
(1999) 10 AHC CK 0031

In the Allahabad High Court

Case No : C.M.W.P. No. 23884 of 1999, connected with 25 other writ petitions

Uma Crushing Ston Co. and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 28-10-1999

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 1A, 2
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 1(4), 10, 23, 3, 9
Constitution of India, 1950 — Article 14, 166, 166(1), 19, 38

Citation : (2000) 1 AWC 433

Hon'ble Judges : R.K. Agarwal, J; Palok Basu, J

Bench : Division Bench

Advocate : S.P. Singh, Y.K. Saxena, C.L. Pandey, Sanjay Kumar, D. Mukherjee, Ramesh Upadhyaya, M.P. Yadav and Mukesh Prasad, for the Appellant; Vishnu Pratap, S.C., for the Respondent

Judgement

Palok Basu, J.—Undisputedly, policy decisions relating to matters which involve betterment of the polity and of the masses are within the exclusive jurisdiction of the respective Governments, subject to Judicial scrutiny if the policy is challenged on the ground of contravening fundamental rights or disturbing the basic structure of the governance through the constitutional provisions, whether or not the policy decision sought to be conveyed through G. O. dated 16.3.1999 issued by the State of U. P. conforms with the directive principles and the fundamental rights of citizens enumerated under the Constitution are the two basic issues raised by the petitioners in this bunch of writ petitions. The Government Order dated 16.3.99 which is under challenge, has been issued by the State of U. P. in exercise of power conferred by the provisions of the Uttar Pradesh Minor Minerals (Concession) Rules. 1963 (in short. M.M.C. Rules) which have been framed in pursuance of the provisions contained under the Mines and Minerals (Regulation and Dvelopment) Act. 1957. Section 15 of the said Act authorises the State Government to make Rules in respect of Mines and Minerals vide subsection 1-A.

Clause (E).

2. When the writ petition was filed, the arguments were advanced as a result of which counter-affidavit was called. In due course of time, the other petitions in the bunch came to be filed and in some of them counter-affidavits were again called which have been filed to which rejoinder-affidavits have also been filed.

3. As prayed by the learned counsel for the parties, this bunch of the writ petitions was taken up on priority basis under the order of the Chief Justice because practically whole length and breadth of the State is covered by the State Notification dated 16.3.1999 in so far as the mode, method and procedure of auctioning the mining rights with regard to minor minerals is concerned.

4. Shri S.P. Singh. Shri Y.K. Saxena, Sri C.L. Pandey. Shri Sanjay Kumar, Shri D. Mukherjee, Shri Ramesh Upadhyaya, M.P. Yadav and several other counsel who appeared on behalf of the petitioners. On behalf of the respondents Shri Vishnu Pratap Standing Counsel has been heard. As Jointly requested, all the petitions are being disposed of finally at this stage under the Rules of the Court.

5. Before advertng to the arguments advanced relating to the validity of the aforesaid Government Order, a few provisions have to be noted here in order to comprehend the arguments in pith and substance. The Parliament has brought the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957) with effect from 1st June, 1958 in order that "the Union should take in its control the regulation of Mines and the Development of Minerals to the extent hereinafter provided, (vide Section 2 thereof). In so far as the Minor Minerals are concerned, the Central Government has left the field open for the State Governments and Section 15 provides that State Government by Notification in the Official Gazette may make rules for regulating the grant of quarry leases and Mining leases or other mineral concession in respect of Minor Minerals and for the purposes connected therewith. State Rules may provide for the procedure for obtaining quarry leases. Mining leases or other mineral concession and fixing of collection of rent royalty fees, fine of other charges and the time within which and the mining in which fees shall be done and be payable (see Section IA, sub-clauses (e) and (g) respectively) : Armed with the aforesaid powers, the State of U. P. came out with a comprehensive set of rules known as U. P. Minor Minerals (Concession) Rules. 1963. (M.M.C. Rules) which make it clear that those shall apply to all the Minor Minerals available in the State vide sub-rule (4) of Rule 1 of the M.M.C. Rules. By Rule 3 thereof, it has been provided that no person shall undertake any mining operations in any area within the State, of any minor minerals to which these rules are applicable except under and in accordance with the terms and conditions of mining leases or mining permit granted under these rules ; Proviso provides that nothing shall affect any mining operations undertaken in accordance with the terms and condition of a mining lease or permit duly granted before the commencement of these rules. It further provides that no mining lease or mining permit shall be granted otherwise than in accordance with the provisions of M.M.C. Rules.

6. For the purpose of effective understanding in order to decide this bunch of petition, it may be mentioned that the State of U. P. through a Government Order dated 4.10.91 brought the entire area in the State under Chapter IV of the M.M.C. Rules. It may be pointed out that Chapter IV of the M. M. C. Rules is captioned as "auction lease-17 amendment". It consists of provisions made in Rules 23-30. Persons who were aggrieved even by the aforesaid Government Order dated 4.10.91 preferred several writ petitions including the leading one being C. M. Writ Petition No. 28796 of 1991 M/s Bundelkhand Minerals and Alkali Private Ltd. v. State of U. P. and others. A Division Bench of this Court considered all the phases of argument and ultimately concluded that :

"We have already held above that against notice issued by the District Officers amount to declaration under Sub-rule (1) of Rule 23 of the Rules. We have also held that the Government Order issued by the State Government on November 16, 1990 amounts to declaration with regard to the entire area of minor minerals in the State of U. P. thus it cannot be held that no declaration has been made with regard to the two villages as required by sub-rule 1 of Rule 23 and the contention raised by the learned counsel for the petitioner has no substance."

7. Then comes the G. O. dated 27.8.94 issued by the State Government declaring all the areas which previously was covered within Rule 23 for the auction lease under Chapter IV, to be covered thereafter by the provisions contained in Chapter II. This Chapter II of the M.M.C. Rules is captioned "grant of mining lease". The said Government Order dated 27th August, 1994 provides that District Magistrate will be empowered to notify the areas, call applications and grant lease to the persons in accordance with the provisions contained in the said Chapter 11.

8. While issuing the aforesaid Government Order dated 27.8.94, the State of U. P. came out with procedural amendment in the provisions contained in the entire M.M.C. Rules wherever necessary in order to give effect to its policy decision which may have been formulated then. Mention should be made to new additional provisions brought about after 20th amendment in the M.M.C. Rules. Rule 9A was added. Rule 23 was amended and Rule 27A and 27B were added, and, likewise Rule 53A was added in Chapter IV of the M.M.C. Rules which is captioned as "Mining Permit".

9. The State amendment, whether brought by 17th amendment or 20 amendment ensured that:

(1) Whenever matter was to be dealt with in Chapter II and the area in question called for the applicability of the provisions in Rule 9 and 9A or Rule 53 or 53A of Chapter VI, adherence shall be made to the provisions contained in 9A and 53A of the Rules.

(2) The declaration of an area deemed to be covered thereafter under Chapter IV was no more required to be published by Notification in the Official Gazette, because the State Government was, by the amended Rule 23 of M.M.C. Rules,

empowered to issue general or special order declaring the area or areas which may be leased out by auction or by tender or by auction -cum -tender.

(3) The preferential rights conferred by Rule 9A was applicable to mining lease for sand or morrum or Bajri or boulder or any of these in mixed state exclusively found in the river bed.

10. Rule 9A further provides that the preferential rights to persons "belonging to socially and educationally backward and citizens engaged in carrying on occupation of excavation of sand or morrum as a provision and/or residents of the same district in which the lease is applied for, or have established or intended to establish a minor mineral based industry in the State" shall be followed and the "Explanation" mentioned some castes also. Rule 10 provides that no person shall acquire in respect of any minor minerals one or more mining leases exceeding at a total of 30 acres. But simultaneously, it reserved the right of State Government that in the interest of mineral development, it is necessary so to do so, it may for reasons to be recorded, permit any person to be allotted one or more mining leases covering an area in excess of the aforesaid maximum of 30 acres. Moreover under Rule G8 of the M.M.C. Rules the State Government may if it is of the opinion that in excess of mining development it is necessary so to do, by order in writing and for reasons to be recorded authorises in any case the grant of any mining lease or working of any mining for the purposes of winning in mineral on terms and conditions different from those laid down in this rules." Chapter VI which is captioned as "Mining permit" contains the provision in Rule 51 that no permit shall be granted to a person who is not an Indian National or for a period more than 6 months. As stated above the newly added Rule 53A as brought out by 20th amendment permitted preference to be given in accordance with the provisions contained in Rule 9A and has laid down that the explanation of Rule 9A shall apply for the purpose of granting permit under Rule 53A.

11. It would be relevant to note here that even when Chapter IV, i.e., the Chapter dealing with "auction lease" is applied, a clear-cut distinction has been made under the M.M.C. Rules with regard to riverbed-mineral-deposits. In this connection, sub-rule (2) of Rule 23 should be mentioned here which provides that subject to the direction issued by the State Government from time to time in this behalf, no area or areas shall be teased out by auction or by tender or by auction-cum-tender for more than 5 years at a time provided that period in respect of in Situ rock type mineral deposit shall be 5 years and in respect of river bed minerals deposit shall be one year at a time.

(Emphasis by Court)

12. It is permissible for the State Government to make a declaration withdrawing any area or areas declared under sub-rule (1) of Rule 23 and in that event, the provisions of Chapter II, III and VI of these rules shall be applicable to said area or areas.

(Emphasis by Court)

Likewise sub-rule (3) of Rule 23 says that on the declaration of the area or areas under sub-rule 1, the provisions of Chapter II. III and VI of these rules would not apply to the area or areas in respect of which the declaration has been issued and that

"SUCH AREA OR AREAS MAYBE LEASED OUT ACCORDING TO THE PROCEDURE PRESCRIBED IN THIS CHAPTER"

(Emphasis by Court)

13. Having noticed the aforesaid provisions, the effect of Government Order dated 16.3.99 may now be examined. The subject of this G. O. translated in English would read as under:

"Subject--In accordance with U. P. Mineral Policy, 1998 applying an auction lease method granting lease of minor minerals in the areas concerned."

14. The contents of G. O. start by excluding limestone granite, morrum stone and clay for making bricks and applies Chapter IV to the entire area wherever minor minerals are found in the State of U. P. except the exceptions indicated above.

15. Before proceeding, it should be noted that the said G. O. was not to apply as per the proviso in clause II of para 2, to the rivers which were coming out of forest areas and made some exception to those areas. Clauses 4 and 5 of paragraph 2 of the said G. O. translated into English -would read as under :-

(4) Rule 23 (2) of Rules. 1963 provides that subject to directions of the State Government, no area under auction/auction-cum-tender system shall be leased out for more than, five years and it has also been clarified in the proviso of the same rule that, at a time lease period for in sifu rock type mineral deposit shall be five years and in respect of river-bed mineral the period of lease shall be one year. Therefore, while making declaration for granting lease under the auction/ auction-cum-tender system, the insertion of the above mentioned proposed period should be taken care of.

(5) Such areas on which already leases or permits are granted shall continue till expiration of their period but as soon as the period of lease/permit expires, declaration shall be issued under Rule 23 (1) of Rule. 1963 for granting lease under auction/auction-cum -tender system and the period of the lease shall be fixed so far as it is possible, so that the lease in respect of river bed minerals to expire in the month of September, and for in sifu rock type mineral to expire according to financial year."

Before proceeding further, it may be noted here that clause 6 of paragraph 2 specifically provides that new areas or vacant areas may be declared forthwith for settlement of lease in accordance with the provisions of Chapter IV. Likewise, clause 9 of para 2 provides that 15% enhanced rent/royalty should be ensured

while making settlement. Rest of the clause 2 of Paragraph 2 of remaining paragraph and the said G. O. are not relevant for the purpose of present discussion.

16. Learned counsel for the petitioner objected to the aforesaid G. O. on three grounds. First, the G. O. is ineffective as no where does it refer to having been issued in the name of Governor of State. It was stated that G. O. is only issued by Secretary and shall not have the force of law. In this connection, provision of Article 166 of the Constitution of India read with the provision of Chapter IV were read out, along with reference of two decided cases, of the Hon"ble Supreme Court. Second, by present policy decision declared through the aforesaid G. O., the State Government was not authorised to interchange Chapter II to Chapter IV and in this connection, it was emphasised that because of the absence of objects and reasons, and unless special reasons were disclosed as provided in Rule 68, it was not permissible for the State Government to issue the aforesaid Government Order. The third criticism is that the aforesaid Government Order contravenes provisions of Articles 37, 38 and 39 of the Constitution of India read with Articles 14 and 19 thereof particularly because the changes brought out by Rules 9A and 52A are not perhaps going to be adhered to by the Government in view of this G. O. and, therefore, it should be struck off.

17. During the course of argument, Shri Vishnu Pratap was afforded opportunity to produce the record in order that first argument of the learned counsel for the petitioner may be met, if possible. There is no denial of the fact that the G. O. itself does not show that it is issued in the name of the Governor whereas Article 166 of the Constitution of India provides that all executive matters of the Government of a State shall be expressed to be taken in the name of Governor.

18. Shri Vishnu Pratap produced three records. From the first record, it appears that the Chief Minister of U. P. passed an order for keeping the consideration of the Industrial policy as item of agenda in the Cabinet meeting. The second record shows that the policy decision was formulated as per paragraph 6 of the recommendation of the secretariat. The Mineral Policy. 1998 has been published in the Form of book-let, copy of which has been furnished to the Court which will form part of the record. The third record shows that Principal Secretary of the Industrial Department has issued directions along with copy of the cabinet decision taken on the 1st December, 1998 and that letter of the Joint Secretary (Cabinet) was issued on behalf of the Chief Secretary which is dated 4th December, 1998. As to the examining of the controversy whether the constitutional guidelines have been followed, by the Court making judicial scrutiny of the policy decision challenged through these writ petitions, Shri Vishnu Pratap relied upon the said three records and then adverted to three rules namely 1. U. P. Rules of Business, 1975 2. U. P. Business (Allocation) Rules. 1975. 3. U. P. Abhipramanikaran (Adesh Abhilikhit Niyamawali) 1975, he also placed reliance upon two decisions of the Supreme Court in R. Chitralekha. A/R 1964 SC 1823 and also A. Sanjeev Naidu AIR 1970 (1) SC 443.

19. It was specifically pointed out by the learned counsel for the petitioner that the Government Order was issued under the signature of the Secretary and, therefore, at best it could be said as emanating from the Secretary alone. Apparently the order should have stated that it was being issued in the name of the Governor which is not existing in the order but in view of the record produced by the Standing Counsel, there can possibly no doubt whatsoever that G. O. has been issued after Government decision has been taken on the policy matter endorsing what is known as Minerals Policy. 1998.

20. It should be stated here that the provisions contained in sub-Article (1) of Article 166 of the Constitution need not be held mandatory from the point of view of the publication of the notice or order in case it is found that the record fully validates the issuance of the order. The net result of the discussion is that the first challenge to the order fails and it is hereby held that G. O. dated 16.3.99 is a validly issued G. O.

21. Coming now to the question as to whether objects and reasons behind the policy decision has been disclosed or not, it is apparent that G. O. itself refers under the heading "subject" to the policy decision which was taken by the Government and endorsed by the Cabinet in the meeting held on 1st December, 1998. Stood communicated under the letter of the 4th December, 1998 shown from the three records produced by Vishnu Pratap, Standing Counsel. The copy of the Mineral Policy, 1998 has already been filed in the Court and is now a part of the record. Therefore, there is full application of mind and objects and reasons are already formulated and delineated in the Mineral Policy, 1998, therefore, second argument also is without any basis and is hereby rejected.

22. The State Government has, with regard to entire mineral available in the State a new policy shown in the booklet as Mineral Policy. 1998. The third argument is a mixed question of fact and law and has to be addressed as such. The policy applies to minor mineral in river-bed, for which several provisions exist in M.M.C. Rules which have been in vogue and are already saved by paragraph 5 of the aforesaid Government Order. The point to be reconsidered is that the limited type and amount of minor mineral found by the river-bed was already included in the earlier policy decisions and can it be said that the present policy makes a departure or deviates from the same? Before discussing further, it should be at once stated here that by and large mineral can be classified into two heads, major and minor minerals. Again, minor minerals may be classified into further several heads few of which will be "sand, or morrum or Bajri or boulder or any of these in mixed state exclusively found in the river-bed." One may see the special provisions of these types of minor minerals formulated under Rule 9A and also see the proviso to sub-rule (2) of Rule 23 of the M.M.C. Rules.

23. The most crucial aspect of the case now emerges--what is the distinction between Chapter II and Chapter IV? How is the recent policy decision going to adversely affect the special provisions enacted in Rule 9A of the Rules which remains in the statute book. What is going to be the effect of the G. O. with

regard to minor minerals found in the riverbed? How and in what manner the declaration under Rule 23 does away with the policy or need and necessity with regard to the minor minerals and also the reserved classes of persons covered by the provisions of Rule 9A?

24. As noted above, through Rules 3 and 4 in Chapter II and Rules 23 and 24 in Chapter IV the mining leases are brought about. In fact, the M.M.C. Rules authorise the State Government to part with the mining rights to some person or firm or company only by two major modes-1. Lease 2. Licence. Chapter VI is a temporary measure for a permit for a very short period which will never extend beyond 6 months. Chapter VI which has been considered while dealing with the provisions regarding permits, allows applicability of the principle behind Rule 9A, Whenever an area is made available under Chapter II, the District Magistrate issues notice calling applications. When applications are filed, they have to be dealt with in accordance with the provisions contained in Chapter II, but ultimately it is only "lease" which is going to be granted to the person who applied in response to the District Magistrate's notice. Likewise, the District Magistrate calls for tender or notifies area or areas for tender auction or auction-cum-tender as the case may be, whenever the District Magistrate has to settle the "lease" of the mining area in accordance with the provisions of Chapter IV of the M.M.C. Rules. Again, the District Magistrate, while granting lease whether under Chapter II or Chapter VI acts for the State Government and on its behalf, the lease deed is executed in favour of the person found entitled to the lease as compared to another applicant.

25. The Government policy. 1998 as noted above makes a long discussion of what the State Government proposed to do regarding mining industry. It says :

1. To expedite Investigation of new mineral deposits for development by adopting modern exploration techniques.

8. To ensure economic prosperity in the distant and backward areas of the State through mineral development.

11. To help the people traditionally engaged in mining works with a view to encourage social justice and increase in employment opportunity in mineral matters.

12. To provide for safety and welfare of the people engaged in mining activities.

26. In the said booklet, the following proposals also exist :

SOCIAL JUSTICE. SAFETY & WELFARE :

For remote and backward areas of the State, where mining is the main activity, thrust will be given in the Policy to involve local people. especially of socially and economically backward community. Safety and welfare of workers engaged in mining activity will be constantly monitored.

For persons of Mallah community, who are traditionally engaged in the mining of

sand and morrum, welfare schemes will be initiated, such as training centre, school, dispensary, etc. whose expenses would be met from the Khanij Vikas Nidhi, For considering these proposals a committee will be constituted under the chairmanship of the Commissioner in which suitable representation will be given to the people of this community. The above committee would also monitor, the implementation of these welfare schemes. In addition employment to the local persons of this community would also be provided.

KHANIJ VIKAS NIDHI (MINERAL DEVELOPMENT FUND) ;

To achieve the twin objectives of promoting exploration and mineral development, funds will be required for the following :

1. For procurement of modern equipments for exploration and testing.
2. For preparation of a computerised data base and feasibility reports for the use of entrepreneurs.
3. For building/strengthening of infrastructure and creation of Mineral Estates.
4. For compensatory afforestation and reclamation of mined out lands.
5. For operating the welfare schemes for the Mallah Community.

To meet these requirements, the State Government will create a "Khanij Vikas Nidhi" by providing five per cent of the revenue collection. For approval of the utilisation of the money collected in the said fund, a committee will be constituted consisting of Industrial Development Commissioner as its Chairman and Secretary, Industrial Development, Principal Secretary/Secretary Finance. Secretary Planning, Managing Director, PICUP, Managing Director, UPSIDC. Director-Geology & Mining and concerned officers will be its members."

27. In spite of hearing, the learned counsel for the petitioner at more than sufficient length, the Court could not find any force in the argument that the aforesaid Government Order takes away the principle behind Rule 9A by bringing into new mineral policy. 1998. It is more than obvious that the State proposes to raise revenue earnings from major mining activities in the State and at the same time, draw balance for the minor minerals and protect these persons who are engaged in river-bed activities of mining as was envisaged through the 20th amendment by incorporating Rule 9A.

28. The Court is thus called upon to make a harmonious construction so that the welfare provisions are not lost in the search of revenue procurement. In this connection, one may refer to the decision of the Supreme Court in *Pondicherry v. Mohd. Hussain*, 1994 (6) SCO 121, wherein it has been held :

"We cannot lose sight of the fact that the Act is itself a legislation enacted with a view to achieve a more equitable distribution of land so as to support the directive principle contained in Article 59 of the Constitution of India. The provisions of such a legislation have to be so interpreted as to further the object

of the legislation and not defeat the same."

29. The Court finds enough support and strength from the aforesaid observations of the Supreme Court on the provisions of the said Act as furthering the object of the Act and the Court does not find any indirection in the provision of the Act which justify placing such an interpretation of the present Mining Policy which will defeat the policy behind Rule 9A of the M.M.C. Rules.

30. It has already been noted above that M.M.C. Rules are similar to subordinate legislation and, therefore, if an interpretation put to it results beneficial for all sections of the society and also ensures the economic development of weaker class of society, compulsorily such an interpretation must be applied.

31. A reference has already been made to clause 5 of para 2 of G. O. dated 16.3.99. It has saved the leases about which period has not expired. It is specifically provided in the aforesaid clause that on expiry of period of lease, those areas will be declared under Chapter IV. Therefore, the G. O. dated 16.3.99 is not a declaration with regard to areas covered by those lease deeds.

32. The aforesaid provisions in clause V left out of the para 2 of the G. O. mining area wherever lease was existing and continuing on 16.3.99. The District Magistrates are required to declare by notification that these areas are to be covered by Chapter IV by issuing a declaration under Rule 23 of M.M.C. Rules. A number of petitions have been filed where the area was continuing to be under lease executed in favour of lessee under Chapter II by applying 20th amendment of the M.M.C. Rules. Consequently, all those areas are yet to be notified by the District Magistrates of the concerned areas. In this respect, unless a lawful notification is issued by the District Magistrate, the G. O. is not going to cover those areas. To this extent, therefore, it is hereby held that the instant G. O. has not yet covered those areas where lease was in continuation on 16.3.99 and unless a declaration under Rule 23 is issued, Chapter IV of M.M.C. Rules will not apply and Chapter II continues to apply.

33. In order to extend preferential rights under Rule 9A, the matter has to be considered by the State Government. Shri Vishnu Pratap learned Standing Counsel argued that in view of the provisions contained in Rules 23 and 24 respectively, the declaration of an area for one Chapter i.e., Chapter IV excludes the provision of Chapter II and where Chapter II provisions are attracted. It may exclude provisions of Chapter IV. With these provisions in mind, he argued that the applicability of Rule 9A will not be permissible with regard to any of the area which now falls under Chapter IV. On the other hand, the point canvassed by some of the counsel for the petitioner is that Rule 9A is a benevolent policy which is in no way contradicted by the policy decision of 1998, therefore, the distinction of the chapters should be removed and the principle behind Rule 9A should be applied to lease deeds which will be executed under Chapter IV because, whether, it is Chapter II or it is Chapter IV, it will always be a lease deed which will have to be executed by Government for settling mining right with citizens.

34. The propositions and the respective contentions have been put to severe test. The Court does not find favour with the argument of some of the learned counsel for the petitioners that the present policy is designed in any manner to undo the protective economic good which was brought into being for certain section of the society. The economically and educationally backward classes of our society particularly those living in river sides and earn through the riverbed minor minerals and also for the persons living in the said districts are designed to be protected by those special provisions. As already discussed above, one of the objectives of any democratically elected Government will be to uplift the down-trodden.

35. It is hereby held that the principles and the policy applicable through Rule 9A of M.M.C. Rules will be applied with regard to settling of lease rights even if Chapter IV is applied by the State Government, The mineral policy, 1998 may not be affected at all if settlement is done with regard to river-bed minerals by resorting to provision of Chapter 11 while adhering to the auctioning method for other minerals through Chapter IV. Thus this is a matter which has to be considered by the State Government and the Court is not inclined to force any decision on this issue except to the extent noted above that even while applying Chapter IV, the Rules in Chapter II may be applied particularly the special provisions existing for socially and educationally backward citizens engaged in carrying the occupation and excavation of sand or morrum and are resident of same district.

36. Since admittedly, all areas which are notified under Chapter IV by the Government Order would not cover the area with regard to which lease deeds were in existence on 16.3.99 and the District Magistrate may not have made separate notifications, those have to be advertised by the District Magistrate in accordance with the provisions of Chapter IV in view of what has been contained in clause 5 of para 2 of the G. O. dated 16.3.99.

37. It is after sufficient argument that the Court had granted and issued a complete stay order with regard to auction of mining rights. The stay order, therefore, will cease with the writ petition being disposed of but the State Government shall take decision at the earliest convenience so that the policy decision behind Rule 9A and the decision which is taken with regard to the Mineral in the State as envisaged through the Mineral Policy, 1998 are combined for all round development of the State of Uttar Pradesh.

38. During the course of argument, it was pointed out that whether or not Rule 9A is intra vires has been subject matter of a reference by a Division Bench in the Lucknow Bench and a Full Bench has been constituted and perhaps arguments have been heard. Be that as it may, in the instant case the wires, etc, was never touched by either side. That apart, this Court has already expressed in Writ Petition No. 35895 of 1997 relying upon the decision of another Division Bench in case reported in 1997 (2) AWC 618 that the aforesaid Rule 9A is well protected by the Constitutional provision and is intra vires.

39. In view of the aforesaid discussion, the writ petitions partly succeed. They are disposed of with the direction that each one of the petitioner's claim shall be adjudged by the officials under the M.M.C. Rules in accordance with the direction which may be issued by the State Government in pursuance of this judgment which preferably may be issued within a period of 2 months from today. For the reasons aforesaid, the parties will bear their own costs.

40. Before parting with the case, the Court places on record appreciation for the sincere assistance which came through the learned counsel for the petitioners in deciding these bunch of writ petitions and also from Shri Vishnu Pratap, learned Standing Counsel who argued the matter brilliantly.