counsel for the petitioners that the prejudice has been caused due to non-supply of the copy of the enquiry report then also the requirement of the position of law as per the ratio decided in the case of M.D. ECIL (supra) and the judgment in the case of Uttarakhand Transport Corporation & Ors. vs. Sukhveer Singh, reported in (2018) 1 SCC 231 which has been rendered after following the ratio laid down in the case of M.D. ECIL (supra) wherein it has been laid down that mere non-supply of the inquiry report does not automatically warrant reinstatement of the delinquent employee. It is incumbent upon the delinquent employee to plead and prove that he suffered a serious prejudice due to the non-supply of the inquiry report.

This Court after examining the pleading made in the writ petition has found that no pleading to that effect i.e. causing prejudice due to non-supply of the inquiry report, has been made.

It also needs to refer the judgment rendered by Hon'ble Apex Court in the case of Gaurav Aseem Avtej vs. Uttar Pradesh State Sugar Corporation Limited & Ors., reported in (2018) 6 SCC 518 wherein at paragraph 15 it has been laid down that a statute is best interpreted when we know why it is enacted. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. Reasons for the enactment of the Rules, 2016 are set out in the Statement of Objects and Reasons that is after the pronouncement made by the Hon'ble Apex Court in the case of Goa Foundation's case as well as Common Cause's case making departure from the provision of the Rules, 1960 to that of the Rules, 2016 inserting a provision to ask explanation before cancellation of the lease deed save and except notice is to be given by providing therein 60 days time for remedying the breach or to pay royalty or dead rent, meaning thereby, in case of violation of any of such condition, the State Government reserves its right to terminate the lease and forfeit the whole or part of the performance security, and therefore, applying the judgment rendered by the Hon'ble Apex Court in the case of Gaurav Assem Avtej (supra), the ground raised by the petitioners is having no substance.

22. It also needs to refer that if the arguments advanced on behalf of the learned counsel for the petitioners would be accepted then the provision made under the provisions of Rules, 2016 more particularly Rule 12(10) would become redundant and will come in the period of the provision of Rules, 1960 wherein there was no provision for cancellation of the lease deed rather there was a concept of deemed renewal and in consequence thereof the ratio laid down by Hon'ble Apex Court either in the case of Goa Foundation or Common Cause, will be in conflict.

23. In view of the discussion made hereinabove according to the considered view of this Court it is not a case where it can be said that there is violation of principles of natural justice attracting the exception to entertain the writ petition rather the whole argument of the petitioners are that the Member Board of

Revenue has not considered the factual aspect produced before it, meaning thereby, they are disputing on fact.

24. The second ground has been raised which pertains to jurisdiction since according to the petitioners the show cause notice has been issued by the Deputy Commissioner and the decision has been taken by the departmental authority, which cannot be said to be in consonance with the provision of Rule 12(10) of the Rules, 2016 since the stipulation made there is of the State Government and hence, the notice or the decision is beyond jurisdiction.

25. This Court after appreciating the rival submission of the parties in this regard thinks it proper to first deal with the jurisdiction in issuing the notice.

Admittedly, herein the first agreement was entered into in the name of Governor of the State of Bihar and subsequent thereto and in the light of the order passed by this Court and in the light of the provision of Rule 24-A(6) of the Rules, 1960, the mining lease has been executed on 28.03.2017 and the same has been registered vide deed No.200/185 dated 29.03.2017 by agreement entered into by the Deputy Commissioner of the concerned districts with the lessee.

When the Deputy Commissioner has entered into the agreement that is under the delegated power of the State Government as has been referred hereinabove that the spirit of the minerals act read with the judgment rendered in the case of Goa Foundation's case or the Common Cause's case, the Hon'ble Apex Court after considering the larger issue of environment and the sustainable development is concerned with the fact that the mining operation must go in accordance with the provisions of law, there cannot be any deviation from it.

Although the provision has been made under Rule 12(10) conferring power upon the State Government but the Deputy Commissioner cannot be segregated from the State Government being the functionary who has entered into the agreement with the lessee and when the lessee have accepted the agreement entered into with the Deputy Commissioner of the concerned districts they now cannot come around and say that the Deputy Commissioner while issuing the notice has got no jurisdiction.

It is for the reason that when they have accepted the terms and conditions of the leases for carrying out the mining operations it is the Deputy Commissioner who would be said to be the competent authority being district head to look into the deviation in any part of the mining operations, here in the instant case, Deputy Commissioner after seeing the irregularities, have directed the district mining officer, a functionary in the mining department to issue notice as provided under the provision of Rule 12(10) of the Rules, 2016 therefore, it cannot be said that the Deputy Commissioner of the District has got no jurisdiction to issue such notice.

26. The second point urged in this regard by the learned senior counsel for the petitioners that the decision ought to have been taken by the State Government

provided under the provision of Rule 12(10) but the same having been taken by the departmental authority that too with the approval of the Chief Minister without referring it before the cabinet will not be said to be an order passed by the State Government being contrary to the rules of the executive business.

27. This Court has examined the impugned decision issued under the signature of a Departmental authority in the rank of Joint Secretary by the order of the Governor.

Now it is to be seen as to whether the order passed by the Governor if not sent before the cabinet rather the Chief Minister being the departmental Minister after getting it approved and after getting the concurrence of the Governor if the order has been passed can it be said to be not by the State Government.

28. It is not in dispute that the Constitution provides the provision under Article 166(1) & (2) which reads as follows:

"166. Conduct of business of the Government of a State.--

(1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor."

It is evident from the aforesaid constitutional mandate that Article 166(1) & (2) expressly envisage authentication of all the executive actions and shall be expressed to be taken in the name of the Governor and shall be authenticated in such manner specified in the rules made by the Governor under Article 166(3), the Governor is authorized to make the rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business insofar as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion.

The issue pertaining to the provision of Article 166(3) as to whether it is directory or mandatory, the same has been dealt with by Hon'ble Apex Court elaborately in the judgment rendered in the case of Dattatraya Moreshwar vs. The State of Bombay & Ors., reported in AIR 1952 SC 181 wherein at paragraph 7 it has been held as:-

"It is well settled that generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the

main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only the neglect of them not affecting the validity of the acts done."

Strict compliance with the requirements of Article 166 give an immunity to the order in that it cannot be challenged on the ground that it is not an order made by the Governor. If, therefore, the requirements of that article are not complied with, the resulting immunity cannot be claimed by the State. This, however, does not vitiate the order itself.

29. In the judgment rendered by the Hon'ble Apex Court in the case of Gulabrao Keshavrao Patil & Ors. vs. State of Gujarat & Ors., reported in (1996) 2 SCC 26, the Hon'ble Apex Court by making a reference of its own judgment rendered in the case of Bachhittar Singh vs. State of Punjab [1962 Supp (3) SCR 713], Kedar Nath Bahl vs. State of Punjab [(1978) 4 SCC 336] and State of Kerala vs. A. Lakshmikutty [(1986) 4 SCC 632] has been pleased to hold that before an order or action can bind the Government it cannot be drawn in the name of the Governor as envisaged in Article 166(1) & (2) read with business rules and must be communicated to the affected persons until that the action of the Government is not final. Before it is duly done, the Chief Minister has power to call for any file and would have it re-examine and decision taken.

30. In the case of MRF Limited vs. Manohar Parrikar and Ors., reported in (2010) 11 SCC 374, the Hon'ble Apex Court has been pleased to hold in the aforesaid judgment that the rules of business are not directory rather it is mandatory in nature.

31. Backdrop of this position of law as referred hereinabove, the rules of executive business of the State of Jharkhand needs to be examined.

After creation of the State of Jharkhand, Government of Jharkhand has come out with the Jharkhand Executive Rules, 2000 in exercise of power conferred under Article 166(3) of the Constitution of India whereby and whereunder the business has been allocated in between the different departments of the State of Jharkhand.

The said rules of executive business contains a schedule known as Third Schedule. The business provided under the Third Schedule is required to be placed before the council of Ministers.

It is evident from the content of the Third Schedule contained in said rules of executive business from Third Schedule Rule 10, 15, 16 and 13(ka)(11) Rules, 2015 is in Chapter 2, process of council of ministers wherein it has been provided that all the subjects in Third Schedule after discussion by the Departmental Ministers would be placed before the cabinet secretariat and through the cabinet secretariat it would be placed before the Chief Minister to place it before the council of Ministers in view of the stipulation made under Rule 16.

It is evident from the stipulation made under Rule 16(1) that the Chief Minister

will direct to place the matter pertaining to Third Schedule for getting the opinion of the departmental ministers, if there is unanimous decision and if the Chief Minister is of the view that the same need not to be placed before the council for its discussion, then the decision can be taken but in case the Ministers are differing with the opinion or the Chief Minister is of the view that the discussion is necessary then it would be placed before the cabinet for its discussion.

Rule 32 provides that before issuance of an order the issues would be placed before the Chief Minister through departmental secretaries after the discussion of the departmental ministers.

It is evident from the Third Schedule that the reference of the issues have been given to place it before the cabinet, one of the issues are under Clause 32 which stipulates regarding settlement or lease or grant or contract or revenue matters or minerals or forest related authority.

In the aforesaid subject under the heading 'Note', the said provision would not be applicable for Mines and Minerals (Regulation and Development) Act, 1957 and the other rules enacted under the provision of the said acts pertaining to certificate of the Mines, issuing of licence, etc.

The aforesaid provision of the rules of executive business thus, stipulates that the matter contained in Third Schedule would be placed before the cabinet through the departmental ministers or the Chief Minister before placing it before the Governor but under the heading 'Note' the mining subject have been excluded from the aforesaid purview, meaning thereby, the matter pertaining to mines would not be required to be placed before the council of Ministers rather it would be placed before the departmental Ministers and then it will go before the Governor and if that would be done it will be said to be in consonance with the rules of executive business as per notified in pursuance to the power conferred under Article 166 (3) of the Constitution of India.

32. In view the provision of rules of executive business, upon which learned counsel for the petitioners have given much reliance which would be evident from the factual aspect that the department has acted in pursuance to the enquiry report submitted by the Member Board of Revenue, the same has been placed before the Chief Minister who also happens to be the Departmental Ministers of Mines and Geology who has approved the decision and then it has been placed before the Governor, and then it has been issued under the signature of an officer in the rank of Joint Secretary of the Department in the name of the Governor, and therefore, it can well be said that the said decision is in pursuance of the rules of executive business and Article 166 (3) of the Constitution of India.

33. In view of the discussion made hereinabove, it is the considered view of this Court that the decision taken by the authority cannot be said to be without jurisdiction.

34. In view thereof, both on point of violation of principles of natural justice as well as jurisdiction, this Court is not in agreement with the submission advanced on behalf of the learned counsel for the petitioners to entertain this writ petition since there is alternative remedy of revision and accordingly these issues are answered against the petitioners.

35. It is the settled position of law that if there is availability of statutory remedy, the right course would be for the High Court not to entertain the writ petition under Article 226 of the Constitution of India subject to some exception as discussed hereinabove rather to direct the parties to approach before the statutory remedy or revision, reference in this regard be made to the judgment rendered in the case of *Sri Siddeshwara Coop. Bank Ltd. vs. Ikbali*, reported in (2013) 10 SCC 83 wherein it has been held at paragraph 27 as under:

"27. No doubt an alternative remedy is not an absolute bar to the exercise of extraordinary jurisdiction under Article 226 but by now it is well settled that where a statute provides efficacious and adequate remedy, the High Court will do well in not entertaining a petition under Article 226. On misplaced considerations, statutory procedures cannot be allowed to be circumvented."

Reference also needs to be made in the judgment rendered in the case of *Nivedita Sharma vs. Cellular Operators Association of India and Ors.*, reported in (2011) 14 SCC 337, wherein it has been held at paragraph 11 as under:-

".....There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation -- *L. Chandra Kumar v. Union of India*. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

Reference also needs to be made in the judgment rendered in the case of *Cicily Kallarackal vs. Vehicle Factory*, reported in (2012) 8 SCC 524, wherein it has been held at paragraph 4 as under:-

"..... it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has

provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India."

36. It is evident from the provision as contained in Rule 35 of Rules, 2016 that there is provision of revision, the said provision is being referred as under:

"35. Application for revision.-- (1) Any person aggrieved by:-

(a) any order made by the State Government or other authority in exercise of the powers conferred on it by or under the Act or the rules made thereunder; or

(b) non-passing of any order by the State Government or other authority in exercise of the powers conferred on it by or under the Act or the rules made thereunder, within the time prescribed therefor may, within three months of (i) the date of communication of the order to him; or (ii) the date on which the time period for passing such order expired, apply to the Central Government in the form specified in Schedule XI for passing of an order, pursuant to section 30.

(2) The application should be accompanied by a bank draft for rupees ten thousand as application fee drawn on a Scheduled bank in the name of Pay and Accounts Officer, Ministry of Mines payable at New Delhi or by way of a bank transfer to the designated bank account of the Ministry of Mines:

Provided that any such application may be entertained after the said period of three months if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

(3) In every application under sub-rule (1) against the order of a State Government refusing to grant a mineral concession, any person to whom a mineral concession was granted in respect of the same area or for a part thereof, shall be impleaded as party.

(4) The applicant shall, alongwith the application under sub-rule (1), submit as many copies thereof as there are parties impleaded under sub-rule (3).

(5) On receipt of the application and copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (3) specifying a date on or before which he may make his representations, if any, against the revision application:

Provided that in case where the revision application has been filed for the reason that no order has been passed by the State Government within the time prescribed therefor, the Central Government shall before passing an order give the State Government an opportunity of being heard or to represent in the matter."

37. The petitioners since are disputing the factual aspect as because their main contention as has been gathered by this Court is that they have remedied the

irregularities which has not rightly been appreciated while according to the State Government the irregularities has not been remedied, meaning thereby, there is dispute in facts and as such entertaining the writ petition in the disputed question of fact if the alternative remedy of revision is there, would not be proper for this Court as has been settled in the aforesaid judgment referred in the preceding paragraphs.

38. This Court has examined the provisions of Rule 35 and Rule 36 of the Rules, 2016 and has found that the revisional power has been vested under the statute upon the authority but would be notified by a notification issued by the Central Government and as such when the original authority is State Government but the revisional authority is to be appointed by the Central Government by virtue of notification, there would be no question of any biasness as the same has been raised and further it is evident that the revisional power is wide enough since under the provision of 35(1)(A), the revision will lie against any order made by the State Government or other authority in exercise of power conferred on it by or under the Act or the Rules made thereunder and under the provision of Rule 36, the revisional authority has got power to confirm modify or set aside the order or pass such other order in relation thereto as the Central Government may deem just and proper and as such, the revisional jurisdiction as provided under the provision of Rule 35 read with Rule 36 is an efficacious remedy and as such entertaining the writ petition even though the provision of statutory remedy or revision is there, would not be proper for this Court.

39. Therefore, this Court is not inclined to entertain these writ petitions at this stage, accordingly, the same are dismissed.

40. The parties are at liberty to approach before the revisional authority, if they so wish.

41. In consequence thereof, interim order, if any, stands vacated.