
(1973) 03 RAJ CK 0023
In the Rajasthan High Court
Case No : First Appeal No. 42 of 1966

State of Rajasthan

APPELLANT

Vs

Raghunath Singh

RESPONDENT

Date of Decision : 09-03-1973

Acts Referred:

Constitution of India, 1950 — Article 299
Contract Act, 1872 — Section 70
Mineral Concession Rules, 1949 — Rule 4
Rajasthan Minor Mineral Concession Rules, 1955 — Rule 43, 44

Citation : AIR 1974 Raj 4 : (1973) RLW 387 : (1973) WLN 424

Hon'ble Judges : L.S. Mehta, J; J.P. Jain, J

Bench : Division Bench

Advocate : S.K. Tewari, for the Appellant; B.P. Agarwal, for the Respondent

Judgement

Jain J.

1. This appeal by the defendant State arises out of the original Civil Suit No. 16/62, instituted by the respondent Raghunath Singh, for the recovery of Rs. 70,151.32 as damages for breach of contract and which has been partly decreed by the Senior Civil Judge No. 2 Jaipur City, on 28-2-1966.

2. Briefly put, the plaintiff Raghunath Singh's case is that he was granted a minor mineral lease for lime-stone of the mines, known as Dawa and Seelva in Tehsil Nokha. District Bikaner. Rajasthan, consisting of an area of 40 acres for a period of five years on an yearly dead rent of Rs. 6195/- on the terms and conditions given under the Rajasthan Minor Mineral Concession Rules, 1955. This mining lease was granted by the Director of Mines and Geology Government of Rajasthan. Udaipur. The sanction was conveyed to the plaintiff by the Assistant Mining Engineer, Bikaner. by his letter, dated 4-7-1957 (Ex. 26). The Deputy Director (Administration) of Mines and Geology also communicated this fact to him by his letter, dated 5-7-1957 (Ex. 25). The plaintiff then deposited an amount of Rs. 1550/- by way of security with the Assistant Mining Engineer,

Bikaner. on 8th August. 1957. He also completed the other formalities regarding demarcation etc. of the area in question. By letter, dated 9-10-1957 (Ex. 5). the plaintiff was also informed to commence his work. Plaintiff Raghunath Singh further deposited Rs. 1550/- on 28th October, 1957, as another part of the security deposit amount. He also paid a sum of Rs. 1550/- on the same date as the first quarterly instalment of the dead-rent. He was then asked to execute the indenture on a duly stamped paper. The plaintiff in response to that got prepared an indenture relating to the mining lease and submitted the same duly signed by him and accompanied by necessary stamp duty. This was done in the month of January. 1958. The said indenture and its copies, duly signed by the plaintiff, are on the record. They are marked Exs. D1/1 D1/2 and D1/3. According to the plaintiff he engaged necessary staff and labour. He also constructed a fair weather road for the purpose of working the mines. By his letter, dated 19-2-1959 (Ex. 10). the Assistant Mining Engineer acknowledged the receipt of the formal agreement executed by the plaintiff and said that it had been sent to the competent authority for his signature.

3. On 21st February, 1958, the plaintiff was asked by the Assistant Mining Engineer Bikaner to appear before the Deputy Minister Mines at Jaipur on 26th February, 1958, at his residence. It was stated that one Anand Singh Kach-hawa, representing Messrs. Chemical Limes, Jodhpur had some grievance against the grant of mining lease to him. The plaintiff appeared before the Deputy Minister, but he had to come back as the Deputy Minister had not heard the matter. He was again called on 13th March, 1958, but nothing substantial had come out. By telegram, dated 28-3-1958 (Ex. 24), the plaintiff was asked by the Assistant Mining Engineer to stop working the mines. This was followed by another letter, dated 4-4-1958 (Ex. 22). On a representation made by the plaintiff against that order, he was informed that the matter was under consideration. The plaintiff did not hear anything for about an year. On 17th February, 1959, he was informed by telegram (Ex 30) that the lease of Dawa and Seelva lime-stone was cancelled. To the same effect letter, dated 19-1-59 (Ex. 14), was addressed to the Plaintiff by the Assistant Mining Engineer. The Assistant Mining Engineer by another letter, dated 13-11-59 (Ex. 12), while reiterating the fact that the lease had been cancelled, called upon the plaintiff to deposit the dead-rent due failing which the security deposit would be forfeited to that extent. Under these circumstances, the plaintiff served a notice u/s 80 of the CPC to the State Government and claimed a sum of Rs. 70151-5as-3p as damages for breach of the contract. The particulars of this amount are as follows:--

1. Security Deposit Rs. 3100/-
2. First quarterly instalment Rs. 1550/-
3. Preliminary expenses in demarcation etc. Rs. 80/-
4. Incidental expenses, payment to staff, and labourers ensaeed. ad-vances made for work which have been for-feited by them Rs. 24405/8/3

5. Application fee Rs. 5/-

6. Loss incurred on account of bargain struck and contracts made with different parties for supply of lime and lime-stone i.e. the compensation the plaintiff had to pay on account of his inability to fulfil the said agreement with various parties
Note:-The further details of it are as under: -

a) Shri Ramiilal S/o Ramprasad of Delhi. Rs. 7500/-

b) Ganpairam s/o Boduram of Alwar Rs. 500/-

c) Birbal s/o Panna of Village Dhani Bha-tota Tehsil Narnaul Rs. 3531/-

d) Minimum loss of profit which the plaintiff would have earned by working the said mines Rs. 25000/-

Total :- Rs.

70,151/5/3

Since the plaintiff failed to obtain any relief from the State Government, he instituted the suit for the recovery of the amount on 16th April. 1962.

4. The defendant State resisted the suit by its written-statement, dated 17-10-1962. The main plea of the defendant was that the plaintiff was not granted a minor mineral lease of limestone inasmuch as no formal document granting the lease was executed between the plaintiff and the Director of Mines and Geology Rajasthan, in the name and on behalf of the Governor. The mere granting of the lease by the Director of Mines was not sufficient to constitute a valid contract of lease. It was further maintained on behalf of the defendant that the plaintiff had not commenced the work of the said mines. He did not engage any staff and any labour, nor did he construct any fair weather road nor did he have to pay advances to the skilled labour, as alleged by him. It was, however, admitted that Rs. 3100/- were deposited by way of security deposit and Rs. 1550/- as dead-rent, for one Quarter. It was also admitted that the plaintiff had submitted the standard form of the mining lease agreement duly signed on 15th January. 1958, but it was not signed by the Director of Mines and Geology on behalf of the Governor and as such the document was incomplete and did not give rise to a valid contract. It was contended that there was no breach of the contract and, therefore, the plaintiff was not entitled to recover any damage for the alleged breach.

5. The learned trial Judge framed necessary issues and after the trial held that the Director of Mines and Geology was the competent authority to grant the minor mineral lease in question and he did grant the said lease for lime-stone, as alleged by the plaintiff. It was also held that the lease was granted under the statutory Powers of the Minor Mineral Concession Rules 1949. The applicability of Article 299 of the Constitution of India could not be invoked. It was found that there was a valid contract and stopping the plaintiff from working the mines was illegal and it was not within the authority of the State Government to cancel the

lease. For these reasons it was held that there was a breach of the contract and the plaintiff was entitled to claim damages. He allowed the following amounts by way of damages:--

1. Security deposit Rs. 3100/-
2. Quarterly dead rent Rs. 1550/-
3. Preliminary expenses in-curred by the plaintiff in demarcation etc. Rs. 60/-
4. Application fee Rs. 5/-
5. Incidental expenses incur-red by the plaintiff Rs. 14647.75
6. Loss of profit Rs. 25000.00

The plaintiff's suit was thus decreed for Rs. 44362.75 p with proportionate costs. He was also allowed interest at the rate of 6% per annum from the date of judgment till the satisfaction of the decree. This decree is the subject matter of challenge in this appeal.

5A. On behalf of the appellant it has been urged by Mr. Tewari that there was no enforceable contract between the parties inasmuch as there was no formal instrument evidencing the contract between the Parties in accordance with the provisions of Article 299 of the Constitution. It was submitted that though the Director of Mines and Geology had absolute power and was the competent authority to grant the mining lease in Question, yet he was acting on behalf of the State and the contract was to be made by him in the exercise of executive power of the State. It was therefore, necessary that the contract should have been expressed in terms of Article 299 of the Constitution. According to him the view taken by the trial Judge that the mining lease was granted by the Director of Mines and Geology under the statutory powers and as such, Article 299 of the Constitution was not applicable, is erroneous. On the other hand, Mr. Agarwal learned counsel appearing for the plaintiff-respondent, urged that the mining lease was granted under the Minor Mineral Concession Rules 1955 and, therefore, no other law would be looked into to determine the validity of the lease except the said Rules of 1955. He has also argued that the lease in Question was not granted in the exercise of the executive power of the State inasmuch as the State made the Minor Mineral Concession Rules of 1955 in exercise of the powers conferred by Rule 4 of the Mineral Concession Rules. 1949 of the Central Government. He. maintains that it was not the executive function of the State to grant the mining lease as it was in fact in pursuance of the delegated authority of the Union Government.

6. There is no doubt that the mining lease in question was granted under the Minor Mineral Concession Rules. 1955, but it was certainly an executive function of the State. The Director of Mines and Geology only acted on behalf of the State and the contract must, therefore, be expressed as required by Article 299 of the Constitution. According to Article 246 of the Constitution, "regulation of mines

and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the Public interest" is a subject of the Union List. This item also appears at entry No. 23 of the State List. But this is subject to the provisions of List I. It is, therefore, clear that the State Legislature has also power to legislate as regards the regulation of mines and mineral development, but subject to the legislation made by the Parliament under Entry No. 54 of List I of the Seventh Schedule of the Constitution. The jurisdiction of the State Legislature thus is subject to the limitations imposed by entry No. 54. It is not disputed that at the relevant time, there was no post Constitutional enactment. Mines and Mineral (Regulation and Development) Act, 1948, a pre-constitutional Central Act existed and that governed the regulation of mines and mineral development.

According to Section 4 of this Act no mining lease could be granted after the commencement of the Act otherwise than in accordance with the rules made under the Act. Section 4 (2) provided that any mining lease granted contrary to the provisions of Sub-section (1) shall be void and of no effect. u/s 5 of the Act of 1948, the Central Government was empowered to make rules for the granting of the mining leases or for prohibiting the grant of such leases in respect of any mineral or in any area. The rules can also prescribe the manner, the authority and other incidental matters for granting such a lease. The Central Government in exercise of the powers conferred by Section 3 of the Act of 1948 made "The Mineral Concession Rules, 1949". Rule 4 of the Rules of 1949 provided that these rules shall not apply to minor minerals, the extraction of which shall be regulated by such rules as the State Government may prescribe. There is no dispute between the parties that lime-stone is a minor mineral. The Mineral Concession Rules of 1949 will not therefore, govern the mining lease for lime-stone and it must be regulated by such rules which the State Government may make, in exercise of the powers under Rule 4 of the Mineral Concession Rules. Minor Mineral Concession Rules 1955, were framed by the Rajasthan State. These rules came into force on June 11, 1955.

Learned counsel for the parties are at one that the mining lease in Question was governed by Chapter IV of these Rules. Chapter IV consists of rules 19 to 32. Rule 19 prescribes certain restrictions for the grant of mining lease. Rule 20 provides that an application for the grant of a mining lease shall be submitted to the Director of Mines and Geology. According to the Rule 21, an application for a mining lease shall be accompanied by a fee of Rs. 5/-. If the applicant is refused the grant of the lease applied for the fee shall be refunded. Rule 22 prescribes as to what an applicant should show in his application for the grant of mining lease. Rule 23 deals with the Question of priority in the event there is more than one applicant. Rule 24 prescribes for the maintaining of register of mining leases by the Divisional Officer of the Department. Rule 25 refers to the area of mining lease as it was left to the Government to decide. Rule 28 requires the lessee to deposit money by way of security which shall be equal to one-fourth of the yearly dead-rent if the instalments are monthly and equal to one-half in case the

instalments are fixed Quarterly. Rule 30 deals with the period of lease, which, according to it, shall be for a period of five years unless the applicant desired a shorter period. Rule 31 prescribes 24 conditions which shall form part of every lease granted under the Rules. Rule 32 refers to the date of commencement of the Rules.

According to this rule, the lease shall be deemed to commence from the date of the communication of the sanction to the parties. Rule 31-A was added on 30-8-1957 and according to this rule a formal written lease within two months from the date of communicating the sanction was made a necessary requirement. The State Government being the proprietor of the mineral resources in the State had the power to grant the mining leases, but by Rule 43 of these Rules of 1955, the Government may by a notification in the Rajasthan Gazette, direct that the powers of the Government under all or any of these rules, including the power to grant quarrying licences or mining leases, may be exercised by the Director or by any other officer or officers of the Department or by other officers subject to such restrictions and for such area and within such limits, if any, as the Government may direct. By a notification the Director of Mines and Geology has been authorised to grant a mining lease.

There is no controversy between the parties that the Director of Mines and Geology was a competent authority to grant the lease in question under Rule 43 (I), Rule 44 may also be referred here. It reads as under;--

"44. Effect of delegation:-- While a notification under Rule 43 is in force, an officer so exercising the Powers of the Government or the Director in accordance with the notifications shall be deemed to be the Government or the Director (as the case may be) for the relevant provisions of these rules."

Reliance has been placed by Mr. Tewari on this rule in support of his contention that even when the Director of Mines and Geology had the absolute power under the Notification, issued under Rule 43 (1) he only acted on behalf of the Government and under Rule 44, he was deemed to be the Government itself. This argument is not without force. The State Government has full proprietary right on the mineral resources of the State and the State Government is the original authority which can grant a mining lease for the exploitation of a particular mining mineral. Even the delegation under rule 43 by the Government may be subject to such restrictions regarding area and the limits as the State Government may direct. We have noticed above that Rule 4 of the Mineral Concession Rules, 1949, empowered the State Government to regulate the minor minerals in the State.

7. The contention of Mr. Agarwal, to this extent, that mining lease can be granted under the Minor Mineral Concession Rules, 1955 is, no doubt, correct. But his submission that no other law can be looked into for determining the validity of a mining lease does not appear to be sound. In our opinion the provisions of the Minor Mineral Concession Rules do not abrogate other laws which are for the

time being in force in the State of Rajasthan. For instance, a minor is not competent to contract under the Contract Act. Surely, no mining lease can be granted under the Minor Mineral Concession Rules, 1955, to a minor even though there is no prohibition in these rules that the minor cannot make an application for the grant of a mining lease. Similarly, if some formalities are required to be done under some law in force in the State, it will be obligatory upon the parties to comply with the said requirements to constitute a valid contract of mining lease. In the present case, if Article 299 applies, a mining lease has to be expressed in terms of that article. We are therefore unable to agree with the submission of Mr. Agarwal that while granting a mining lease no other law can be looked into for constituting the mining lease as a valid contract.

8. On behalf of the respondent reliance has also been placed on a decision of this Court in *State of Rajasthan v. Rameshwar Dayal D. B.* Civil First Appeal No. 29/65 decided on 22-10-1971 (Raj) "to which one of us was a party in support of the contention that an act done under the statutory powers will not attract Article 299 of the Constitution. This case is distinguishable on facts. In the case referred to the Tehsildar allowed some land to Rameshwar Dayal in the "abadi" in the district of Kota under the provisions of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951. A mutation to effect the transaction was recorded by the Tehsildar in Pursuance of the powers conferred upon him. This land was subsequently sought to be acquired by the State of Rajasthan some time in the year 1958 under the provisions of the Rajasthan Land Acquisition Act, 1953. Notice was also issued to Rameshwar Dayal to submit his claim for compensation. The Land Acquisition Officer awarded compensation. Rameshwar Dayal not being satisfied with the award asked the Land Acquisition Officer to make a reference u/s 18 of the Land Acquisition Act. The District Judge, Kota, who heard the reference, increased the amount of compensation. It was against that order of the learned District Judge that the case came before the High Court at the instance of the State of Rajasthan. One of the objections raised by learned counsel appearing for the State was that the transfer of land effected by the Tehsildar was not in accordance with the requirement of Article 299 of the Constitution. In the circumstances of that case it was held by this Court that the Tehsildar acted within the powers conferred upon him by the statute and the transaction of transfer of the land which fell within his jurisdiction could not be challenged on the ground that Article 299 of the Constitution was not complied with. The decision in that case cannot be applied to the facts of the present case. As indicated above, the Government was the sole authority to grant the mining lease under the Minor Mineral Concession Rules. It was only by virtue of rule 43 that the Government could delegate its Powers to the Officer of the Department of Mines and Geology. Again, in the succeeding rule it has been made clear that the Officer while granting the mining lease shall be deemed to be the Government. In this view of the matter, no assistance can be claimed by the respondent from the decision referred to above.

9. Another contention that Mr. Agarwal has strenuously urged before us is that

the mining lease in question granted by the Director of Mines and Geology was not in exercise of the executive powers of the State. According to him this was an act in exercise of the delegated power under Rule 4 of the Mineral Concession Rules of 1949 of the Central Government. He has also referred to Articles 154 and 162 of the Constitution. They are reproduced below:--

"154. Executive power of States.--(1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(2) Nothing in this article shall

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority: or

(b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor,"

"162. Extent of executive power of State-- Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has Power to make laws:

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof."

10. On the basis of the said articles, learned counsel has submitted that the executive power of the State shall extend only to the matters with respect to which Legislature of the State has power to make laws. In this submission he obviously fails to notice the expression "subject to the provisions of this Constitution". Article 298 has a material bearing on this question and it is extracted below:--

"298. Power to carry on trade, etc.--The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: Provided that- (a) the said executive power of the Union shall, in so far as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and

(b) the said executive power of each State shall, in so far as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament."

11. Under this article, the executive power of the Union and the State extends to the carrying on of any trade or business and to the acquisition, holding or disposal of any property. The present case is not hit by the proviso attached to

this article. This article has been substituted with the object to make it clear that the Union Government as well as the State Government are competent to carry on any commercial or industrial undertaking whether or not it is related to a matter within the legislative competence of the Union or as the case may be of the State. Similarly, the holding, acquisition and disposal of property and the making of contracts by the Union or State can be for any purpose without constitutional impropriety. At the same time the revised article provides that this extended executive power of the Union and of the State will be subject, in the former case, to the legislation by the State and in the latter to the legislation by Parliament. We have noticed above that the State has not made any other legislation on this subject of regulating the mineral development nor was there any legislation of the Union Parliament at the relevant time. This article is definitely intended to supplement the meaning of the words "executive power" in Articles 73 and 162 of the Constitution. The exploitation of the minor mineral resources in the State is clearly an exercise of the executive power of the State. We are not impressed by the submission of Mr. Agarwal that the State in granting the mining lease under the Minor Mineral Concession Rules, 1955 does not act in exercise of the executive power.

12. Executive power is not defined in our Constitution. Articles 73 and 162 which describe the extent of the executive power of the Union and the State respectively are concerned primarily with the distribution of executive power between the Union and the State. In *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, it was observed that although it was not possible to give an exhaustive definition of what executive power means and implies, ordinarily they connote the residue of governmental functions that remain after legislative and judicial functions are taken away. In that case it was contended that the executive power of the State did not extend to the carrying on of the trade of printing, publishing and selling text books for schools unless such trade was authorised by law. The contention was rejected. Their Lordships of the Supreme Court held that so long as the trade was carried on in pursuance of the ministry's policy, with the tacit support of the majority in the legislature, no objection on the score of its not being sanctioned by a law could possibly be raised. The nature of the executive power was again considered in *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, in connection with Article 258. Shah J. treated it as well settled that functions which did not fall strictly within the legislative or judicial field, fell in the residuary class and had to be regarded as executive and he referred to the description of executive power given by Mukherjea J. in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, . He also cited the following passage from Halsbury:

"Executive functions are incapable of comprehensive definition, for they are merely the residue of the functions of government after legislative and judicial functions have been taken away. They include, in addition to the execution of the laws, the maintenance of public order, the management of Crown property and nationalised industries and services, the direction of foreign policy, the conduct of

military operations and the provision or supervision of such services as education, public health, transport, and state assistance and insurance. In the performance of these functions, public authorities are bound to issue orders which are not far removed from legislation, and to make decisions affecting the personal and proprietary rights of individuals which, while not strictly judicial, are Quasi judicial in character. Discretionary action of both these types must now be considered normal on the part of the executive."

In view of what has been discussed above, the grant of mining lease under the Rajasthan Minor Mineral Concession Rules, 1955, cannot be said to be a legislative or a judicial act of the State and it will, therefore, fall in the residuary class of executive functions of the State.

13. In determining the liability of the Union and the State in respect of contracts, regard must be had to Article 299(1) of the Constitution, which prescribes the formal requirements for the making of contracts by the Union and the State for their power to enter into contracts and to carry on trade or business is expressly affirmed by Article 298, which provides that the executive power of the Union and the State extends to the carrying on of any trade or business, acquiring, holding or disposing of any property and the making of contracts. Therefore, if the requirements of Article 299 are complied with, there remains no doubt that under Article 300 a valid contract can be enforced against the Union and the State and in case there is a breach damages in respect of the breach can be claimed. It is a settled law that the provisions of Article 299 are mandatory. It follows, therefore, that any agreement which did not comply with its terms is void. Section 2(e) and (h) of the Contract Act provides that an agreement not enforceable by law is void and an agreement enforceable by law is a contract. If the terms of Article 299 are not complied with in the present case, the contract will be void as being not enforceable in law. The question was considered in *Seth Bikhraj Jaipuria Vs. Union of India (UOI)*, with reference to Section 175(3) and (4) of the Government of India Act, 1935, which contained provisions corresponding to those of Article 299(1) and (2). Shah J., referred to Maxwell on Interpretation of Statutes for the tests to determine whether a statutory provision was mandatory or directory and observed:--

"It is clear that the Parliament intended in enacting the provision contained in Section 175(3) that the State should not be saddled with liability for unauthorised contracts and with that object provided that the contracts must show on their face that they are made on behalf of the State, i. e. by the Head of the State and executed on his behalf and in the manner prescribed by the person authorised. The provision, it appears, is enacted in the public interest, and invests public servants with authority to bind the State by contractual obligations incurred, for the purposes of the State."

14. In *State of West Bengal Vs. B.K. Mondal and Sons*, the Supreme Court followed *Bhikrai's* case and held that Section 175 (3) was mandatory and that failure to comply with it made the agreement invalid, which must mean in the

context that it was "void". The Supreme Court took the same view in the Union of India (UOI) Vs. A.L. Rallia Ram, .

15. In a Bench decision of this Court in *Tiwari Jhumarlal Swarooplal v. State of Rajasthan* 1964 RLW 380 it was held with regard to a minor mineral lease that the lease agreement, if not executed in terms of Article 299 of the Constitution, will not be enforceable in law.

16. The same view was taken by a learned single Judge of this Court in *Bharat Bhoosan v. State of Rajasthan* S. B. Civil Writ petition No. 2268/70 decided on 17-1-1973 (Raj). In that case a lease agreement was signed by the Joint Director on behalf of the Governor. It was revealed that Joint Director was not authorised to execute and sign on behalf of the Governor. The agreement was declared to be unenforceable in law and the demand notice for the recovery of the money due under the said agreement was quashed.

17. Likewise *Lodha J. in the State of Rajasthan Vs. Jairam Das*, held that the effect of non-compliance of the provisions of Article 299 of the Constitution makes the contract void and it cannot be enforced. This was also a case of lease under the Minor Mineral Concession Rules. 1955.

18. As a result of the foregoing discussion, we have no manner of doubt that the mining lease was though granted to the plaintiff by the Director of Mines and Geology, Udaipur, it was in exercise of the executive function of the State and Article 299 of the Constitution applied to the mining lease in Question.

19. Next, learned counsel for the respondent urged that even if Article 299 applied to the lease in question, the requirements are fulfilled. He has placed reliance on the following observations of the Supreme Court in *Union of India (UOI) Vs. A.L. Rallia Ram*,

"Section 175(3) does not in terms require that a formal document executed on behalf of the Dominion of India, and the other contracting party, alone is effective. In the absence of any direction by the Governor-General u/s 175(3) of the Government of India Act prescribing the manner, a valid contract may result from correspondence if the requisite conditions are fulfilled. The contracts for sale of "War disposal" goods were not directed by the Governor-General to be made by a formal document executed on behalf of the Governor-General as well as by the purchasing party. It is true that Section 175(3) uses the expression "executed" but that does not by itself contemplate execution of a formal contract by the contracting parties. A tender for purchase of goods in pursuance of an invitation issued by or on behalf of the Governor-General of India and acceptance in Writing which is expressed to be made in the name of the Governor-General and is executed on his behalf by a person authorised in that behalf would conform to the requirements of Section 175(3)."

20. Article 299 of the Constitution lays down the following requirements:--

1. That the contract shall be expressed in writing.

2. It must be executed in the name and on behalf of the Governor,

3. By such person as he may direct or authorise and

4. In such manner as he may direct or authorise. It is true that no manner of execution of the document has been prescribed. Now, we have to see whether the remaining three requirements have been fulfilled. Ex. DI/1 is in the standard form. This document is prepared in the name and on behalf of the Governor on the one hand and the plaintiff on the other. It has been signed by the plaintiff and his signatures are attested by the witnesses. The executant of the lease in question is the Governor. It is admitted that the Director of Mines and Geology was the person authorised to sign and to execute on behalf of the Governor. His signatures are not appended to this document. This document no doubt, bears the signatures of the Assistant Mining Engineer, but it is not the case of either party that he was authorised to sign on behalf of the Governor. Therefore, the requirement of executing the document on behalf of the Governor is not obviously fulfilled. Mr. Agarwal has also referred to the letters Ex. 25 and Ex. 26. On the basis of the two letters, he has argued that it contains the sanction of the lease by the Director of Mines, as these two documents coupled with the document Ex. DI/1 may together constitute a valid contract. We have examined the document Ex. 25. Though this letter has been issued from the office of the Director. Mines and Geology, yet it purports to have been signed by the Deputy Director (Administration). Ex. 26 is another letter by which the sanction of the lease has been communicated, but this is signed by the Assistant Mining Engineer. There is thus no basis for the argument that the grant of the mining lease is anywhere executed and signed by the Director of Mines and Geology. There is no substance in this contention and in our opinion, the observations made in Rallia Ram's case have no application to the present case. In this view of the matter, we hold that there was no valid and enforceable lease inasmuch as the lease agreement has not been executed in terms of Article 299 of the Constitution: and since there is no valid contract, no suit for damages for breach of contract can be maintained. We are therefore, unable to sustain the finding of the trial Judge in awarding damages to the plaintiff.

21. We, however, feel that the plaintiff can be awarded a decree for Rs. 4715/-. The plaintiff in pursuance of the alleged grant of the lease deposited Rs. 1550/- on 8th August. 1957 by way of security deposit. He also deposited Rs. 1550/- as security deposit on 28th October, 1957. He further deposited Rs. 1550/- as the dead-rent for the first quarter of the year. Thus, he deposited Rs. 4650/-. This is admitted by the defendant State. The plaintiff also deposited Rs. 60/- by way of incidental charges for the Purpose of demarcation etc. This deposit is also not disputed. The plaintiff made an application for the grant of mining lease. The application was accompanied by a fee of Rs. 5/-. Rule 21 provides that if the applicant is refused the grant of lease applied for, he is entitled to its refund. In the facts and circumstances of the case, the lease granted to the plaintiff by the Director of Mines and Geology has been cancelled for no fault of his and all these

deposits were made by him in pursuance of the grant of the mining lease. He did not clearly intend to give the money to the State gratuitously. Section 70 of the Contract Act provides that where a person lawfully does anything for another Person or delivers anything to him not intending to do so gratuitously and some other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of or to restore the thing so done or delivered. In view of the facts admitted and proved, the plaintiff is entitled to the restoration of this amount u/s 70 of the Contract Act. Their Lordships of the Supreme Court in State of West Bengal Vs. B.K. Mondal and Sons, held that though an agreement is invalid. Section 70 of the Contract Act applied and the compensation can be recovered by the party who had performed his part of the agreement which the Government had accepted. Their Lordships of the Supreme Court upheld the claim u/s 70 in that case. We therefore feel justified to order the refund of Rs. 4715/- by the State to the plaintiff along with pendente lite and future interest. We have taken notice of the fact that the plaintiff did not actually work the mine and could not derive any benefit out of the grant

22. Before parting with this case, we take it to be our duty to observe that the State has not given an account of fair play and justice in the present case. The Director of Mines and Geology had absolute power under Rule 43 of the Minor Mineral Concession Rules and he granted the mining lease to the plaintiff. The sanction was communicated to him and he was also ordered to commence his work of the mines on 9th October, 1957. He paid the required security deposit and also deposited the quarterly instalment. The demarcation of the area was also done at his expense. He was also made to submit the necessary indenture for the execution of the lease agreement, on a standard form. He did so in January, 1958. The necessary indenture was accompanied by the requisite stamp duty. The Deputy Minister for no reason stepped in and the plaintiff was stopped to work the mines. The matter was kept pending for an year and then he was informed in 1959 that the lease granted to him has been cancelled. Under these circumstances, the plaintiff could not have done more than what he did. The only thing left to make the lease valid was for the Director of Mines and Geology to sign the document which he did not obviously on account of the intervention of the Deputy Minister. All this must have caused a great loss to the plaintiff. On this account State also suffered loss. Though for the reasons stated hereinbefore, we are unable to hold that there was any enforceable contract and that the plaintiff was entitled to damages but we must say that the action of the State Government in this case was very much arbitrary and it goes a lone way to shake the confidence of the people in the State Government. The Director of Mines and Geology also failed to do his duty in spite of the fact that he had had the power to sign the indenture, submitted by the plaintiff. He did not sign it and shirked his responsibility as an officer. We view this whole affair with great displeasure.

23. In the result, we accept the appeal in part, set aside the judgment and decree of the learned trial Judge and instead decree the plaintiff's suit only for Rs. 4715/- against the State with proportionate costs in both the courts. The

amount shall bear pendente lite and future interest at the rate of 6% per annum. The State is allowed three months" time to pay the decretal amount, if it has not been paid already.